

# BAR BULLETIN

MARYLAND STATE BAR ASSOCIATION NEWSLETTER

APRIL 15, 2018

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## MSBA Focus Group Series Invites Member Input for Future of Profession

By Patrick Tandy

The MSBA is in the midst of a significant evolution as it positions itself for its next 100 years as the home of tens of thousands of attorneys. To help inform its Board of Governors on the priorities on which it must focus for the next three to five of those years, MSBA has launched a series of spring Focus Groups across Maryland, inviting members to weigh in with their top priorities, questions, and concerns.

"MSBA is embarking on a journey to meet with members throughout the state to get a sense of what the opportunities and challenges are for individual attorneys, for the profession and, as a result, for our Association," said MSBA Executive Director Victor

Velazquez at the program's March 19 debut in Bethesda.

Subsequent Focus Groups have been held in Columbia and Frederick, with more already scheduled for Baltimore City (April 2) and Bel Air (April 16). Free to attend, each Focus Group is facilitated by professionals from the Business Leadership Institute who guide attendees through a series of interactive exercises.

"We are trying to figure out how we can spend our energy to better position ourselves for the future and support the work that you do - individually, as firms, as employers," notes Velazquez, "and that requires a lot of input, which means that we are working to come to you as opposed to the expectation that you are going to come to the MSBA, wherever we might be."



## 2018 Influential Marylanders

The Daily Record counted a handful of Maryland Bar members among its 2018 Influential Marylanders, who were recognized with a special dinner ceremony on March 22 at the Grand Lodge of Maryland in Cockeysville.

Legal professionals honored included MSBA President Sara H. Arthur; Chief Judge Mary Ellen Barbera, Maryland Court of Appeals; Maryland Attorney Grievance Commission Bar Counsel Lydia Lawless; attorney

A. Dwight Pettit; Lerch, Early & Brewer Managing Partner Steven A. Robins; and Venable LLP Partner Kenneth L. Thompson.

MSBA congratulates these and all of The Daily Record's 2018 Influential Marylanders.



# MSBA Names 2018-2019 Leadership Nomination Slate

The MSBA Board of Governors (BOG) has named **Dana O. Williams**, a trial attorney and partner at the Towson law firm of Heisler, Williams & Lazzaro, LLC, MSBA's 2018-2019 President-Elect Nominee. Williams will run for election this June at the MSBA Legal Summit & Annual Meeting, leading a slate that includes Baltimore City District Court **Judge Mark F. Scurti** for Treasurer and **Deborah L. Potter**, a Partner at the Bowie-based firm of Potter Burnett Law, for Secretary.

Current President-Elect **Judge Keith R. Truffer** will be installed as MSBA President at the Legal Summit & Annual Meeting.

MSBA's elective officers consist of the President, President-Elect, Secretary, Treasurer, one or more District Governors elected from each of the state's 12 districts, and three Young Lawyer Governors. The BOG consists of all of MSBA's elective officers as well as the Immediate Past President, three Section Representatives, the State Delegate to the House of Delegates of the

American Bar Association, and the Chair of the MSBA Young Lawyers Section. The BOG has full power and authority over the affairs of the Association between its membership meetings and performs other duties as specified in the MSBA Bylaws. Visit [www.MSBA.org](http://www.MSBA.org) for more information about the MSBA Board of Governors.

Register online at [registration.msba.org/annual-meeting](http://registration.msba.org/annual-meeting) for the 2018 MSBA Legal Summit & Annual Meeting today.

## BAR BULLETIN

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April 15, 2018

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## MARYLAND PATRIOT RIDE

To Antietam National Battle Field  
**April 28, 2018, Saturday 2:00 - 4:00 p.m.**

Join the Patriot Motorcycle Ride to help provide our Disabled Veterans, active duty military and all Maryland Veterans with the legal help they need for benefits and services they deserve, including disability benefits, discharge upgrades, family law issues, foreclosure prevention, homelessness and bankruptcy.

This event is perfect for any type of motorcycle rider, all motorcycle enthusiasts/supporters, military veterans, officers and patriots who desire to support our active or former military personnel. All lawyers and members of the Maryland Bar Association are welcome too!

The ride will start and finish at Harley-Davidson of Frederick, Inc., 5722 Urbana Pike, Frederick, MD 21704.

A donation of \$10 (or more!) will go directly to support the legal needs of Veterans.

This event is supported by the Maryland State Bar Association Veterans Affairs & Military Law Section, the University of Baltimore School of Law, and the Homeless Persons Representation Project, Inc.

***Join us in a beautiful ride for a great cause.***

### Registration:

[sections.msba.org/maryland-patriot-ride](http://sections.msba.org/maryland-patriot-ride)

You can register on race day from 12:30 - 1:45 p.m. at the Harley-Davidson in Frederick.

For more information email [msbapatriotride@gmail.com](mailto:msbapatriotride@gmail.com).

Last minute details available within 24 hours of ride at (401) 526-4653.

**DISCLAIMER:** Motorcycle riding, by its very nature, includes certain inherent risks that cannot be eliminated regardless of the care taken to avoid injuries; consequently, the supporting organizations and entities disclaim all liability for any riding events.

## APRIL

**16 MSBA** invites you to participate in a *Focus Group (Bel Air)* on the future trends impacting the legal profession. Hosted at Main Street Tower, 29 S. Main St., Bel Air, MD 21014, from 1:00 p.m. - 6:00 p.m., this event is one of a series of focus groups, facilitated by experts at the Business Leadership Institute (BLI). The goal of the workshop is for each participant to walk away with a clearer understanding of the immediate and future challenges and opportunities impacting attorneys, and the profession as a whole; and what we can do to overcome these challenges and leverage the opportunities. After the workshop, enjoy a complimentary reception with heavy appetizers and cocktails from 4:30-6:00 p.m. Each attendee will also be entered into a drawing for a free iPad Pro! Register online at registration.[msba.org/focus-group-bel-air](http://msba.org/focus-group-bel-air), or contact Kevin Cook, [kevin@msba.org](mailto:kevin@msba.org), for additional information.

**17 MSBA's Construction Law Section and Administrative Law Section** welcome Lt. Governor Boyd Rutherford, Philip Andrews, Esq., and Scott Livingston, Esq.

as Speakers at their co-sponsored event *Bid Protests With the State of Maryland* from 8:00 a.m. - 12:00 p.m. at the Judicial Education and Conference Center, 2011D Commerce Park Drive, Annapolis, MD, 21401. Contact Angela Munro, [angela@msba.org](mailto:angela@msba.org), to register, or for additional information.

**19 Join MSBA's Litigation Section** for their *Annual Judge's Dinner and Presentation of the Harrell Award for Judicial Excellence* to the Honorable Kathleen Gallogly Cox, scheduled from 6:00 p.m. - 8:00 p.m. at the Doubletree Hotel in Annapolis. Contact Angela Munro, [angela@msba.org](mailto:angela@msba.org), for additional information.

**20** You are invited to attend **MSBA's Young Lawyers Section's 27th Annual Charity Event**, this year benefitting the Oyster Recovery Partnership. Scheduled from 6:00 p.m. to 9:00 p.m. at Gertrude's, 10 Art Museum Drive, Baltimore, MD 21218, the event will include hors d'oeuvre stations, oyster shucking, an open bar, entertainment, and a silent auction. The goal is to raise \$20,000 for the Oyster Recovery Partnership to support their environmental education program for youth. Contact Angela Munro, [angela@msba.org](mailto:angela@msba.org), for additional information.

ditional information.

**24 The MSBA Alternative Dispute Resolution Council** is proud to present an exceptional training program by Kenneth Feinberg: *Mediation and Advocacy in Life Changing Events* at their *Spring Event Training and Judge Bell Award Dinner* at Tabrizi's, 500 Harborview Drive, Baltimore, MD, 21230. Registration runs from 11:30 a.m. - 12:00 p.m.; Lunch/Training runs from 12:00 p.m. - 5:00 p.m.; Cocktail Hour is scheduled from 5:00 p.m. - 6:00 p.m.; and, Dinner/Award Presentation will run from 6:00 p.m. - 8:00 p.m. Contact Angela Munro, [angela@msba.org](mailto:angela@msba.org), for additional information.

**26 The Maryland Bar Foundation** hosts its *Annual Open Meeting and Curran Award Reception* from 6:00 p.m. - 8:00 p.m. at Cunningham's, 1 Olympic Place, Towson, MD 21204. Contact Angela Munro, [angela@msba.org](mailto:angela@msba.org), for additional information.

**26 The Pro Bono Resource Center of Maryland's** hosts the *20th Partners for Justice Conference* at the Baltimore Convention Center, 1 West Pratt Street, Camden Lobby, Baltimore, MD 21201, featuring

MD Attorney General Brian Frosh, Mayor Catherine Pugh, and Blair Franklin and Ciera Dunlap of the Youth Empowerment Society Walk-in Center, as speakers. Additional information and registration available online at [probonomd.org/training-events/conference](http://probonomd.org/training-events/conference).

**28 The MSBA's Veterans Affairs & Military Law Section, the University of Baltimore School of Law, and the Homeless Persons Representation Project, Inc.** are hosting the *Maryland Patriot Motorcycle Ride* to help provide our Disabled Veterans, active duty military and all Maryland Veterans with the legal help they need for benefits and services they deserve. The event runs from 2:00 p.m. - 4:00 p.m. and begins and finishes at Harley-Davidson of Frederick, Inc., 5722 Urbana Pike, Frederick, MD 21704. Register online at <https://sections.msba.org/maryland-patriot-ride/>, and contact [msbapatriotride@gmail.com](mailto:msbapatriotride@gmail.com) for additional information.

## MAY

**3 Join the Maryland Bar Foundation** for their *Annual Open Meeting and Curran Award Reception* from

See Dateline Page 19

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Members should address their written ethics inquiries to Patricia Weaver, Chair, Ethics Committee, 4800 Hampden Lane, Suite 700, Bethesda, MD 20814, or call (301) 951-9360, or e-mail [tweaver@paleyrothman.com](mailto:tweaver@paleyrothman.com). Opinions of the Ethics Committee are available online at [www.msba.org](http://www.msba.org). Please consult the Rules and MSBA Ethics Opinion Website before calling.

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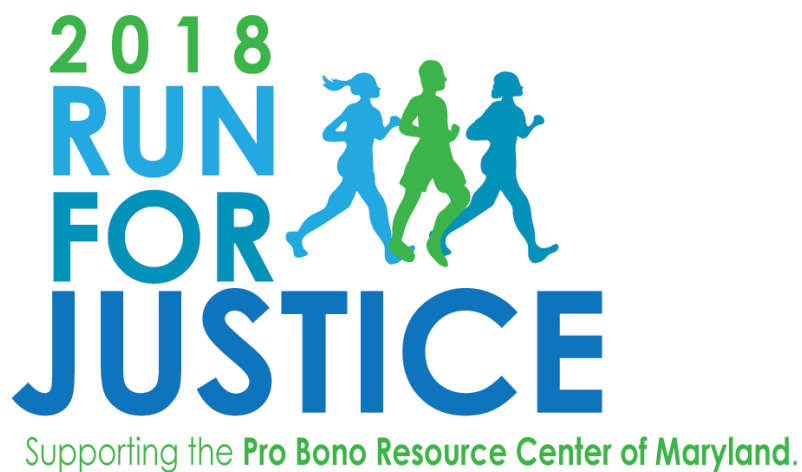
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## Support the Pro Bono Resource Center of Maryland at our Annual RUN FOR JUSTICE!

SATURDAY JUNE 9, 2018 – 7:30 AM registration  
(race starts at 8 AM)  
Meadowood Regional Park  
10650 Falls Road, Lutherville, MD 21093

**Pro bono attorneys change lives... and you can too!**

**Run a 5k or walk a mile to support PBRC, the pro bono arm of the Maryland State Bar Association.**

Register today to run as an individual or with a team of friends, family, or co-workers. And when you fundraise together, you provide access to justice for even more people in need.

Individuals who commit to raising **\$100 or more** can run for free using the code FUNDRAISER.

**Join us at [www.probonomd.org/run](http://www.probonomd.org/run)**

Questions? Ask Linzey Powers at [lpowers@probonodmd.org](mailto:lpowers@probonodmd.org).

## Brigadier General Philip Sherman Award

The Veterans Affairs and Military Law Section of the Maryland State Bar Association is pleased to present The Honorable Philip Nichols, 7th Circuit Court Judge and Captain, JAGC, USNR (Ret.) with the 2018 Brigadier General Philip Sherman Award on May 17, 2018 at the 5th Regiment Armory, Baltimore. The ceremony will begin at 5:30 PM in the Reckford Room at the Armory. If you would like to join us in honoring Judge Nichols, please email Hugh McClean at [hmclean@ubalt.edu](mailto:hmclean@ubalt.edu).

Judge Nichols has served as Circuit Court Judge since 1992 and previously served as a District Court Judge from 1985 to 1992 and as Judge of the Orphans Court from 1977 to 1985. As a Naval Reserve Judge Advocate, Captain Nichols served as a General Courts Martial Judge and had two tours as a member of the U.S. Navy -Marine Corps Court of Military Appeals. Since his retirement, he has remained active teaching at the U.S. Naval War College and the U.S. Naval Academy.

## TRIALS & TRIBULATIONS FUNDRAISER

**“A FAMILY AFFAIR”**

**June 7, 2018**

6 p.m. at Westminster Hall

Join CLREP – MSBA’s educational arm in Maryland schools – for “Trials & Tribulations,” a heartwarming and entertaining evening of storytelling (as well as a silent auction) by legal professionals. All proceeds benefit CLREP’s youth programs such as the annual MSBA Mock Trial Competition, Baltimore City Teen Court, the Law Links Summer Internship Program, and more!

Purchase your tickets online at:  
**[clrep.networkforgood.com/events/3620-trials-tribulations-a-family-affair](http://clrep.networkforgood.com/events/3620-trials-tribulations-a-family-affair)**





# MSBA

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2018

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Former Attorney General  
of the United States



**PREET BHARARA**  
Distinguished Scholar, NYU  
School of Law & Host of  
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**Maryland State Bar Association  
Legal Summit & Annual Meeting 2018**

**June 13-16, 2018 | Ocean City, MD**

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To register, go to  
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## 20<sup>TH</sup> ANNUAL MARYLAND PARTNERS FOR JUSTICE CONFERENCE

THURSDAY, APRIL 26, 2018 | 8:15 AM TO 3:30 PM

BALTIMORE CONVENTION CENTER  
1 WEST PRATT ST. BALTIMORE, MD, 21201

**Morning Speaker:** CATHERINE PUGH | MAYOR OF BALTIMORE

**Keynote:** BRIAN FROSH | MD ATTORNEY GENERAL

**Guest Speakers:** BLAIR FRANKLIN AND CIERA DUNLAP  
YOUTH EMPOWERED SOCIETY BALTIMORE

### TICKETS:

Purchase tickets online by April 20th for \$150 - walk-in pricing \$175.

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[WWW.PROBONOMD.ORG/CONFERENCE](http://WWW.PROBONOMD.ORG/CONFERENCE)

## 10<sup>TH</sup> ANNUAL VETERANS LEGAL ASSISTANCE CONFERENCE AND TRAINING

FRIDAY, JUNE 2, 2018 | 8:00 AM TO 5:00 PM

UNIVERSITY OF BALTIMORE SCHOOL OF LAW  
1401 N. CHARLES ST. BALTIMORE, MD 21201

**Keynote:** FRANCINE C. BLACKMON

DEPUTY ASSISTANT SECRETARY OF THE ARMY (REVIEW BOARDS)  
AND DIRECTOR OF THE ARMY REVIEW BOARDS AGENCY (ARBA)

**REGISTRATION & MORE INFO:**  
This conference is FREE.

[WWW.PROBONOMD.ORG/VETERANS](http://WWW.PROBONOMD.ORG/VETERANS)

## 4<sup>TH</sup> ANNUAL RUN FOR JUSTICE SATURDAY, JUNE 9, 2018 | 7:30 AM RUN STARTS AT 8:00 AM

MEADOWOOD REGIONAL PARK  
10650 FALLS ROAD, LUTHERVILLE, MD 21093

Run a 5K or walk a mile! Teams encouraged!  
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**QUESTIONS? Contact:** JACI JONES -

Phone: (443) 703-3053 or [jjones@probonomd.org](mailto:jjones@probonomd.org).



Young Lawyers Section's

## 27<sup>th</sup> Annual Charity Event

**Friday, April 20, 2018**

6:00 p.m. to 9:00 p.m.

Gertrude's at the  
Baltimore Museum of Art



YOUNG LAWYERS SECTION  
Maryland State Bar Association

**Visit**

**[bit.ly/YLSCharityEvent](http://bit.ly/YLSCharityEvent)**

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# Significant Amendments to Guardianship Rules in Title 10 of Maryland Rules of Procedure



By Judge Karen Jensen

*Effective January 1, 2018, the Maryland Court of Appeals adopted significant amendments to the guardianship rules in Title 10 of the Maryland Rules of Procedure. If you practice in this area, or even if you do not now but will undoubtedly have a case in future, it is imperative to be familiar with the rule changes.*

## Attorney Training

Before appointment as a Guardian, Rule 10-106 now requires counsel for the alleged disabled person to have completed a training program, unless waived for good cause by the court. Any training program offered for this purpose must conform to the Maryland Guidelines for Court-Appointed Attorney in Guardianship Proceedings Appendix to Title 10. The training must include an overview of guardianship practice, an understanding of mental and physical disabilities, of diminished capacity, and of the ethics required of counsel. Additionally the attorney must be a member in good standing with the Maryland Bar and provide evidence to the Court of financial responsibility, such as malpractice insurance.

**Practice Point:** Online training is available through the Judiciary website. Live training may also be sponsored by any organization such as the State Bar Association, as long as the curriculum complies with the Guidelines. The Judiciary is maintaining a State-wide roster of attorneys who have completed the training and who apply to be added to this roster. Check with each jurisdiction to determine whether the court is permitting training waivers. If waivers are permitted, use the waiver request form posted on the Judiciary website.

## Guardian Training

Except as to a public guardian of the person, a prospective guardian of the person and/or property is required to complete both an orientation program and post-appointment training in conformance with Guidelines for Court-Appointed Guardians, also found as an Appendix to Title 10. Rule 10-108 provides that the orientation program is to be completed before appointment. For guardians of the person, post-appointment training is to be completed within 120 days of the appointment, while guardians of the property must complete training no later than

60 days following appointment. See Rules 10.205.1 and 10-304.1. Certificates verifying completion of the training are to be filed with the Court. Finally, attorneys appointed as guardians are required to complete an additional training module focusing on attorney ethics.

**Practice Point:** The Judiciary offers online training modules through its website. Several courts now offer live trainings, so best practice is to learn what on site trainings are available in your jurisdiction.

## Bond

Attorneys representing the petitioner in a property guardianship, as well as counsel for the alleged disabled person, should expect more scrutiny from the court in determining whether a bond can be waived. Rule 10-702 lists several factors that the Court must consider in establishing the bond amount, such as value, liquidity and annual income of the guardianship estate; the credit and criminal history if any of guardian; and whether the estate can be protected through a restricted account.

**Practice Point:** A Petition for guardianship of the property must list as much information as possible

See *Guardian* Page 16

# Social Security Disability Insurance: New Changes Make Disability More Difficult

By Richard P. Neuworth and  
Devan M. Wang

Social Security Disability Insurance and Supplemental Security Income (SSI), the two federal disability benefit programs, were significantly changed during 2017. It is important for applicants and their representatives to understand the impact of these changes both on the application process, and on the way Social Security evaluates applications for benefits.

## The Five Day Rule:

The most significant change is the new Five Day Rule which went into effect on May 1, 2017. The Five Day Rule requires that applicants at the hearing level, or their representatives, must either submit, or notify the Administrative Law Judge (ALJ) about, all evidence at least five business days before their scheduled hearing.

The Five Day Rule was enacted in conjunction with a new rule requiring that the ALJ send a hearing notice to applicants and their representative at least 75 days before a scheduled hearing. The combined effect of these two changes means that applicants and their representatives must plan and begin gathering as early as possible, all evidence necessary for their hearing, ideally, as soon as the notice of hearing is received. Failure to notify the ALJ, at least five business days before the hearing, of efforts to obtain all evidence that will be submitted at the hearing, and all evidence not obtained, could result in crucial evidence being excluded.

Representatives have additional duties in addition to this rule. The Social Security Regulations, adopted in 2017 (SSR 17-4p) also require representatives to make good faith efforts to act with reasonable promptness to obtain information or evidence that must be submitted. This requirement means that representatives must not wait until the five day deadline to request, submit, or notify the ALJ about evidence. Representatives who repeatedly violate the Five Day Rule may be suspended or prohibited from further practice.

## New Mental Health Listings:

Applicants and their representatives also must be aware that the Social Security Administration updated the mental health listings as of January 17, 2017.

Social Security listings are of impairments for each major body system, including mental health, that are considered severe enough to prevent an individual from performing any gainful activity.

While the changes to mental health listings are too numerous to cover, there are a few major changes that applicants and their representatives must know.

First, the terminology of the mental health listings was updated to reflect the current language found in the DSM-5.

Second, there were changes to the listing numbers, and requirements. Listings 12.11 Neurodevelopmental disorders; 12.13 - Eating disorders; and 12.15 - Trauma and stressor related disorders (e.g. PTSD) were added, while listing 12.09 for substance addiction disorders was removed. An additional significant change is that an applicant can no longer be found disabled under listing 12.05, without meeting the functional limitations in Paragraph B of that listing. This is in contrast to the previous rules, under which a valid Full Scale IQ either under 60, or an IQ between 60-70 with another severe impairment, were each enough to meet the requirements of listing 12.05.

The four areas of functioning considered in Paragraph B of the listings were also changed. Previously, Social Security considered functional limitations in the following categories:

- (1) Activities of Daily Living;
- (2) Social Functioning;
- (3) Concentration, Persistence, and Pace; and
- (4) Episodes of Decompensation.

See *Social* Page 16



# Protect Your Client's Home Using the Parental Care Rule

By Tenae L. Smith

Life Estate Deeds, especially life estate deeds without powers, are tools to avoid both probate and the Medicaid lien (life estate without powers only). The Life Estate Deed without powers gets the 5-year lookback ticking for the Medicaid application process. In a perfect pre-crisis planning situation, the client remains healthy and out of a nursing home for at least five years.

But what happens if your client is in crisis, must go into a nursing home, and apply for Medicaid before the five years is up? If the client has completed the Life Estate Deed, before you decide to add the remainder value interest of the home into the total of gifts, take a look at the Parental Care Rule. This rule is written in COMAR 10.09.24.08 and enumerated in the Medicaid Manual Section 800.21. *Verification that Parental Care Was Provided.*

## Parental Care Rule

The Parental Care Rule, also known as the "2-year Rule", allows for the Medicaid applicant's child, to assert that he/she has taken care of mom/dad for the past consecutive 24 months. The Rule is one of several exceptions that prevents the transfer (e.g., "disposal") of a home from being penalized. When applying for Medicaid, the following must be submitted at the time of the Medicaid application to assert the 2-year Rule:

1. Utility bills, automobile registration, or other documents containing the son's or daughter's name and address (one document dated 24 months and another dated one month prior to the parent's institutionalization), to verify that the son or daughter resided in the home during that entire period; *and*
2. Written verification from the parent's attending physician, stating that the parent's

medical and physical condition was such that he/she needed long-term care (i.e., nursing facility or higher level of care) during the entire 24-month period; *and*

3. A statement from the son or daughter that he/she:
  - a. Provided the needed care that delayed the parent's institutionalization (e.g., quit a job to care for the parent, and has a letter from the former employer to document the voluntary resignation); *or*
  - b. Paid for the parent's care while the son or daughter was at work by:
    - i.) Hiring a nurse to care for the parent (must be verified by the nurse or by the agency through which the nurse was employed); *or*
    - ii.) Hiring a home health aide to care for the parent (must be verified by the agency through which the

aide was employed); *or*  
 iii) Placing the parent in a medical day care center (must be verified by the medical day care center).

Providing the necessary documentation seems relatively easy, at first blush. It becomes problematic for many reasons including: physicians were changed in the last two years, child does not have contact with former employer, or child did not keep receipts and/or invoices when hiring a nurse or home health aide. The attorney can assist with preparing an Affidavit, which would assert the facts of what happened in the last two years. The Affidavit should encompass all of the "who, what, when, where and how" type of facts. Also, the attorney should think outside of the box by including all relevant facts that allowed the parent to stay at home. For example, in one client situation, in addition to the daughter leaving her job to stay at home and care for her mother, she also purchased a wheel chair lift and

made repairs to the home so that the mom could stay at home. The attorney can review the doctor's statement and ensure it's specific in describing the parent's medical and physical condition. The attorney can then take the same doctor's statement and create and affidavit. Explaining everything that has occurred two or more years ago can be very frustrating in a crisis situation.

## Pre-Crisis Planning Tool

This rule should be used as a pre-crisis planning tool. Attorneys could advise the senior and the senior's child of what is needed for the rule in advance. A discussion could be held among all parties: Can child move in with parent? Can child afford to resign from employment? Is child willing, and able (both physically and mentally) to care for senior? Child should be organized and keep contracts,

See Parental Page 16



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# New Medicare Cards Coming Soon

By Jennifer Goldberg

The Centers for Medicare & Medicaid Services (CMS) is in the process of issuing new Medicare cards with new numbers to help protect the identities of Medicare beneficiaries. What will this mean for your clients? What do you say if your mother asks why she got a new Medicare card in the mail? Here is what you need to know:

## *Why are the cards changing?*

Identity theft is a growing problem for older adults. In 2014, over 2.5 million older Americans experienced identity theft. From the inception of the Medicare program, cards incorporated Social Security numbers as part of the actual Medicare number. Those Medicare numbers are used to process claims and to determine eligibility. The Medicare Access and CHIP Reauthorization Act (MACRA) of 2015 requires CMS to remove the Medicare beneficiary Social Security number from Medicare cards, no later than April 2019. The goal of this change is to reduce the risk of medical identity theft.

## *What is changing on the Medicare card?*

Starting during April 2018, all people with Medicare will be receiving new Medicare cards with a new "Medicare Beneficiary Identifier." Current Medicare beneficiaries will be mailed a replacement Medicare card with instructions. Those Medicare beneficiaries who are new to Medicare during or after April 2018, will receive the Medicare card with the new Medicare Beneficiary Identifier upon enrollment. The Medicare Beneficiary Identifier number is unique to each person.

The new card design no longer includes the Social Security number, nor the gender, nor the signature, of the Medicare beneficiary. Instead, the new Medicare Beneficiary Identifier will be printed on the new Medicare card, and available to Medicare providers, such as doctors or hospitals, for claims processing.

## *What can be done to prepare?*

During the month of April 2018, CMS will begin mailing new Medicare cards to beneficiaries. The cards will be mailed in seven waves, by groups of States, during the ensuing year. **Maryland is in the first**

**wave with mailings scheduled to be completed no later than the end of June 2018.** It is expected that all beneficiaries will receive the new card no later than April of 2019. The mailing schedule and status of card mailings will be available on the Medicare.gov website. To prepare, beneficiaries can contact the Social Security Administration to make sure the mailing address of record with the Social Security Administration, is in fact the correct, current address.

## *Are the Medicare benefits changing?*

The new number does not change Medicare benefits. People with Medicare will use the card and Medicare Beneficiary Identifier when receiving care through Original (Fee-for-Service) Medicare. The card and Medicare Beneficiary Identifier can also be used to enroll in a Medicare Advantage plan, or a Part D prescription drug plan. Medicare Advantage plans and Part D plans will still issue insurance cards which enrollees must use when receiving health care or filling prescriptions.

## *When are the new cards effective?*

People with Medicare may start using their new Medicare cards as

soon as the new card is received. The effective date of the new cards is the date the beneficiary became eligible for Medicare. After beneficiaries receive the new card, then it is recommended that the old card be shredded to prevent identity theft.

During a transition period from April 2018 through December 2019, CMS will recognize both the new Medicare Beneficiary Identifiers and the old Social Security number cards. After the First of January 2020, beneficiaries, providers, and plans must use the new Medicare Beneficiary Identifiers.

## *What are the scams related to the new Medicare number?*

Identity thieves and scammers are always looking for ways to make money or get personal information. The new Medicare cards do present new scam opportunities. Some scammers may try to convince Medicare beneficiaries that they must pay to receive the new card. Of course this is a lie. The new cards are free. Anyone who calls to ask or demand money so that a Medicare beneficiary can receive the new card is a scammer. In addition, it is completely unnecessary to provide any personal information

to receive a new card. Medicare is automatically sending the cards. Anyone who calls to demand personal information, such as a Social Security number or bank account number, is also part of an identity theft scam. People with Medicare must keep their new Medicare card numbers private, just as they would a new health insurance or credit card number. Anyone who thinks he or she has been a victim of a scam, is recommended to report the scam to the Federal Trade Commission.

## *Where can I find out more?*

CMS has created a webpage with information and resources for a variety of audiences, including beneficiaries, partners and providers. See [cms.gov/medicare/new-medicare-card/nmc-home.html](https://cms.gov/medicare/new-medicare-card/nmc-home.html). The resources include *10 Things to Know about Your New Medicare Card* and other consumer-oriented materials. The information is available in English, Spanish, Korean, Chinese, Japanese, Vietnamese, and Arabic.

*Ms. Goldberg is Directing Attorney at the Washington DC office of Justice in Aging, where she directs the health team and leads the National Center on Law and Elder Rights.*



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# How the ABLE Law Helps Persons With Disabilities

By Morris Klein

The Stephen Beck Jr., Achieving a Better Life Experience Act of 2014, better known simply as the “ABLE” law, offers eligible persons with disabilities an attractive option to set aside money to help pay for care-related expenses.

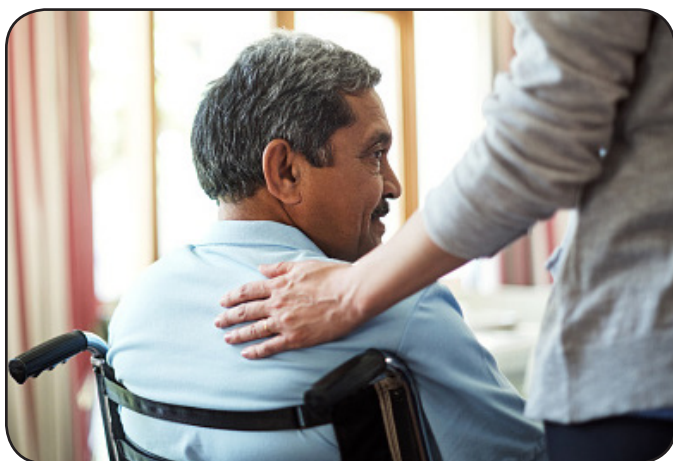
The law, codified as section 529A of the Internal Revenue Code, is modeled after the “529” college savings plans. Funds in an ABLE account grow tax free, and distributions related to the disability of the beneficiary are not taxed. Permissible distributions include expenses for the beneficiary’s health, education, housing, transportation, training, assistive technology, and personal support. Also, until 2026, funds may be transferred from a 529 account of various relatives of the ABLE beneficiary into the beneficiary’s ABLE account without incurring any tax or penalty.

Perhaps the most important aspect of an ABLE account is that funds in the ABLE account are not a countable resource for determining eligibility for federal means-tested programs, most notably Medical Assistance (“Medicaid”) and Supplemental Security Income (“SSI”). Generally, one may not have more than \$2,000 in countable resources to qualify for these programs, but ABLE account assets are not considered in calculating this amount. Thus, the ABLE beneficiary can continue to qualify for Medicaid or SSI when funds are transferred into, or remain a part of, an ABLE account. The maximum account balance may be as large as the state limitation for the 529 college savings plans (currently \$350,000 in Maryland). The one exception is that SSI eligibility is suspended if the ABLE account balance exceeds \$100,000. “Suspended” means that the person will automatically requalify for SSI, after the ABLE account balance is reduced to less than \$100,000. No new application

for benefits is required. Medicaid eligibility is not adversely affected, even if the ABLE account balance exceeds \$100,000.

## Eligibility

To be eligible for an ABLE account, a person must be disabled



for purposes of SSI or Social Security Disability Insurance. It is not necessary to receive either of those public benefits to qualify for an ABLE account, however, because the law permits a physician to certify the disability of the ABLE account beneficiary.

Each state may establish either an ABLE program itself, or contract with another state that has established an ABLE program. Maryland is one of about 33 states plus the District of Columbia that now offers ABLE accounts. As with “529” college savings plans, an ABLE beneficiary is not limited to the state of residency and may be opened in any state that accepts non-resident account holders. State plans differ in the types of investments offered, the management fees charged, and the process to open accounts and to withdraw funds. A Maryland resident who opens a Maryland account may deduct on the Maryland income tax return, up to \$2,500 per beneficiary per year.

## Limitations on Eligibility

The ABLE law contains some significant limitations. A person must have become disabled before age 26 to qualify for an ABLE account. Thus, a 25-year-old person disabled as a result of an auto accident can qualify, but a 26-year-old disabled in the same accident cannot. Once an account

is established, however, it can be funded and used throughout the life of the beneficiary. Efforts to have Congress raise the eligibility age have been proposed but have so far been unsuccessful.

Unlike college savings plans, only one ABLE account per beneficiary is permitted. Total annual cash funding per beneficiary (not per donor) is limited to the federal annual gift tax exclusion, which is \$15,000 during 2018. Also, until 2026, beneficiaries who qualify for employment under the SSI work rules can deposit their earnings up to the federal poverty level (about \$12,000 per year) into the account beyond this annual cap.

An ABLE account may only hold cash assets (so no real property). An ABLE account may be rolled over into a new ABLE account only for the same beneficiary, or into an ABLE account for a sibling who is also eligible for an ABLE account. Account funds cannot be used as security for a loan.

Finally, federal law allows states to require that any funds remaining in an ABLE account after the beneficiary dies must first be paid to Medicaid for all services provided since inception of the account. This is now the rule in Maryland, but legislation pending in the General Assembly this spring may eliminate the Medicaid payback for Maryland residents who have accounts in the Maryland ABLE program.

## Conclusion

ABLE is a new option to consider in determining how to help preserve cash funds for the care needs of a disabled person. The limitations built into the law mean that an ABLE account cannot always serve as the sole planning tool for persons with disabilities. Nevertheless, ABLE is a welcome addition to the arsenal of available options when planning for such individuals.

*Morris Klein practices elder law and disability law in Bethesda, Maryland.*

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# The Advance Directive and the Medical Order for Life Sustaining Treatment (MOLST)

By Elena Sallitto Boisvert and  
Adam C. Zimmerman

Statutory advance health care planning in Maryland consists primarily of two forms: the Advance Directive and the Medical Order for Life Sustaining Treatment (MOLST). In an ideal world, the two documents would complement each other, to be sure that the wishes of the principal are honored throughout incapacity and until death. Unfortunately, the overlapping nature of these documents can be a source of confusion for lay people and lawyers alike.

The Maryland Health Care Decisions Act, codified at Health Gen. § 5-601 et. seq. contains the requirements for an advance directive. The law allows a competent person to create an advance directive in any form, including written, verbal, and electronic. Two witnesses are required, one of whom cannot benefit from the death of the principal. The suggested form in the Maryland code is a compilation of several topics: appointment

of a health care agent and successors and the corresponding authority; living will, in which particular treatment preferences are specified for end-stage, terminal condition, or in a persistent vegetative state; a provision for organ donation; and finally, instructions for disposal of the remains. It is extremely important to know that the statutory form is not mandatory. Better documents can be drafted for the benefit of our clients.

If a person has not completed an advance directive appointing a health care agent, the law provides a hierarchy of persons to serve as surrogate decision maker for that person, as follows:

1. Court appointed guardian
2. Spouse/domestic partner
3. Adult child
4. Parent
5. Adult Sibling
6. Friend or relative who provides an affidavit that she or he is familiar

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**By Andrea Terry**

The upcoming Employment Law Institute in April still has some seats available and offers everything new in employment law (federal and state) that practitioners need to know. Block chain technology and crypto-currency will be just one of dozens of topics covered at the Advanced Business Law Institute. An all new program on High Value Divorce Cases is offered in April. Finally, the fiduciary litigation program cancelled in March due to snow has been rescheduled to April 26th, which hopefully works for the fifty plus people who had registered for that program. Keep in mind that if you cannot attend the live program in person, it will be concurrently webcast to enjoy anywhere in the state, and it will be available online, on-demand approximately 6-10 days after the live program. All online programming carries CLE credit with surrounding MCLE states just like our live programs. Keep an eye on <http://msba.inreachce.com> for all upcoming live and online programs. See below for details.

**LIVE IN-PERSON & LIVE WEBCASTS**

- **MARCH 22, 2018.** *Fiduciary Litigation: Contesting and Defending Wills, Trusts, and Inter Vivos Transfers.* Columbia, MD. Registration opening soon. \*webcast
- **APRIL 18, 2018.** *Employment Law Institute.* Columbia, MD. Registration is open. \*webcast
- **APRIL 19, 2018.** *2018 Advanced Business Law Institute.* Columbia, MD. Registration is open. \*webcast
- **APRIL 24, 2018.** *Issues in High Value Family Law Cases.* Columbia, MD. Registration is open. \*webcast
- **APRIL 26, 2018.** *Fiduciary Litigation: Contested Wills, Trusts, Inter Vivos Transfers and Guardianships.* Columbia, MD. Registration is open. \*webcast
- **MAY 9, 2018.** *Adult Guardianships in Maryland – the New and Improved Process!* Columbia, MD. Registration is open. \*webcast
- **MAY 10, 2018.** *2018 Hot Tips in Workers' Compensation.* Columbia, MD. Registration is open. \*webcast
- **MAY 17, 2018.** *Immigration*

*Law Update.* Baltimore, MD. Registration is open. \*webcast

- **MAY 23, 2018.** *Advanced Estate Planning Institute.* Columbia, MD. Registration is open. \*webcast
- **MAY 24, 2018.** *Make it Happen! The Art of Discipline and Getting Things Done.* In partnership with Business Learning Institute (BLI). Columbia, MD. Registration is open. \*webcast
- **JUNE 21, 2018.** *2018 Hot Topics in Elder Law.* Columbia, MD. Registration opening soon. \*webcast
- **JUNE 25, 2018.** *Pesky and Persistent Evidentiary Issues in Estate and Trust Litigation.* Baltimore, MD. Registration opening soon. \*webcast
- **SEPTEMBER 24-28, 2018.** *40 Hour Mediation.* Baltimore, MD. Registration opening soon.
- **OCTOBER 9, 2018.** *Advanced Real Property Institute.* Columbia, MD. Registration opening soon.
- **NOVEMBER 12-16, 2018.** *Advanced Tax Institute.* Baltimore, MD. Registration opening soon.

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**NEW PUBLICATION UPDATES—NOW AVAILABLE**

**GIBBER ON ESTATE ADMINISTRATION 6TH EDITION**

Allan J. Gibber, Esq.  
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- Comments on legislative activity where needed

- Reference citations when including full text would be cumbersome

The NEW 6TH Edition significantly expands the treatise with thorough references to new case law and statutory amendments through 2017. The revised text also reflects new rates and statutory amounts, and includes new and updated samples of all the official forms throughout the volume.

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"... Mr. Gibber is particularly qualified to deal by virtue of his service as special consultant to the Rules Committee on the Probate Rules project."

Melvin J. Sykes, Esq.

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**MSBA LAWYER ASSISTANCE PROGRAM WELLNESS TIPSHEET**

**If You Don't Keep Moving,  
You Don't Keep Moving**

**By Lisa Caplan**

The best advice I have ever received was from my grandmother who would always say, "If you don't keep moving, you don't keep moving," and she meant it literally. We stop moving our bodies and our minds and we die. She would take every opportunity she had to get up and go, even as she was aging and slowing down, and all she would ask is, "When do you want me to be ready?"

I really believe that the less we

do, the less we want and are motivated to do. Think of the days when you chose to do very little and how difficult it was to maintain energy. Now, think of the days when you wake up and start your day with a positive attitude, exercise, and tasks to accomplish. I believe that a negative attitude equals a negative outcome and a positive attitude equals a positive outcome. So, here are some ideas on how you can have a positive attitude and a plan to keep moving.

1. **Set an intention for your day.** Before you get out of bed stretch, take a couple deep breaths, and decide on an intention for the day. For example, "I plan to be productive today." Setting an intention helps you focus on what is important and empowers you to decide what your day will look like.
2. **Motivate yourself** not only by the positive possibilities in your life but by the challenges.

Your motivation does not come from external forces; it comes from how you choose to respond to what is going on in your life.

3. **Start exercising.** You don't have to run a marathon to get moving. If you don't exercise at all, start slowly and set small goals. The more you exercise, the more it will become a lifestyle, and not an activity.
4. **Exercise with a friend or family.** Plan a bike ride, hike

or weekly walk with someone else. Exercising with someone will help to keep you motivated, and it's harder to talk yourself out of not exercising if someone else is relying on you.

5. **Challenge yourself** to see the positive in things. Become aware of your thoughts and see if you can reframe your negative thoughts to be more positive.

See Moving Page 16



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# THE BUSINESS OF LAW

## Meet Anna

Hello! My name is Anna Sholl, and I recently joined the Maryland State Bar Association as the Director of Profession and Practice Advancement. In the future, I hope to utilize this column to deliver useful information for various legal professionals, but for now, I would like to take this space to introduce myself.

I will start by admitting that my legal career is somewhat unique. Although law school was always part of my plan, it was placed on the backburner after I graduated from UMBC (yes, I am a Retriever Believer!) in 2004. After graduation, I decided to spend some time in the "real world" working full-time and repaying student loans. It turns out this was not a bad decision, as I had a successful career as a leader/manager in two different organizations, including a Fortune 500 retailer.

My success, however, ultimately delayed my plan for law school longer than expected. Eventually, I managed to convince myself to follow my dreams, walk

away from the career I had built, and attend law school full-time.

My legal career was born in Fall 2011 when I stepped onto the University of Baltimore School of Law campus as a full-time, non-traditional student. I carried my non-traditional approach throughout law school, electing to forego traditional law school activities like law review and moot court. Instead, I participated in other activities including becoming a Teaching Scholar (a program where I assisted other law students with writing and academics), clerking for a small firm in Baltimore, and spending two semesters with UB's Community Development Clinic, working with emerging nonprofits and cooperatives.

After graduation, passing the bar, and being sworn-in (a process that sometimes feels entirely too long), I gained valuable litigation experience at a mid-size firm in Towson, Maryland (Pessin Katz Law, P.A.), as an associate in its general litigation group. In addition,

I spent time as an associate at a small, family law firm in Fulton, Maryland (McCabe Russell, P.A.) Both opportunities were crucial to my development as an attorney, as well as the development of my own unique career path.

Now, as Director of Profession and Practice Advancement, I look forward to utilizing skills and tools I learned as leader/manager, as well as my education and experience as an attorney, to assist the MSBA, an organization in the midst of significant change, to be a key resource for legal professionals in Maryland.

I would like to utilize this opportunity to seek out members interested in a potential writing opportunity. As some of you may have noticed, the monthly *Bar Bulletin* includes a "Tech Tips" column. To the extent you have experience with emerging technologies, and would like the opportunity to contribute to this column, please contact me at [anna@msba.org](mailto:anna@msba.org) or (443) 703-3026.



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# Energize Your Diet

## 7 Tips To Spring Up Your Diet to Brighten Up Your Mood

By Haley Shaw

As Springtime has officially sprung, are you taking advantage of the locally grown produce starting to sprout from the ground? Are you spending more time outside to reap the benefits of Vitamin D? Or are you still feeling like you need that extra one (or two) cups of coffee to push through your day? Spring can be a great time to refresh, and get a jump start on eradicating unhealthy habits we may have created over the winter time. This article shares 7 tips to *Spring Up Your Diet* to brighten up your mood. We are saying “Goodbye” to excuses and “Hello” to results.

### Tip 1. Take Your Food Outside

No more lunch breaks at your desk, or in the break room; no more dinner dates or meetings inside. Make and take the time to eat your food outside.

Nature has a way of calming our souls, so when the weather is nice, try your best to get outside and do what you would normally do during your snack, lunch, or dinner time. Even as little as five-minutes outside can make a huge difference in your energy, mood, and conversations with the individual, or individuals, you are meeting with.

### Tip 2. Sip on Water (infused and cold)

Everyone knows we should be drinking water; however, how much is enough? Should the water be cold or room temperature? Infused with citrus fruit or no? As a nutritionist, I am asked these questions quite often. My response is: aim to consume at least half of your bodyweight in ounces of cold water per day.

For example, a 150 lb. male should aim to consume 75 ounces of cold water (roughly 9 8-ounce cups). Adding flavor with sliced fruit (lemons, limes, oranges, strawberries, etc.) will introduce the natural detoxification benefits including: decreasing inflammation, creating glowing skin, soothing upset stomach, and increasing metabolism.

### Tip 3. Use Herbs to Add Flavor

Spring is when fresh local produce starts to hit the grocery stores, farmer markets, and vegetable stands. When given the choice between fresh herbs, dried herbs, salt or pepper, skip the salt, and add flavor with fresh herbs. Fresh herbs are going to give you better flavor every time. Plus, getting creative in the kitchen keeps things interesting.

Here are some popular herbs, and what they season best:

#### Basil:

- Bruschetta, Noodles, Pesto, Rice, Soups, Turkey Burgers

#### Cilantro:

- Salsa, Guacamole, Fish, Stir-Fry Vegetables, Salads, Skillets (Mexican-style scrambled eggs), Pesto

#### Dill:

- Fish, Pickled Beets/Pickles, Roasted Vegetables, Salmon

#### Mint:

- Mojitos, Mint Juleps, Lamb, Hot/Iced Tea, Arugula and

#### Beet Salad

#### Parsley:

- Turkey, Fish, Chicken, Eggs, Roasted Vegetables, Stir-Fry Vegetables

#### Rosemary:

- Potatoes, Pork, Beef, Lamb, Roasted Vegetables

### Tip 4. Jump Start your Morning with a Superfood Drink

When you jump start your morning with a superfood drink and detoxifying tea, you help detoxify your body with the natural herbs, spices, and alkalizing fresh greens in each sip.

### Tip 5. Add Volume to Meals

Aim for three cups or more of vegetables per day, and at least one type at each meal. When we load our plates with vegetables, we end up consuming a greater volume of food instead of more calories per bite. Vegetables are considered a healthy carbohydrate. Vegetables

have significantly fewer calories per serving than other carbohydrates, (rice, potatoes, pasta, etc.) allowing us to consume more fiber-rich foods. Stock up on cucumbers, celery, carrots, mixed greens, cooked or raw vegetables at each main meal. Vegetables are great for you and help keep your cells functioning at optimal levels.

### Tip 6. Go Nuts About It

Nuts provide key protein, antioxidants, and nutrients our bodies need to survive. Add in a handful a day of nuts (roughly 1/2 cup) to enhance brain function, heart health, cellular circulation, aid in lowering cholesterol, and strengthening hair, skin, and nails.

### Tip 7. 30-Minutes, 3-5x/Week

30 minutes of sweating at least three times a week is all we need. The American College of Sports Medicine recommends 150 minutes of moderate-intensity exercise per

week. If you're unable to meet these recommendations, any physical activity (getting the body moving) works great. This can be a simple walk around your block, down your street, in the park, 10 minutes of flexibility/balance work, cleaning house, washing your car, etc. Aim to get (and keep) your body moving to help boost your energy and reap the benefits of endorphins throughout your body, mind and soul.

Remember that the little things add up. Start with one or two tips this week, then focus on completing another tip the next.

*Haley Shaw specializes in corporate wellness programs, and partners with corporations throughout the United States. Her mission is to help employees become more confident, and ready to take on anything in life. You can contact her for feedback or with questions at [Haley@AmpUpFitness.com](mailto:Haley@AmpUpFitness.com).*



concerning the assets and income of the estate. Then supplement that information at the time of the hearing. To protect the integrity of the estate, the court has the authority to limit the authority of the guardian in the Court order, until competent evidence is presented to the court concerning all known assets.

### Conviction of a Disqualifying Criminal Offense

New Rule 10-113 provides guidance to the court in determining whether there is good cause to permit the appointment of a guardian, who has been convicted of one or more of the crimes enumerated in Annotated Code of Maryland, Estates and Trusts, Section 11-114. If you represent a Petitioner who wants to be appointed as a guardian of the person or property, and that Petitioner has been convicted of one or more of the enumerated crimes, the court must consider such factors as the nature of the offense, the lapsed time since the conviction, the conduct of the prospective guardian since the conviction, and the relationship between the prospective guardian and the alleged disabled person.

**Practice Point:** A prospective guardian convicted of a disqualifying conviction has the burden to demonstrate to the court, good cause why the appointment can be made, despite the criminal conviction. The prospective guardian must expect to be questioned by the court on the record, regarding the factors, including questions regarding probations before judgment.

### Certificates

The health certificates required by Rule 10-202 are now standardized across the State and must conform to the forms approved by the State Court Administrator. There are now three separate and distinct forms for physicians, psychologists, and licensed clinical social workers.

**Practice Point:** Recycle, toss, shred or delete any form used before January 1, 2018 from your system database.

### Online Resources

The Judiciary has a dedicated guardianship web page, containing information on attorney training, as well as guardian orientation, post-appointment trainings, the roster of attorneys eligible for appointment under Rule 10-106, and guardianship forms, including the health certificates. [www.mdcourts.gov/guardianship](http://www.mdcourts.gov/guardianship).

Now, the four areas of functioning in Paragraph B are:

- (1) Understand, remember, or apply information;
- (2) Interact with others;
- (3) Concentrate, persist, or maintain pace; and
- (4) Adapt or manage oneself.

Although activities of daily living are no longer a separate category, they are still used as an indicator for the four areas of functioning.

### Treating Physician Rule:

For all cases filed on or after March 27, 2017, the Social Security Administration no longer follows the Treating Physician Rule. This new policy means that the opinions of the treating doctor of an applicant, are no longer given special weight. Rather, all opinion evidence is given the same weight, even opinions from consultative examiners or other medical sources, who may have only met with the applicant once.

Second, the definition of Accepted Medical Sources was broadened to include Physician Assistants and Advanced Practice Registered Nurses. This change is important because applicants increasingly see Physician Assistants and Advanced Practice Registered Nurses as their primary care provider, instead of medical doctors.

In conclusion, the changes discussed in this article have had a significant impact on the Social Security disability application program. These changes underscore the importance of applicants obtaining competent representation early in the disability application process.

## PARENTAL...Page 9

invoices, and receipts for in-home caregivers, home improvements, and anything else that allowed the senior to stay in the home. With proper counseling and planning, this would be a great pre-crisis planning tool, shorten the five-year lookback period, and protect the home from a Medicaid lien.

*Tenae L. Smith is a Staff Attorney with Senior Legal Services (SLS), a joint program of the Bar Association of Baltimore City and Baltimore Bar Foundation, Inc. that has provided free legal advice, services, and representation to Baltimore City residents age sixty (60) and older since 1991.*

with the activities, health, and personal beliefs of the person for whom decisions must be made.

Surrogate decision makers are able to make end of life treatment decisions, only if the patient is certified by two physicians as being terminal, being in an end-stage condition, or in a persistent vegetative state. Surrogate decision makers are to make decisions based on substituted judgement. The surrogate decision maker must choose or refuse as the patient would have done, even if the surrogate decision maker disagrees with those decisions, or even if the decisions are not in the best interest of the patient.

In 1991, medical ethicists in Oregon determined that end of life treatment preferences were not being honored consistently. In response to the problem, Oregon physicians developed the POLST, or Physician Order for Life Sustaining Treatment. The product of a consultation between physician and patient, the POLST is a portable DNR (do not resuscitate) order, that assures the patient that his/her end of life treatment preferences will be honored. Some form of portable DNR order is in place or is being developed in every State.

Maryland expanded the application of the portable DNR order well beyond its original intended population. As conceived, the POLST is a voluntary document

for those people for whom their physicians would not be surprised if they died within one year. The Maryland MOLST is mandatory for everyone in assisted living, a nursing home, a hospital, in hospice, receiving home health care, or on dialysis. Participation in completing the form is voluntary on the part of the patient, but providers are required to have a completed form in the medical chart.

Health Gen. §5-608.1, provides that the MOLST form must be consistent with: the known decisions of the patient if he or she is competent; the health care agent, guardian or surrogate decision maker, if the patient is not competent; and with any known advance directive. The advance directive will serve as the guide for how to complete the MOLST. The form is completed on admission to the facility. The patient or surrogate must be given the opportunity to participate in completing or updating the form, and a copy must be given to the patient or surrogate within 48 hours of completion. If the patient or surrogate declines to participate in completing the form, that decision is noted, then the person will be a "full code." Under the Maryland Health Care Decisions Act §5-606(b), surrogates who are not named health care agents, can only make end of life decisions for patients who have been certified by two physicians that they are in

end-stage condition, in a persistent vegetative state, or are terminal. As a practical matter, the MOLST is often completed with family members who may or may not have the required legal authority.

The MOLST follows the patient from facility to facility. It must be reviewed annually, and must be updated if the patient changes his or her wishes or his or her physical condition changes. If there are multiple MOLST documents in a chart, the most recent version controls. Note that Part 2 of the Maryland MOLST is entirely voluntary for both patient and facility.

When approaching advance health care planning, the Advance Directive and the MOLST documents work in tandem, and it is important to be conscientious of how they operate and support each other. The Advance Directive names the agent, establishes their authority, and generally outlines health care directions, while the MOLST expounds upon and promulgates those directions. These documents in tandem will, more often than not, clearly and substantially articulate the wishes of the principal to ensure their directives are followed and fulfilled. With these tools in hand, and an understanding of how they work together, a practitioner is able to substantially assist the client in making their health decisions and directives known.

## MOVING...Page 13

6. **Find a hobby.** A hobby is a great way to focus energy and creativity. Giving your mind something different to think about keeps it strong and healthy.
7. **Do community service.** Focusing on the needs of others helps us appreciate what we have and to look at the world in a different way.
8. **Limit time spent with people who drag you down** emotionally, or let go of them completely. Negative people drain energy. If you can't get them out of your life, then reframe how you think about them. You have control over how someone makes you feel, not the other way around.
9. **Spend time outside.** Sunshine and fresh air help reduce stress and can improve mental health.
10. **Remember, progress is not achieved in a "straight line."** We all encounter bumps in the road, and these bumps empower us to change and grow. Without the difficulties, you wouldn't have developed the strengths you have, or be where you are today. You have control over how you see these bumps, and the impact they have on your life.

If you need assistance please contact the Lawyer Assistance Program for free, confidential assistance.

**Jim Quinn**, Lawyer Assistance Director, (443) 703-3041, [jim@msba.org](mailto:jim@msba.org) or **Lisa Caplan**, LCSW-C, Lawyer Assistance Counselor, (443) 703-3042, [lisa@msba.org](mailto:lisa@msba.org). Toll free (800) 492-1964.

*Lisa Caplan is a Licensed Certified Social Worker at the clinical level (LCSW-C), has over 20 years' experience in her field, and extensive experience providing wellness workshops and working with lawyers and judges in the areas of mental health, substance abuse and trauma. Find more of her articles at [www.msba.org/committees/lawyerassist/articles.aspx](http://www.msba.org/committees/lawyerassist/articles.aspx).*

\* reprinted from March 2016





The Maryland Bar Foundation Board of Directors  
invites you to the 2018

## OPEN MEETING & CURRAN AWARD RECEPTION

Thursday, May 3, 2018,  
6:00 pm

Cunningham's  
1 Olympic Pl, Towson, MD 21204

\$55

Join the Maryland Bar Foundation  
Board of Directors for our 2018 Open Meeting  
and Curran Award Reception.

Every year since 2007, the **J. Joseph Curran Public Service Award** has been presented to a government or public interest lawyer known for selflessly serving the public good and furthering the goals of better government and societal standards. The Curran Award is named in honor of former Maryland Attorney General J. Joseph Curran, Jr., and recognizes Maryland's most distinguished public servants.

**All are welcome to attend this event.  
For more information, please contact:**

Angela Munro  
Maryland State Bar Association  
(410) 685-7878  
angela@msba.org

### PREVIOUS AWARD WINNERS

2017	ROD J. ROSENSTEIN
2016	HON. G. EDWARD DWYER, JR. HON. ROBERT A. ZARNOCH
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2014	ELIZABETH HEWLETT
2013	RALPH S. TYLER
2012	KAREN L. FEDERMAN HENRY
2011	CHARLES BLOMQUIST
2010	JOHN J. MCCARTHY
2009	HON. ANDREW L. SONNER
2008	PAUL B. DEWOLFE
2007	J. JOSEPH CURRAN, JR.

[OPENMEETING.MSBA.ORG](http://OPENMEETING.MSBA.ORG)

## ET ALIA

**Brett Ingerman**, managing partner of DLA Piper's Baltimore office, has been named to the *Daily Record's* 2018 Leadership in Law list.

**Kimberly Neal**, general counsel and grant relations officer for The Children's Guild, has been elected to the board of directors for the Baltimore chapter of the Association of Corporate Counsel.



*Kimberly Neal*

**Charles M. Elmer** has been elevated to Principal at Jackson Lewis P.C.



*Charles M. Elmer*



*Catherine K. Hopkin*

**Catherine K. Hopkin** has joined Columbia and Annapolis-based Yumkas, Vidmar, Sweeney & Mulrenin, LLC as a Member.



*Laura S. McKenzie*

**Laura S. McKenzie**, a principal at the Baltimore firm Franklin & Prokopik, has joined the Board of Directors for Kids' Chance of Maryland, a nonprofit scholarship organization.

**Eric T. Kirk** has announced a new office address, as of June 2018 at 1001 N. Calvert Street, Baltimore, MD.

**DLA Piper** has been honored with the University of Maryland, Francis King Carey School of Law's Black Law Students Association (BLSA) Firm Diversity Award. The firm was recognized for its support of the school's Diversity and Inclusion Scholars Initiative.

**The Law Offices of Lee Saltzberg** is now known as **Saltzberg & Schloss**, and is located in Towson, Maryland.

Send your latest news and updates to Lisa Muscara  
for inclusion in Et Alia: [lisam@msba.org](mailto:lisam@msba.org).



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**April 3** Howard County

**April 4** Baltimore County

**April 19** Anne Arundel County

**April 20** Anne Arundel County



### EDITOR'S NOTE

In the March 2018 issue of the *Bar Bulletin*, Bud Stephen Tayman's article entitled "Promoting the More Successful Reorganization of Family Farms and Family Fishing Operations: Newly Enhanced Capital Gain Tax Relief for Family Farmers and Family Fisherman under Chapter 12 of the United States Bankruptcy Code" was mistakenly published under the Intellectual Property Law focus header. The Editor regrets any confusion.

Contact Shelley Brown at [sbrown@clrep.org](mailto:sbrown@clrep.org)



## CLASSIFIEDS

### SERVICES

**ECONOMIST:** Lost income, benefits and life-care plans valued for personal injury, wrongful death and employment cases. University professor with extensive experience. DR. RICHARD B. EDELMAN, 8515 Whittier Boulevard, Bethesda, MD 20817. (301) 469-9575 or (800) 257-8626. References and vitae on request. Visa/MC. Please visit at: [www.economic-analysis.com](http://www.economic-analysis.com).

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### NEW ONLINE, ON-DEMAND

- *Unbundled Legal Services & Limited Scope Representation*
- *2017 Family Practice Update*
- *Planning for People with Disabilities*
- *2017 Advanced Real Property Institute*
- *Handling the Domestic Violence Case in Maryland*
- *Current Trends and Creditor Rights in Consumer Debt Collection*
- *2017 Criminal Law Update*
- *Recent Developments in Estate Administration*
- *Hot Tips in Family Law: What NOT to Do!*

### VIDEO REPLAYS

- **APRIL 17, 2018.** *Hot Tips in Family Law: What NOT to Do!* Baltimore, MD.
- **APRIL 19, 2018.** *Hot Tips in Family Law: What NOT to Do!* Rockville, MD.
- **MAY 15, 2018.** *ABLE, Special Needs Trusts and the New POMS.* Baltimore, MD.
- **MAY 17, 2018.** *ABLE, Special Needs Trusts and the New POMS.* Rockville, MD.
- **MAY 22, 2018.** *Issues in High Value Family Law Cases.* Baltimore, MD.
- **MAY 24, 2018.** *Issues in High Value Family Law Cases.* Rockville, MD.
- **MAY 29, 2018.** *What is New in Handling Drinking and Driving Cases in Maryland.* Baltimore, MD.
- **MAY 31, 2018.** *What is New in Handling Drinking and Driving Cases in Maryland.* Rockville, MD.
- **JUNE 5, 2018.** *2018 Advanced Business Law Institute.* Baltimore, MD.
- **JUNE 7, 2018.** *2018 Advanced Business Law Institute.* Rockville, MD.

- **JUNE 12, 2018.** *Employment Law Institute.* Baltimore, MD.
- **JUNE 14, 2018.** *Employment Law Institute.* Rockville, MD.
- **JUNE 19, 2018.** *Adult Guardianships in Maryland—the New and Improved Process!* Baltimore, MD.
- **JUNE 21, 2018.** *Adult Guardianships in Maryland—the New and Improved Process!* Rockville, MD.
- **JUNE 26, 2018.** *Immigration Law Update: Creative Lawyering Strategies in Times of Uncertainty.* Baltimore, MD.
- **JUNE 28, 2018.** *Immigration Law Update: Creative Lawyering Strategies in Times of Uncertainty.* Rockville, MD.

- **JULY 3, 2018.** *2018 Hot Tips in Workers' Compensation.* Baltimore, MD.
- **JULY 5, 2018.** *2018 Hot Tips in Workers' Compensation.* Rockville, MD.
- **JULY 10, 2018.** *Make it Happen! The Art of Discipline and Getting Things Done.* Baltimore, MD.
- **JULY 12, 2018.** *Make it Happen! The Art of Discipline and Getting Things Done.* Rockville, MD.
- **JULY 17, 2018.** *Advanced Estate Planning Institute.* Baltimore, MD.
- **JULY 19, 2018.** *Advanced Estate Planning Institute.* Rockville, MD.
- **JULY 24, 2018.** *Fiduciary Litigation: Contested Wills, Trusts, Inter Vivos Transfers and Guardianships.* Baltimore, MD.
- **JULY 26, 2018.** *Fiduciary Litigation: Contested Wills, Trusts, Inter Vivos Transfers and Guardianships.* Rockville, MD.

## DATELINE...Page 3

6:00 p.m. - 8:00 p.m. at Cunningham's, 1 Olympic Place, Towson, MD 21204. The J. Joseph Curran Public Service Award is presented to a government or public interest lawyer known for selflessly serving the public good and furthering the goals of better government and societal standards. The Curran Award is named in honor of former Maryland Attorney General J. Joseph Curran, Jr., and recognizes Maryland's most distinguished public servants. Additional information and registration available at [openmeeting.msba.org](http://openmeeting.msba.org).

**6 MSBA's Senior Lawyer Section** invites you to the 11th Annual Senior Lawyer of the Year Dinner from 5:00 p.m. - 7:00 p.m. at Liberatore's, 9515 Deereco Rd., Timonium 21093. Contact Angela Munro, [angela@msba.org](mailto:angela@msba.org), to register or for additional information.

**8** You are invited to join **MSBA's Diversity & Inclusion Committee** for *A Rising Tide Floats All Boats* from 5:30 p.m. - 8:30 p.m. at 5440 Old Tucker Row, Columbia, MD 21044. This program addresses the importance of diversity and inclusion within the legal profession and the bar, through a keynote speaker, listening session, and roundtable discussions. Don't miss this opportunity to network with bar members and share insight on the transformative steps needed to become a more inclusive profession. You can become a change agent within the MSBA. For more information contact Angela Munro, [angela@msba.org](mailto:angela@msba.org), or Yolanda Son-

nier, [yolanda@sonniergroup.com](mailto:yolanda@sonniergroup.com). **16** You are invited to attend **MSBA's Environment & Energy Law Section's Annual Dinner** from 6:00 p.m. - 8:00 p.m. at Dalesio's of Little Italy, 829 Eastern Ave., Baltimore, MD 21202. This year's keynote speaker will be John Cruden, Principal, Beveridge & Diamond, PC Former Assistant Attorney General, Environment & Natural Resources Division, U.S. DOJ. Purchase tickets online at [registration.msba.org/environment-energy-dinner](http://registration.msba.org/environment-energy-dinner).

**17 MSBA's Veterans Affairs and Military Law Section** is pleased to present The Honorable Philip Nichols, 7th Circuit Court Judge and Captain, JAGC, USNR (Ret.) with the *2018 Brigadier General Philip Sherman Award* at the 5th Regiment Armory, Baltimore. The ceremony will begin at 5:30 p.m. in the Reckford Room at the Armory. If you would like to join us in honoring Judge Nichols, please email Hugh McClean at [hmclean@ubalt.edu](mailto:hmclean@ubalt.edu).

**17 MSBA's Estate and Trust Law Section** hosts their *Annual Dinner* at Turf Valley Country Club, 2700 Turf Valley Rd, Ellicott City, 21042, from 5:30 p.m. - 8:30 p.m. Contact Angela Munro, [angela@msba.org](mailto:angela@msba.org), for additional information.

## JUNE

**7** Join **Citizenship Law Related Education Program (CLREP)** for a heartwarming and humorous

evening of storytelling to support their youth programs. Storytellers will include: Jodie Buchman, DLA Piper; Rebecca Murphy, RCM Consulting; Joseph Murphy, Silverman/Thompson/Slutkin/White; Sheila Sachs, Gordon Feinblatt; Steve Sachs. The event features a silent auction, cash bar, and hors d'oeuvres, and will be held at Westminster Hall, 519 West Fayette St, Baltimore, 21201, from 6:00 p.m. - 9:00 p.m. Purchase tickets online at [clrep.networkforgood.com/events/3620-trials-tribulations-a-family-affair](http://clrep.networkforgood.com/events/3620-trials-tribulations-a-family-affair).

**9** Join the **Pro Bono Resource Center** for their 5k fun run or 1-mile walk and support justice for all! To increase your impact, join a team or raise funds from your family and friends! Hosted at Meadowood Regional Park, 10605 Falls Road, Lutherville, MD 21093, from 7:30 a.m. - 12:00 p.m. Details and registration available online at [probonomd.org/training-events/run-for-justice](http://probonomd.org/training-events/run-for-justice).

**13-16** Don't miss **MSBA's Legal Summit & Annual Meeting**, the biggest event of the year for Maryland's legal professionals. Join a thousand lawyers from all aspects of the profession, judges, and other legal professionals from across the state at this annual tradition for the Maryland legal community, combining learning, community, and fun. Additional information and registration available online at [annualmeeting.msba.org](http://annualmeeting.msba.org).

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Chapter 2: Probate  
Chapter 3: Administration of Estates—Generally  
Chapter 4: Appraisal of Asset/Filing of Inventory  
Chapter 5: Inheritance Tax on Non-probate Assets

Chapter 6: Administration Expenses and Claims  
Chapter 7: Representative's Commissions and Counsel Fees  
Chapter 8: Account  
Chapter 9: Maryland Estate Tax  
Chapter 10: Distributions

Chapter 11: Special Administrator and Foreign Personal Representative  
Chapter 12: Minors  
Chapter 13: Small Estate  
Chapter 14: Modified Administration  
Chapter 15: Sample Forms  
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Format: Custom Practice Binder  
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