



MSBA

BARBULLETIN

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MSBA Expands Lawyer Assistance Program Across Maryland

State Bar Now Offers Counseling in Every County

BY PATRICK TANDY

The stress inherent to the practice of law renders the legal profession at least three times as susceptible as the general population to problems stemming from issues such as depression and substance abuse. According to a 2016 report generated by the American Bar Association's Commission on Lawyer Assistance Programs in conjunction with the Hazelden Betty Ford Foundation, between 21 and 36 percent of the nearly 13,000 practicing lawyers surveyed qualified as "problem drinkers", as compared with just 7 percent of the general public.

Moreover, the study, titled *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, reports that "approximately 28 percent, 19 percent, and 23 percent are struggling with some level of depression, anxiety, and stress, respectively."

Sadly, Maryland lawyers are not immune to these trends.

"Today, throughout the state, too many of our members - lawyers, judges, and law students - are suffering from problems with depression, alcohol, and drug abuse," MSBA President Judge Keith R. Truffer noted in his September 2018 video President's Message.

Indeed, during his installation as MSBA President in June of this year, Truffer lamented how "the insidious nature" of alcoholism and substance abuse "demands from those afflicted by it an extraordinary degree of secrecy and denial, conditions which hamper diagnosis and treatment."

"As leaders of our profession, we must act," he said, noting that those suffering from these conditions require "treatment and compassion, not ostracism and scorn." To this end, Truffer counted the Baltimore-based MSBA Lawyer Assistance Program (LAP) among the key focal points of his Presidency.

Now, as part of this presidential initiative, LAP has announced the biggest expansion of services in its 37-year history. Partnering with CorpCare, a nationally recognized provider of counseling services, LAP will now have a network of counselors on the ground throughout the state. With this added muscle, LAP Director Jim Quinn hopes to effectively double the roughly 125 new cases LAP currently handles each year.

Quinn says that LAP's experience with lawyers makes it uniquely suited to address the



**Fortunately,
there is hope,
and there is
help.**

**Hon. Keith R. Truffer,
MSBA President**

needs of attorneys for a variety of reasons. In having nuanced understanding of the demands of a legal practice, "we can accommodate professional responsibilities while a lawyer is undergoing treatment," he explains. LAP, he adds, can also help navigate the complex and often frustrating world of health insurance and, in some cases, even provide financial assistance.

"People often don't have the financial means, or they're in Western Maryland and say they can't come to Baltimore," says Baltimore City Circuit Court Judge Charles H. Dorsey III. "We're trying to stop giving people reasons to say they can't."

Dorsey speaks from experience; some 15 years ago he sought and received help from LAP. In turn, he has spent much of the interim since serving on LAP's oversight committee. The new statewide expansion of counseling services, he says, marks a key evolutionary step for the program.

"It's so hard to help someone with an A Type Personality," notes Dorsey. The adversarial nature of the profession, stress, anxiety, and the challenges of maintaining work-life balance can often seem insurmountable, and generate fears of disciplinary measures, or even disbarment. "LAP understands the profession."

"Lawyers are extremely busy, which adds to their stress," says LAP Counselor Lisa Caplan, LCSW-C. "Through the Lawyer Assistance Program we have a lot of experience in helping the legal profession. Lawyers don't need to

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EXECUTIVE DIRECTOR'S COLUMN

We recently released a new product, free for members, titled Legal Profession Trend Highlights. It provides insights into trends affecting Maryland attorneys and the legal profession at large. Per the report, Maryland has 40,452 attorneys and firms appear to be optimistic however hiring looks to be constrained in the upcoming quarter. Work life balance issues, pressures on billable rates and competitive forces within and outside of the profession are detailed. The national legal profession, made up of 1,338,678 attorneys, ticked up .02 percent from 2017. Maryland is 10th in the list and has seen growth slightly higher than national numbers. Be sure to download the report. Go to msba.org/highlights.

We're in the midst of a membership renewal campaign and we continue to the work to maintain our percentage of the profession within Maryland and nationally, given aging, smaller classes of new admittees to the Bar and the need to remain relevant in our modern 'internet of things' (IoT) environment. I'm pleased that the MSBA has attracted over 800 attorneys not previously members this year, through its membership marketing efforts, which is the largest new number in over a decade. We are now focused on renewing members.

If you haven't renewed yet, it takes less than a minute to renew online at msba.org/renew. Download the free member 'Highlights' report, receive a free online CLE worth up to \$200 which makes membership essentially free, and get access to many more direct benefits.

A couple of months ago, an attorney asked for reasons why she should belong to the MSBA. I started my response by sharing the usual value in membership summary. An MSBA member receives \$1K+ in tangible benefits, gets access to hundreds of events each year, many at no additional cost, saves hundreds in member priced substantive books & events, get access to our Practice Management portal, etc. And then I shared something that turned out to be much more impactful.

Each year when attorneys make the decision to join or renew, they allow us to assist hundreds of

attorneys, on a confidential basis, who suffer from substance dependence, alcohol abuse and mental health issues. In fact, thanks to President Truffer's initiative, our in-person counseling is being expanded to the entire state. One call to 1-888-388-5459 gets you the assistance you need.

Due to our members, we have ensured that thousands of high school students understand the rule of law and engage with our members in mock trials and various other programs through our educational arm, MYLaw.

Our members support the efforts of numerous committees working on their behalf. In fact, one of the hardest working MSBA committees, that meets for hours each Monday during the legislative session, monitors dozens of bills, recommends positions when appropriate, and interacts with legislators and other key players on behalf of the profession and public interest. Our 30+ committees work with the judiciary as they revise and craft new rules, work with attorneys to develop authoritative content, work with legal service providers, focus on diversity and inclusion, many other critical areas.

Thanks to the membership and engagement of our members, the Maryland Bar Foundation has supported numerous causes in the communities our members call home. The Pro Bono Resource Center of Maryland, created by the MSBA, trains attorneys so that they can give back. In fact, in addition to our focus on the profession, we have created several organizations that serve the public interest and give back. The Access to Justice Commission is now part of the MSBA family adding to quite a legacy of contributions to our communities.

A few weeks after I had chatted with the attorney, she circled back to me to indicate she had renewed. She agreed belonging to the MSBA helped her especially given all the contacts she's made through MSBA. I've heard countless stories of the power of relationships made possible via the MSBA community. She thanked me for taking the time to chat with her and ended our chat with the following comment "I

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



PRESIDENT'S MESSAGE



NOVEMBER 2018

In this month's president's message, MSBA President Judge Keith R. Truffer provides updates on the Conference of Bar Presidents, MSBA's 2018 Solo Summit, how MSBA members are working to promote the rule of law, and developments in our Lawyer Assistance Program.

To watch his most recent message, select the "President's Messages" playlist from our YouTube channel at www.youtube.com/user/MDStateBar/playlists.

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Retired Judge, U.S. District Court, Eastern District of Virginia

The Honorable Gerald Bruce Lee (Ret.) admirably served for nineteen years on the bench of the U.S. District Court for the Eastern District of Virginia. Prior to his appointment to the federal judiciary, Judge Lee served for over six years as a judge for the Fairfax Circuit Court, and before that, he was a trial lawyer representing individuals and businesses in complex civil disputes. Throughout his illustrious career, Judge Lee served his community on various boards and committees, including the Board of Directors of the Metropolitan Washington Airports Authority, as Chairman of the Virginia Judicial Conference Judicial Education Committee, and as a member of the Virginia Circuit Court Judges Benchbook Committee. Judge Lee now brings his record of excellence and achievement to The McCammon Group to serve the mediation, arbitration, special master, and judge pro tempore needs of lawyers and litigants in Maryland, DC, and Virginia.



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Dateline

NOVEMBER

16 Join the Maryland State Bar Association's **Litigation Section & Young Lawyers Section** for *Appellate Practice Tips from the Bench and Bar*. This program will feature a distinguished panel of appellate judges and practitioners who will provide practical advice for attorneys on topics such as: standards of review; issue & error preservation; the final judgment rule; appellate issue selection (COSA); cert. issue selection (COA); the brief, and oral argument. From 2:00 p.m. - 6:00 p.m. at Sheraton Columbia, 10207 Wincopin Cir, Columbia, MD 21044. For more information and to register, check www.msba.org/product/litigation-sections-fall-appellate-program.

17 Join MSBA's **Young Lawyers Section** at a *Wills For Heroes* event from 9:00 a.m. - 3:30 p.m. at The American Legion, 6900 Greenbelt Rd, Greenbelt, MD. To volunteer, or to learn more about the program, contact Ashley Palmere at Ashley.Palmere@dlapiper.com or 410-580-4167.

27 Enjoy some *Pizza & Professionalism* with MSBA's **Alternative Dispute Resolution Section** from 6:00 p.m. - 8:00 p.m. at University of Maryland Francis King Carey School of Law, 500 West Baltimore Street, Room # 107, Baltimore, MD. To register for this free event, visit www.msba.org/product/adr-section-pizza-professionalism-event.

DECEMBER

3 You are invited to the **Maryland Legal Services Corporation (MLSC) Annual Awards Reception** from 6:00 p.m. - 8:00 p.m. at the Lord Baltimore Hotel, 20 West Baltimore Street, Baltimore MD. With Guest Speaker Chief Judge Mary Ellen Barbera. For more information and to register, visit www.mlsc.org/awards/annual-reception.

6 Join the MSBA's **Young Lawyers Section Public Service Committee** for their *Homeless Helpers* event to help fill bags with needed items for our local homeless. For more information and to RSVP, contact Please RSVP to Lauren Deutch at Ldeutchesq@gmail.com.

7 Join MSBA's **Alternative Dispute Resolution Section** for a Happy Hour directly following the Maryland Mediators' Convention, beginning at 5:00 p.m. at Doubletree Hotel in Annapolis, 210 Holiday Court, Annapolis, MD.

BY PAUL GOERINGER

Over the summer of 2018, multimillion-dollar jury verdicts awarded to neighbors of North Carolina hog farms made national news, raising concerns in the agricultural community. To date, the juries have found the hog farms were a nuisance to neighboring landowners. Back in late 2017, the federal district court judge hearing the case ruled that North Carolina's right-to-farm law did not apply in these cases, a marked change from earlier cases. Right-to-farm laws exist in all 50 states and provide a defense to nuisance suits to qualifying agricultural

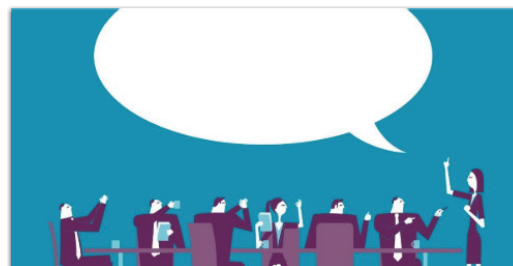
operations.

Many individuals moving to agricultural areas may have no farm backgrounds and little understanding of agricultural operations. The same is true of individuals moving near commercial fishing and seafood operations in Maryland. Once there, the new residents may find the noises, insects, farm equipment on the roads, smells, and other characteristics of agricultural and commercial seafood life unexpected and objectionable. In response, all states have developed right-to-farm laws which provide a

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The 4 Faces Of Public Speaking: What Kind Of Speaker Are You?

Identifying what kind of speaker you are will help you jumpstart your journey to becoming a better public speaker.



4 E-Discovery Pitfalls Judges Wish More People Avoided

At Exterro's inFusion conference, three federal judges explained that the average lawyer has a lot of room for e-discovery improvement, even with seemingly simple tasks like being specific and knowing the court.

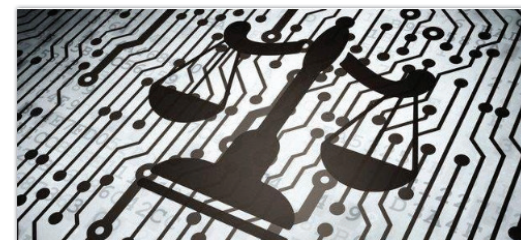


Read these articles and more at msba.org/linkedin.



WindTalker Wants to Protect the Water, Not the Glass, With Redaction Software

The tool, initially developed for the U.S. Department of Defense, is now being released to the wider legal market with an aim of more secure, yet collaborative, document encryption, redaction and sharing.



States Require Lawyers to Have Tech Competency, But Observers See Some Struggling

In 2012, the ABA enacted an amendment requiring lawyers to have knowledge of technology's risks and benefits. Some lawyers are faring better than others in adapting to tech, said observers.



Right-to-Farm Laws Provide a Valuable Nuisance Defense to Agricultural Operations

nuisance defense to agricultural operations. The majority of states view a right-to-farm law as a codification of the traditional "coming to the nuisance defense."

Maryland's right-to-farm law was codified in 1981 and has been amended a few times since then (Md. Code Ann. Cts. & Jud. Proc. § 5-403). In 2014, Maryland extended these protections to commercial seafood operations and fishing. Maryland's law is unique in providing a defense to nuisance claims brought against agricultural, commercial fishing, and seafood operations in the

state; when faced with a nuisance suit, Maryland's agricultural, commercial fishing, or seafood operation in business for at least one year and complying with all applicable federal, state, and local laws, ordinances, and permits will have a strong defense.

Besides the above requirements, operations will need to process crops or conduct on-farm harvesting, production, or marketing of agriculture, lumber, honey, or aquaculture product produced by the agricultural producer to qualify for the law. Commercial seafood and fishing

operations must harvest, store, process, market, sell, purchase, trade, or transport any seafood product to be protected by the state's law.

Another unique feature of Maryland's law is that before filing any nuisance suit in the district court, the complaining neighbor must first file to have the issue heard by a mediator or county review. The review is either by the county's agricultural reconciliation board if the county has established a county board or if not, by the Maryland Agricultural Con-

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OP-ED Aftermath of Murders at the Tree of Life Synagogue

Over the past week, many people have reached out to express various sentiments in the aftermath of the barbaric murders at the Tree of Life Synagogue in Pittsburgh, and to ask how I am coping with this tragedy. I was, and still am, deeply shaken by this noxious act of anti-Semitism, and it became even more chilling for me when my 12-year-old daughter, who is going to have her Bat Mitzvah next year, said to me, “I just want to enjoy my Bat Mitzvah; what if one of those people come?” It should be unthinkable that a 12-year old girl in the United States in 2018 is worried about being attacked on her Bat Mitzvah (or any other day) simply because she is Jewish (or because of her race/ethnicity/religion/gender). Yet, even as a child, I remember going to high holiday services in NY under police protection. Things have not changed, as the same rings true today.

In 1790, George Washington wrote to the Hebrew Congregation in Newport, Rhode Island, that “the Government of the United States . . . gives to bigotry no sanction” and “the Children of the Stock of Abraham,

“Approximately 53 percent of faith-based hate crimes target Jews.

who dwell in this land, [should] continue to merit and enjoy the good will of the other Inhabitants; while everyone shall sit in safety under his own vine and fig tree, and there shall be none to make him afraid.”

Sadly, nearly 230 years later, President Washington’s words have not come to fruition. Anti-Semitism has been on the rise for years, with nearly 2,000 incidents in 2017 alone in the United States (a 57 percent increase from 2016). The number of incidents in schools and on college campuses nearly doubled for the second year in a row and, according to the FBI, approximately 53 percent of faith-based hate crimes target Jews. I do not find it coincidental that the surge in anti-Semitism has coincided with a shocking level of tolerance for anti-Semitic rhetoric in our political discourse – *from both the right and the left* (kudos to Chris Cuomo for being the only person I have seen on TV to call out people on *both sides* for tolerating anti-Semitism) – as well as from ordinary citizens in private, daily life. Yet, as we approach the 80th anniversary of Kristallnacht (November 9), this is where we find ourselves as a nation.

Beyond the anti-Semitism, we have likewise sadly seen a disturbing increase in racism, xenophobia, anti-Muslim rhetoric, homophobia, and other forms of bigotry. Overshadowed by the events at the Tree of Life Synagogue, for example, was the murder of two black people in Kentucky, seemingly because of their skin color. Also, by way of example, the number of attacks on Muslims in 2017 for the first time exceeded the number of attacks that occurred in 2001.

Several years ago, when my best friend and I were discussing bullying in school, he said to me something along the lines of, “I hope my kids not only do not join in when other kids are getting bullied, I hope they do not sit by idly, either, and instead they do the right thing and speak out against the bad behavior.” While that seems like a reasonable, common sense goal for our children, today they are not the only ones who fail to speak up in the face of hateful rhetoric: adults are failing to do so, too. For that reason, I take great comfort from the following:

- Clergy members of various churches in my community wrote to our synagogue, not just to condemn the brutal anti-Semitic attack at the Tree of Life Synagogue, but to affirm that they and their church members stand with the Jewish people to fight the scourge of anti-Semitism until it is eradicated.
- Former members of the United States military offered to stand guard outside our synagogue, saying they will not allow a similar act of hate to occur in their community.

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59th Annual Conference of Bar Presidents and 11th Young Lawyers Summit

BY PATRICK TANDY

More than 140 bar leaders and their guests convened October 26-27, 2018, at the Gaylord National Resort & Convention Center in National Harbor, Maryland, for the 59th Annual Conference of Bar Presidents and the 11th Young Lawyers Summit. Every fall, the two-day program, hosted by the MSBA, invites bar presidents, presidents-elect, and their executive directors to share their knowledge, experience, and camaraderie in a casual setting.

During his welcoming remarks, MSBA President Judge Keith R. Truffer delivered a “State of the MSBA” report, outlining the many changes that have taken place since the Board of Governors approved a set of 24 forward-thinking foundational recommendations intended to set the future stage for MSBA in May 2017. Those initiatives include, among many other things, an emphasis on mobile-first technology, policy review, revamped publications, more robust CLE offerings, a statewide expansion of the Lawyer Assistance Program, and a clearly defined strategic vision over the next decade.

“This is an exciting time for our association,” said Truffer. “We are moving forward vigorously, and we want to work with every single bar leader here today, and throughout the state. It is integral to our mission, to your mission, that we work together.”

In addition to breakout sessions for Large, Medium/Small, and Specialty Bars, this year’s conference included plenary sessions addressing cybersecurity, civility, and avoiding bar communication pitfalls. Attendees mingled with members of the MSBA Board of Governors and 2018-2019 Leadership Academy Class of Fellows, and many went all-out for Friday evening’s Broadway-themed costume dinner and dancing.

Held in conjunction with the Conference, the 11th Young Lawyers Summit brought together young attorneys from across the state, representing various practice areas. Key discussion points included lawyer wellness and the valuable career development opportunities afforded by MSBA involvement.



Find more photos of this event at [flickr.com/marylandbar](https://www.flickr.com/photos/marylandbar/).

On Saturday morning, the MSBA Local & Specialty Bar Liaison Committee presented its Best Public and Best Bar Project Awards to the following:

- The Bar Association of Frederick County, Best Service to the Bar Project Award, for its Family Law Section Expert Symposium Project;
- The Bar Association of Baltimore City, Best Service to the Public Project Award, for its Young Lawyers’ Division Law Day Celebration; and
- The St. Mary’s County Bar Association, Special Small Bar Association Best Service to Public Project Award, for helping senior citizens

prepare their advanced medical directives on Law Day.

In addition, MGM National Harbor Gaming Consultant Michael Pappas offered an insider’s perspective into the state’s gaming industry; WBAL-TV Chief Investigative Reporter Jayne Miller discussed “Fake News, Real Issues, and the Social Media Explosion”; and former Maryland State Delegate Timothy F. Maloney delivered an entertaining legislative update.

First held in 1959, MSBA’s Conference of Bar Presidents is the oldest event of its kind in the nation. ●

PBRC PARTNER PROFILE:



A Conversation with Shila Mashhadishafie, Esq., PBRC Board Member and Pro Bono Attorney

Can you tell me a little about your full-time job?

I work at the Legal Services Corporation, the single largest funder of civil legal aid for low-income Americans in the nation. In this role, I help nonprofit organizations comply with all the rules that come with federal money.

Can you share something that most of your colleagues may not know about you?

I am addicted to poetry... and I just got my motorcycle license!

Which of PBRC's projects do you volunteer with?

I have been volunteering with the Tenant Volunteer Lawyer of the Day project in Baltimore City Rent Court for a year and a half.

What does the Tenant Volunteer Lawyer of the Day (TVLD) project do?

It helps tenants in eviction proceedings. Often the clients have been living in terrible conditions - in many cases, landlords have not complied with the law, in the rental process or in the eviction process.

How did you get involved with the TVLD project?

Believe it or not, there aren't a lot of volunteer opportunities out there for someone with expertise in 4th amendment, Title III, and regulatory compliance. I had to learn a new area of law, and the TVLD project made it easy!

How does the project make it easy?

It's really amazing. You simply attend a training session (available online at www.probonomd.org/for-lawyers/training/tenant), and then email Dean Fleyzor, the program manager, to sign up for a date. You show up at 8:30 am, get all the support you need from Dean, and you're done by noon.

Do you have a favorite client story?

Yes. In the heat of summer, my client had her power cut off, and was facing both wrongful eviction and a \$2,000 bill from BG&E. Even though she had paid the landlord for her electric bill, the landlord claimed the bill was still her responsibility. On top of this, the property was not properly licensed. When her home lost power, my client had stopped paying rent.

I advocated for her in rent court, and the judge ruled to terminate the lease and return her deposit. My client gave me a tearful hug, and said no one had ever done something like this for her. We drafted an order for the judge to sign, and my client used it to clear her balance with BG&E. The sincere outpouring of gratitude from this young woman was so heartening. There are really no words to capture the experience.

What do you like most about volunteering?

I like knowing that I'm leveling the playing field for those who need it the most.

What message would you give to attorneys thinking about volunteering?

Just do it! There really is a volunteer opportunity for everyone - regardless of your legal expertise or time limitations. The need is very great. Let's close the justice gap together - one client, one case, one day at a time!

PBRC's featured training opportunity for the holidays:

December 6 Litigation Skills Lunch & Learn - Witnesses at Trial: Prep, Direct, and Cross Witnesses to Establish the Elements of Your Case

www.probonomd.org/litigation-mentoring



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The Tapestry of ADR Services in the District Court of Maryland

BY MAUREEN A. DENIHAN AND ANDREW FONTANELLA

The District Court of Maryland has a centralized Alternative Dispute Resolution (ADR) Office that coordinates civil ADR programs at most District Court locations around the State. The ADR Office is responsible for administering civil ADR programs, including, but not limited to: recruiting practitioners; reviewing volunteer applications; training, orienting, and scheduling ADR practitioners; collecting and maintaining statistical data about the District Court ADR programs; and, maintaining a roster of qualified ADR practitioners to provide mediation, settlement conferences, or both.

Access to ADR is available pre-file, pre-trial and on the day of trial. Large and small claims

cases including contracts, torts, replevin, detinue, failure to pay rent, rent escrow, breach of lease, wrongful detainer, tenant holding over, and select peace order cases may be appropriate and referred to ADR.

Of the 20 District Court locations throughout Maryland, there are 16 day of trial ADR programs, 13 pre-trial ADR programs, as well as specialty ADR and mediation programs for peace order, failure to pay rent and municipal infraction dockets. There is no cost to litigants to participate in a District Court ADR program. All processes are conducted by volunteer mediators and settlement conference attorneys. Volunteer Day of Trial ADR practitioners staff 42 dockets a week, and an additional 7 dockets a month in

20 of 34 District Court locations. Roughly 1,600 cases are referred to ADR in Day of Trial programs annually and volunteer ADR practitioners help to resolve between 50 percent to 60 percent of cases participating in ADR.

Pre-File

The ADR Office regularly provides information about mediation to callers interested in resolving a dispute prior to filing suit in the District Court, and makes referrals to local community mediation centers and the directory of private mediators on the Maryland Program for Mediator Excellence website.

Pre-Trial

Parties, and their attorneys (if applicable), meet with a mediator

or co-mediator pair before the trial date. The District Court ADR Office partners with 12 local community mediation centers and the mediation clinic at Maryland Carey Law.

While mediation continues to be the primary ADR process offered to litigants, parties, and their attorneys prior to trial, the judge may also request that the case participate in a settlement conference. The District Court ADR Office will recruit a settlement conference attorney from the court's Day of Trial ADR Program practitioner roster to meet with the parties prior to the trial date. The ADR Office coordinates the invitation, communication, and scheduling of all non-judicial pre-trial settlement conferences.

Day of Trial

The ADR process available (mediation or settlement conference) at a particular court location is dependent on the qualifications of the ADR practitioner present to receive a case referral that day. Cases may use ADR on the day of trial by request of the parties and/or their attorneys, or the judge may request, refer, or order a case to ADR from the bench.

One or more specialty docket ADR programs operate in three District Court locations: Baltimore City, Ellicott City, and Rockville. Specialty docket ADR programs include: Peace Order Mediation, Municipal Infraction Mediation, and Failure to Pay Rent ADR Programs. These programs are offered on the trial

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ADR in Maryland

A MACRO Perspective

BY JONATHAN S. ROSENTHAL

Advancing the appropriate use of ADR is a central part of the Maryland Judiciary's mission to provide fair, efficient, and effective justice for all. It has been about 20 years since the creation of the Maryland Alternative Dispute Resolution (ADR) Commission, and about 18 years since the Mediation and Conflict Resolution Office (MACRO) was established within the Maryland Judiciary as part of the ADR Commission's action plan, *Join the Resolution*. If you are not familiar with MACRO, and even if you are, here is a summary of what we have been up to recently.

MACRO's mission is to promote the availability, use, and quality of alternative dispute resolution (ADR) throughout Maryland. In striving to meet this mission, MACRO relies heavily on collaborative efforts from Maryland's courts, ADR practitioner organizations, and the practitioners themselves. That collaborative nature is the heart of MACRO's success for two decades.

An example of the collaborative effort is the recent draft revision of the Maryland Standards of Conduct for Mediators. That project, led by the Judicial Council ADR Committee, included representatives from each of Maryland's largest ADR practitioner organizations and comments from more than 200 practitioners around the state at five regional forums, plus one online webinar. The goal of the draft Revised Standards of Conduct is to replace the existing two sets of Standards (for the courts, adopted in 2001 by the Court of Appeals and referenced in rules 17-205, 17-304, and 17-405, and for the Maryland Program for Mediator Excellence (MPME), adopted in 2006 for non-court cases) that currently provide guidance to Maryland mediators. Currently, the draft Standards are awaiting consideration by the Judicial Council.

Over the years, we have seen several revisions to the ADR rules for the circuit courts, and new sets of rules developed for ADR in the District Court (2013), the Court of Special Appeals (2014), and Orphan's Courts (2018), in addition to rules created to guide collaborative law practice (2015). The Judicial Council ADR Committee will be leading another review of ADR rules in the coming year to ensure courts are taking advantage of the best uses and efficiencies of ADR.

In addition to supporting effective court ADR rules, MACRO supports the courts and communities with grant funding for projects related to mediation and other forms of ADR. MACRO provides grant funding to courts for ADR program managers and continuing education opportunities, as well as technical support in evaluating and improving court ADR programs. MACRO also supports unique and inventive ways for courts to improve and expand their programs. From mediator coaching projects (Eastern Shore), to providing in-house, on-the-spot ADR services (Carroll County), MACRO seeks to help the courts improve both the quality and availability of their ADR services.

When the MPME was established within MACRO in 2004, it was developed through another collaborative effort involving all practitioner organizations, plus managers from court programs, other government offices, and community mediation partners. Free to join and focused on raising the quality of mediator practice in Maryland, the MPME currently has about 1,600 members, a searchable directory of mediators, and a web-based system to track one's continuing education courses. The MPME also provides regular ethics conversations via its *Mediator Confidential* call-in series and other programs.

Raising the quality of mediation is about more than continuing education. It is also about understanding what mediators do during the session and how their actions affect the mediation process and participants. To learn more about that, MACRO worked with other stakeholders both locally and nationally to embark on a first-of-its-kind research project to look at the effectiveness and efficiency of

court-based ADR programs, and a cost-benefit analysis. MACRO worked with hundreds of people around the state and in a variety of venues to complete the research, and the results have garnered national attention. To see the research reports, go to www.mdcourts.gov/courtoperations/adrprojects.

As the number of mediators increases, and the available services continue to grow, MACRO has worked with others in our field to try to grow the demand for mediation services. In 2014, MACRO initiated the Behavior Change Project. The goal of the project was to try to emulate public service campaigns to move the public to consider alternative ways to handle conflict besides litigation. In 2017, we worked with homeowners and home improvement contractors. In 2019, we hope to work with families who have eldercare conflicts.

MACRO will present the bi-annual Maryland Mediators Convention on Dec. 7, 2018, in Annapolis. Started in 2003 as a conference put on by and for Maryland mediators, the convention is a great place to learn more about the practice and grow ADR skills. About 300 mediators from a cross section of mediation frameworks, venues, and specialty subjects meet, learn, and network with others. As of this printing, tickets are still available. To learn more and register, go to www.mdmediators-con.org.

Finally, MACRO works with others in the judiciary and our community partners to collect and understand comprehensive ADR data. One project is ADDRESS, the ADR Evaluation Support System. ADDRESS is designed to help courts analyze and improve their ADR programs, and track ADR data and customer service surveys in real

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John Pontius represents individual and business clients with sensitive and serious tax matters before the Internal Revenue Service and state taxing authorities. Mr. Pontius regularly represents businesses and individuals with complex tax issues in the following areas: FBAR examinations, offshore

disclosures, FATCA, tax planning, unfiled tax returns, release of tax liens and levies, trust fund recovery penalty, IRS and state audit examinations as well as Appeals, and penalty abatement. Since 2012, Mr. Pontius has served as the Co-Chair of the Tax Law Section for the Bar Association of Montgomery County. He is also an active member of the Tax Section of the Maryland State Bar Association. Before opening his firm in 2017, Mr. Pontius worked for seven years at tax controversy law firms in Maryland and in the international corporate tax group of KPMG in Virginia. In 2006, he began his legal career as a Judge Advocate in the U.S. Army.

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The Evolving Collaborative Law Landscape

BY CONNIE KRATOVIL-LAVELLE

It has been approximately thirty years since the development of the collaborative law process that began with attorneys in the Midwest. By 2009, the Uniform Law Commission created the Uniform Collaborative Law Act. Five years later, Maryland joined the growing number of states that had adopted the act. In 2015, Maryland adopted rules to govern the practice. Many states have adopted statutes or rules to formalize and govern the practice of collaborative law.

The definition and requirements for the collaborative law process are laid out in the Courts Article, Subtitle 19 and in the Maryland Rules, Title 17, Chapter 500; Rule 19-301.2 providing that representation in the collaborative process is a permissible form of limited scope representation. The statute and rules incorporate the basic tenets of a collaborative law process: the parties voluntarily enter into a participation agreement to attempt to resolve their dispute outside of court, represented by collaborative lawyers, with protections of confidentiality and privilege, with the intent to fully disclose requested and relevant information without formal discovery, and with the understanding that the lawyers will not represent their respective clients in litigation if no agreement is reached.

Since 1990, the practice has grown nationwide, most notably in the family law context. In 2015, seventeen (17) states had enacted legislation or adopted rules for collaborative law. Just three years later that number has increased to twenty-four (24) states and the District of Columbia. Cur-



A 2013 study found that a typical collaborative law case was less costly for clients than those handled through litigation.

rently, Massachusetts and Tennessee are considering legislation; which, if passed, results in over 50 percent of U.S. states institutionalizing collaborative practice.

As with other alternative processes, Maryland has been a national leader in promoting and expanding collaborative law. From 2011-2015, hundreds of lawyers received training in collaborative law through a program sponsored by the Maryland Judiciary's Department of Family Administration.

In 2011, the first pro bono collaborative law project in the country was created through a grant from the Judiciary's family department. This statewide project, called the *Collaborative Project of Maryland (CPM)*, provides both pro bono and reduced fee legal services and services by financial

and mental health professionals.

Maryland's law schools incorporated collaborative law into the curriculum. At the University of Baltimore School of Law, Professor Jane Murphy established a collaborative law program for the family law clinic. And, the University of Maryland Francis King Carey School of Law offers a collaborative law course taught by Professor Jana Singer and adjunct professors Suzy Eckstein, Bruce Avery, and Karen Robbins.

A 2013 study commissioned by the Maryland Judiciary and conducted by the Institute for Governmental Service and Research at the University of Maryland, found that a typical collaborative law case was less costly for clients than those handled through litigation. The study found that collaborative attorneys spend, on average, thirty-two hours on a collaborative case, over a period of six months at an average cost of \$8,900 and agreement is reached in over 97 percent of those cases. While the sample size of the Maryland study was small, similar studies in other states, and cited in the 2013 study, have similar findings.

The inclusion of collaborative practice with other dispute resolution options continues with new programs emerging in various jurisdictions. A 2016 grant from the Maryland Judiciary supported the development of alternative dispute resolution program in probate cases in the Prince George's County Orphans Court. The program offers a combination of collaborative law process, mediation, and settlement conferencing.

Also in 2015, the Collaborative Project of Maryland (CPM) started a program in the Baltimore City Circuit Court whereby magistrates refer litigants who appear for scheduling conferences and express

interest in the collaborative process to a CPM staff person on-site. If the litigants choose to proceed collaboratively, CPM places them with attorneys.

In September 2017, Prince George's County Circuit Court launched a new model for the delivery of collaborative law. The program, developed by Connie Kratovil-Lavelle and CPM director L.J. Pelham, offers on-site collaborative meetings to litigants appearing for status conferences. Referred from the bench, an abbreviated intake process occurs and a collaborative meeting is held immediately on-site. The highly successful program has resulted in a one hundred percent agreement rate. In October 2018, Ms. Kratovil-Lavelle and Ms. Pelham introduced the process to practitioners and discussed Maryland's developments at the International Academy of Collaborative Professionals Conference in Seattle.

The newest collaborative law program in the state, *Two Homes One Family*, is a partnership between CPM and the Jewish Social Service Agency (JSSA), and offers a time-limited, reduced-fee collaborative process to middle income families. Families will work with JSSA therapists during the process. This program is currently available in Montgomery county.

The trend is clear: more states are institutionalizing collaborative law and Maryland is on the forefront. ●

Connie Kratovil-Lavelle is the Director of Policy for the Collaborative Project of Maryland and the Director of Legal Services for the Economic Empowerment Center, one of five pilot projects in the United States.



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A Fairly Short Treatise on Arbitration

BY JUDGE FREDERIC N. SMALKIN (RET.)

Where to start? Well, in any treatise long or short, it is probably a good idea to adopt the common-sense approach of one of Lewis Carroll's *Alice in Wonderland* characters: " 'Begin at the beginning,' the King said, very gravely, 'and go on till you come to the end: then stop.' "

It may be surprising to learn that arbitration was not displaced in England by trial before jury in common law cases after the Conquest. Indeed, it flourished. James Oldham, in his book *English Common Law in the Age of Mansfield*, at p. 69, observes that "[Lord] Mansfield was a decided friend to the arbitration process as an efficacious means of concluding cases... that would be well served by an arbitrator's expertise. There are over three hundred cases in Lord Mansfield's trial notes that were referred to arbitration in lieu of a jury verdict."

Skipping a few centuries to modern times, what are some basic arrows lawyers should have in their quivers in handling arbitrations? Here are a few:

- Never confuse arbitration with mediation. True it is that both arbitration and mediation are generally based upon both sides' agreement, but mediation is seldom agreed to by parties at the start of their relationship. Arbitration is, with few exceptions, specifically agreed to by the parties at the inception of their contractual agreement.
- Unlike in mediations, the parties to an arbitration cannot simply jump off the boat if they don't want to accept the wisdom of the mediator, usually because the gulf between the parties' ideas of what is a fair and reasonable outcome can be wider than the Grand Canyon.
- Remember that arbitrations are

essentially bench trials, with the arbitrator acting as judge and jury on the law and facts. Experienced arbitrators usually will conduct the arbitration as if it were a *de jure* bench trial, but with less pomp, circumstance, or – for that matter – attention to the rules of procedure and evidence applicable in a court of law.

- Most arbitral contracts specify a jurisdiction for both the venue and the substantive law to govern the proceedings, but procedural matters are usually governed by rules promulgated by well-known organizations, such as JAMS ADR or the American Arbitration Association. Such rules relax much of the formality of a courtroom, including application of rules of evidence.
- Arbitrators have considerable discretion when it comes to matters both of law and fact. In cases in which an arbitral

judgment (called an Award) is appealed to a civil court, the scope of the court's review of conclusions of law and factual findings is limited. In most cases, the scope of judicial review of an award is highly constrained. The Maryland Court of Appeals has said, "This Court has 'firmly established as a common law principle in Maryland that mere errors of law or fact would not ordinarily furnish grounds for a court to vacate or to refuse enforcement of an arbitration award.'" *Baltimore County v. Baltimore*, 329 Md. 692, 701 (1993), *quoting from Burchell v. Marsh*, 17 How. 344, 349, 15 L.Ed. 96 (1854). (Some things don't change much.)

- At times, there are disagreements at the outset as to the binding effect of the agreement to arbitrate. The usual rule is that the arbitrator has the power to decide

whether the case is arbitrable, but a court of record has the power to decide whether there was forgery in the formation of the contract. *See, e.g., Gregory v. Interstate/Johnson Lane Corp.*, 1999 U.S. App. LEXIS 20862 (D.Md. 1999)

- There are both Maryland and Federal statutes governing arbitration. The Maryland one is the Maryland Uniform Arbitration Act, found at section 3-201 *et seq.* of the Maryland Courts and Judicial Proceedings Code Ann. The Federal one is the Federal Arbitration Act (FAA) of 1918, as amended (yes, it really is a hundred years old), 9 U.S.C. sec. 1 *et seq.* Deep discussion of these statutes is well beyond this tiny treatise, but practitioners involved in arbitrations should, of course, be familiar with them and understand the preemptive

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ADR In The Boardroom

Practice Makes Perfect

BY JOHN GREER

Most cases settle. If your client is in litigation or headed there, this fact alone should steer him toward sharpening his settlement skills. A dry run will improve his odds of obtaining a good settlement. This technique is extremely useful in high-value business cases, but it can be just as effective in smaller, non-business cases.

Dry Run It

Say your client is the decision-maker for his business and you need to prepare him for his first settlement conference. Locate a trained neutral to conduct the mock session. The neutral plays the role of the settlement officer. Your client plays himself.

This is critical: his approach to the settlement conference will be based on what he experiences first-hand in the practice session. His business associate plays the opposing party. You play the opposing counsel. That way, you will fully appreciate the strengths and weaknesses of the opposing case

and, thus, be in a better position to advise your client. Someone from your firm plays your client's attorney.

The neutral is likely to convene a joint session with both parties and attorneys to determine the status of settlement negotiations. At some point, the neutral may suggest breaking into separate, private sessions and will shuttle back and forth with proposals. The mock session should encompass at least two rounds of proposals. Ninety min-

utes is ideal with thirty additional minutes to debrief it.

Benefits

Demonstrates the value of a negotiation plan. One of the worst things your client can do is react solely in response to his opponent's moves. Too many times I have seen Party A react to Party B's "outrageous" proposal by saying, "I'll show her; she needs to get reasonable. Tell her I will go to [fill in tiny move from previous proposal]." Not

only does this give control of the process to the Party B, it increases the chances of impasse because it fails to communicate Party A's settlement zone.

Advise your client to draft an action plan following the mock session laying out all the possible moves his opponent might make as well as your client's responses. In the real session, when the opponent winds up for a punch, your client will be able to see it

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Managing Litigation Risk & Decision-Errors

Mediators Working Inside the Culture of Litigation

BY JEFF TRUEMAN, ESQ.

More than ten years have passed since Randall Kiser and his colleagues documented how often and at what cost attorneys obtain a result worse than what could have been achieved by accepting their opponents' pre-trial settlement proposal. Generally speaking, Kiser found that plaintiffs' attorneys obtained a worse result at trial than they could have received at settlement almost 60 percent of the time at a cost of about \$40,000 per error. Kiser found that the defense did worse at trial in about 25 percent of cases at a cost of approximately \$1.1 million dollars per error.

Since most cases settle, can we assume attorneys are making better risk-management decisions whether or not to adjudicate or settle? Perhaps. But in this author's opinion, there's more than money at stake. Some lawyers define success in ways that differ from Kiser's economic criteria. A number of attorneys who make "bad" decisions according to Kiser's research would try those cases again. They define success in

terms of executing their clients' objectives and earning client loyalty. Furthermore, some lawyers feel that they can be, and perhaps should be, responsible for the decisions of other people (such as judges and juries). They believe their actions can determine the outcome of a case. Similarly, many clients believe that their story will persuade other people.

Defendant institutions such as insurance companies and for-profit companies are "portfolio players" who track outcome data. They know that certain case-types produce results that are fairly predictable. Lawyers employed by insurance companies, who do not bill for their time, may be willing to incur higher levels of risk by empowering plaintiffs to make decisions whether or not to settle – "It's up the plaintiff to take our last offer or we'll try the case." When they lose, defense lawyers take an appeal, or the carrier simply pays the judgment and moves on.

Insurance companies may litigate for reasons not readily apparent to outsiders. Payment of any amount to settle may be

highly scrutinized when a liability defense can be asserted. Often, a great deal of internal pressure exists within an insurance company to maintain the status quo of how risk is managed. An underwriting department may be overly invested in exclusionary language and therefore, not want the claims department to settle. Case reports from lawyers who may be risk averse filter their way up to company leaders who may be risk seeking and view "questionable" outcomes as "winnable" outcomes. This raises an interesting dichotomy between the ways in which jury verdicts are viewed. While individuals look to juries as potential sources of accountability, some institutions view them as sources to be blamed or as "cover" when corporate politics or an executive's ego take priority.

Perhaps one of the greatest inefficiencies reflected in litigation culture is the late timing of settlement decisions. Many lawyers test each other's resolve under the belief that the best settlement numbers come only under the pressure of an impending trial date. To be fair,

economic value can be created by preparing cases for litigation. For example, carriers increase offers at predictable times during the run-up to trial: when the defendant is served; after the plaintiff is deposed (assuming he or she performs well); after dispositive defense motions are denied; and when experts are disclosed or retained. More often than not, many attorneys wait until very close to trial before moving off their bargaining positions. By that time, significant amounts of time and money are invested in an adjudicative process that will – in all likelihood – not be utilized.

Perhaps these dynamics give context to Kiser's findings and, as a result, challenge mediators to consider any number of reasons why the parties may want to assume more risk than seems rational. Many mediators believe their assessment of risk is more realistic than that of the parties or counsel. Perhaps mediators should acknowledge their own biases. Sometimes lawyers have an unshakable confidence in his or her case and no mediation

technique can alter it.

Understanding the culture of litigation and the role that lawyers play as legal advocates is critically important when mediating litigated disputes. Like any great work of art where the space untouched by the artist is just as important as the creation, the mediator might consider what not to address. For example, mediators might avoid overt efforts to sell "better" decision-making to the participants. Instead, in this author's view, well-known techniques that reframe the conflict dynamic through the use of good questions, reflective listening, and process choices that respond to the needs of the parties will create the space for good decision-making. Settlement is not guaranteed, it but occurs much of the time. A positive, productive mediation session that generates a positive result may lead to another case for the mediator. ●

Jeff Trueman is a private commercial mediator.

I Didn't Sign It!

Compelling Non-Signatories to Contracts into Arbitration

BY KENNETH A. VOGEL, ESQ.



“But I did not sign the contract!” the client exclaims. “How can I be forced into arbitration?” This question may occur when a claimant initiates an arbitration proceeding against someone who did not sign a contract which has an arbitration provision.

Arbitration is a voluntary procedure. Parties agree to binding arbitration by contract before the dispute arises. How can someone be involuntarily compelled to arbitrate a dispute? One can enter arbitration either as a claimant (plaintiff) or as a respondent (defendant) including becoming a counter-claimant.

Voluntary joinder is available. If two parties sign a contract which requires arbitration, and if the claimant wants to pursue his claim against a non-signatory, as a general rule he cannot. For example, assume that the claimant wants to go after a LLC and its managing member based on a piercing the corporate veil theory or other theory of relief. The Claimant would have to file an arbitration and also file a separate lawsuit against the managing member to seek either a judicial order to compel the managing member to join the arbitration. Or, the claimant can file a lawsuit to obtain relief against the managing member in a separate court proceeding. The managing member might decide to voluntarily join the arbitration as a co-respondent in order to avoid the expense of defending against two separate legal actions - one in the arbitration and one in court. Joining the arbitration also avoids public knowledge of the dispute, privacy not afforded in civil

lawsuits.

Non-signatories may be joined in matters where multiple independent contracts or multiple parties are involved. This can occur when some of the parties to an agreement containing an arbitration clause and the contracting party are members of a group of companies, or where the parent or its subsidiaries are involved in the same commercial transaction, even though they are not all parties to the specific contract at issue.

Involuntary joinder is rare. It occurs when a party is dragged into arbitration without his explicit consent. For example, the author acted as the arbitrator in a construction dispute. The contractor company filed an arbitration demand against a homeowner who refused to pay its bill. The homeowner responded by filing a counter-claim against the contractor and its corporate president personally. In addition, the homeowner respondent filed a complaint against the company and the corporate president individually with the Maryland Home Improvement Contractor Commission (MHIC). The contractor's response to the MHIC was that an arbitration was pending which would resolve all disputes against all parties. In other words, the contractor used the company's arbitration demand to shield its president individually from MHIC's investigation of the homeowner complaint. The contractor also filed an answer to the counterclaim, and actively defended against the counterclaim.

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Community Mediation

Because Relationships Matter

BY CYNTHIA M. JURRIUS

What if everyone in our communities knew it was possible to resolve conflict without fighting, to solve problems by hearing each other's shared values, and to find sustainable solutions that work for all involved? How would that possibility of peaceful, productive dialog impact your families, schools, workplaces... Thanksgiving dinner tables?

Across the state, volunteer mediators in fourteen community mediation centers help people hear each other, reach agreements, rebuild relationships, and find solutions. Community mediation looks at some of our most painful and difficult challenges, and asks, is there a place in the solution to this challenge that relationships matter? If so, let's bring productive dialog to that challenge.

Community mediation provides a non-profit framework for assuring access to conflict resolution services. Community Mediation Maryland is a non-profit umbrella organization which provides training, quality assurance, research and partnership development for the community mediation centers. Community mediation strives to attain ten aspirational principles for delivery of community mediation, known as the 10 Point Community Mediation Model. See: www.marylandmediation.org

When people can work together on what's important to them, relationships can be transformed and the community strengthened. Lorig Charkoudian, Director of Community Mediation Maryland, states, “When people have voice and hope, they can work together to build a strong community.” Community mediation provides conflict resolution for people facing a wide variety of circumstances, including the following.

Families in Conflict

When separating parents can work together to focus on the best interests of their children, and create plans for themselves that work for all involved, the children and family are benefitted.

Youth in Schools

When students know they can resolve conflict without fighting, positive school climate and learning are enhanced. Through

“Community Mediation has at its core the concept that everyone in the community is a potential peacemaker.”

education, mediation and restorative practice, community mediation centers help youth resolve conflict and learn life skills to manage future conflicts without violence. Additionally, attendance mediation, with parents and school staff at the earliest signs of chronic truancy supports school success and graduation. The Maryland Commission on the School to Prison Pipeline and Restorative Practices, created by the Maryland General Assembly in 2017 (H.B.1287), seeks to address the link between exclusionary discipline practices in schools and later incarceration, and mediation and restorative practices offer promising alternatives. In Dorchester County, the School Based Conflict Resolution Program provided by Mid Shore Community Mediation Center serves schools with on-site conflict resolution services, reaching over 3000 students, parents and school staff.

Neighborhood Conflict

Mediation and group facilitation services to neighbors and neighborhoods reduce stress. In mediation, neighbors discuss current and future challenges. Mediation also helps to end violence and build a foundation for a more peaceful community. As Shan-

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Maryland Schools, Restorative Practices, and School Climate

BY DEBORAH THOMPSON EISENBERG
AND TOBY TREEM GUERIN

All children deserve to learn in a safe and supportive school climate. As the Supreme Court emphasized in *Brown v. Board of Education*, “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.” In recent years, Maryland schools have recognized the link between positive discipline models, school climate, and academic learning. Many districts have embraced “restorative practices,” which is a relationship-focused approach that focuses on building safe, respectful school communities and provides a continuum of tools to promote positive student behavior, and hold students accountable for misconduct in constructive ways.

Restorative practices have been recognized as an antidote to the extreme negative consequences of “zero tolerance” exclusionary discipline practices, that push students out of school rather than addressing underlying issues that may be triggering certain conduct. According to recent analyses by the U.S. Department of Education and the Department of Justice and others, responding to student conduct with exclusionary punishments like suspensions do not improve school safety or academic progress. Instead, exclusionary punishments have been overused to punish age-appropriate student behavior and have disproportionately impacted students of color and students with disabilities, fueling what has been called the “school to prison pipeline.”

The Maryland State Department of Education has recognized that the goal of school discipline should be a “rehabilitative one.” Maryland state law requires that every local school district “provide a continuum model of prevention and intervention activities and programs that encourage and promote positive behavior and reduce disruption.” Md. Code Ann., Education §7-304. Many school districts have found that restorative practices offer an effective approach to encouraging positive student behavior, improving school climate, and decreasing the need for suspensions. Some districts, including Montgomery, Anne Arundel, Baltimore County, and Baltimore City, plan to implement restorative practices throughout all of their schools. Schools in other counties, including Dorchester, Worcester, Frederick, Calvert, Charles, Howard, and Prince George’s, have integrated restorative practices in some schools.

Restorative practices use preventive and responsive dia-



“ It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

logue-based interventions that focus on building strong school communities and helping students understand and comply with community behavioral expectations. Restorative schools focus primarily on prevention, using classroom dialogue circles and other communication tools that give students a greater sense of belonging and engage them in learning. This makes disruptive behavior less likely to occur in the first place. A continuum of informal and formal tools provide schools with a range of responsive interventions that hold students accountable for inappropriate conduct in a way that helps them learn and comply with behavioral expectations in the future. Although direct causation has not been empirically proven, schools using restorative practices report dramatic improvements in student behavior and better outcomes on a number of levels, such as improved school climate data, increases in student attendance and academic performance, and reduced need for suspensions.

In 2017 the Maryland General Assembly created the Maryland Commission on the

School-to-Prison Pipeline and Restorative Practices. Chaired by the Center for Dispute Resolution at the University of Maryland Carey School of Law, the 22-member Commission is tasked with studying school discipline practices in Maryland, examining national best practices, and recommending a plan for integrating restorative practices and other positive discipline strategies in schools throughout the state. The Commission will submit a report and a collaborative action plan to the Maryland General Assembly and Governor by the end of 2018.

As the use of restorative practices in schools has grown, so has the capacity of Maryland-based providers to support the schools and communities. Organizations such as Restorative Response Baltimore, Center for Dispute Resolution at Maryland Carey Law, Positive School Center at University of Maryland School of Social Work, and community mediation centers, among others, have experienced staff and trainers to support schools as they seek to create a more restorative climate.

The growth of restorative practices is

not limited to K-12 schools. Several institutions of higher education in Maryland recognize the value in relationship-based proactive and reactive responses to instances of harm. For years, the University of Maryland Baltimore County has integrated restorative practices into its residence life programs and in addressing student conduct. Similar models are being explored by other Maryland universities.

Excellence in education requires a commitment to creating optimal learning environments for all students. The Maryland State Department of Education has recognized the disproportionate impact of past disciplinary practices on student education and the need for improvement. Relational-based approaches to discipline like restorative practices hold great promise for the future of Maryland’s school children. ●

Deborah Thompson Eisenberg and Toby Treem Guerin manage the Center for Dispute Resolution at the University of Maryland Carey School of Law.

It Doesn't Have to Be a Hostile Takeover: Using Mediation to Navigate the Travails of Adult Guardianship

BY JUDGE KAREN MURPHY JENSEN AND NISA C. SUBASINGHE, ESQ.

U.S. Census Bureau estimates show the senior population is on the rise, and the courts are already seeing an increase in the number of guardianship cases. In an effort to be proactive and adapt to this change, the Maryland Judicial Council adopted 25 recommendations, made by the Council's Guardianship/Vulnerable Adults Workgroup, to reform guardianship court processes across the state. The recommendations were adopted in May 2016 and called for eligibility requirements for guardianship attorneys, training for guardians, standardized forms, dedicated court staff, and judicial training. The workgroup has already implemented several recommendations, some of which were made through court rule changes that went into effect January 1, 2018.

Guardianship is a drastic measure that results in the significant and often permanent loss of a person's rights and liberties. While it may be necessary to protect a person's personal or financial well-being,

guardianship creates opportunities for bad actors. For these reasons, guardianship should be treated as a last resort and imposed in its least restrictive form.

When guardianship does seem necessary, mediation can help. As outlined in one of the workgroup's recommendations, one should "utilize mediation and other forms of alternative dispute resolution (ADR), as appropriate, in contested guardianship cases as a means of expediting resolution and conserving limited judicial resources."

Why Mediation?

In mediation, parties work with an impartial third-party to find a solution that is *acceptable to the parties*. Unlike some court proceedings, mediation is non-adversarial. Mediation is collaborative and promotes self-determination, which can help strengthen or preserve relationships.

The Maryland Judiciary commissioned independent researchers to study ADR in Maryland and found that people who

participate in mediation were more likely to express their concerns than those who did not use mediation, even if the parties were not able to reach an agreement. The research also found that people who reached agreements are less likely to return to court for an enforcement action in the 12 months following ADR. These findings suggest ADR can have significant benefits for guardianship cases. For more information about the research, visit www.courts.state.md.us/courtoperations/adrprojects.

Guardianship Disputes

Mediation can be used to identify less restrictive alternatives to guardianship, resolve conflicts over who should be the guardian, and work through the logistics of a guardianship including visitation, information sharing, housing, care provisions, and property management. Many guardianship disputes stem from family conflicts that are wrought with repressed tensions that bubble to the surface. A

mediator can provide a forum for families to navigate the emotional landmines and focus on the person whose independence or well-being is at stake.

Some disputes are not appropriate for mediation. Whether an adult is legally incapacitated and needs a guardian is a judicial determination. Allegations of abuse, neglect, or exploitation and certain mental health disputes and conflicts with hospitals or nursing homes should not be sent to mediation.

Guardianship Mediators

Guardianship mediations are challenging. The focal point is the person whose decision-making capacity is in question. In each case, mediators must assess an individual's capacity to participate in the mediation process personally or through an attorney or support person. Guardianship mediators should expect to work with multiple "interested persons" including

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Continuing Legal Education Opportunities

BY ANDREA TERRY

For the first time, the MSBA is offering The Cybersleuth's Guide to Fast, Free and Effective Internet Research on December 12, 2018 in Columbia, MD. Learn little known resources to improve your practice and save time in reaching critical information. Keep an eye on the MSBA website <http://msba.inreachce.com> for all upcoming live programs. If you cannot attend a live program, many are webcast

concurrent with the live program, and you can find these programs available online, on-demand approximately 6-10 days after the live program. All video replays and online programming carry CLE credit just like the live programs. See below for details.



Additional information and online registration available at msba.inreachce.com

LIVE IN-PERSON & WEBCASTS

- **December 12, 2018.** *The Cybersleuth's Guide to Fast, Free and Effective Investigative Internet Research.* Columbia, MD. Registration is open. *webcast
- **January 16, 2019.** *Mindfulness as a Foundation for Ethical Lawyering.* Columbia, MD. Registration is open. *webcast
- **February 7, 2019.** *Family Law University.* Columbia, MD. Registration is opening soon.
- **May 9, 2019.** *Hot Tips in Workers' Compensation.* Columbia, MD. Registration is opening soon. *webcast

VIDEO REPLAYS

- **November 27, 2018.** 2018 MSBA Immigration Law Section Fall Conference: Federal Court Litigation and Special Immigrant Juvenile Status Nuts and Bolts. Baltimore, MD.
- **November 29, 2018.** 2018 MSBA Immigration Law Section Fall Conference: Federal Court Litigation and Special Immigrant Juvenile Status Nuts and Bolts. Rockville, MD.
- **December 11, 2018.** Advanced Real Property Institute. Baltimore, MD.
- **December 13, 2018.** Advanced Real Property Institute. Rockville, MD.
- **December 18, 2018.** Financial Elder Abuse – 2018 Update. Baltimore, MD.
- **December 20, 2018.** Financial Elder Abuse – 2018 Update. Rockville, MD.
- **February 19, 2019.** Mindfulness as a Foundation for Ethical Lawyering. Baltimore, MD.
- **February 21, 2018.** Mindfulness as a Foundation for Ethical Lawyering. Rockville, MD.

NEW & RECENT PUBLICATION UPDATES

(All titles available in print and electronically)

NEW—Model Jury Selection Questions for Maryland Criminal & Civil Trials

Select your jury using the easy, practicable sets of questions (separate sets of questions for civil and criminal trials), generously endorsed by the Maryland Court of Appeals. See *Collins v. State*, 452 Md. 614 (2017).

The Maryland Rules of Evidence Pocket Edition, 2018

This easy-to-carry pocket guide allows you to have the rules of evidence at your fingertips.

NEW ONLINE, ON-DEMAND

- Hot Tips in Family Law: What NOT to Do!
- ABLE, Special Needs Trusts and the New POMS
- What is New in Handling Drinking and Driving Cases in Maryland
- 2018 Employment Law Institute
- Issues in High Value Family Law Cases
- Fiduciary Litigation: Contested Wills, Trusts, Inter Vivos Transfers and Guardianships
- Adult Guardianships in Maryland – the New and Improved Process!
- 2018 Hot Tips in Workers' Compensation
- Immigration Law Update: Creative Lawyering Strategies in Times of Uncertainty
- Advanced Estate Planning Institute
- 2018 Hot Topics in Elder Law
- Pesky and Persistent Evidentiary Issues in Estate and Trust Litigation
- Family Practice Update
- 2018 Succession Planning Seminar
- Advanced Storytelling and Persuasion Skills with David Mann
- Handling Collection Cases through Enforcement and Judgment
- Advanced Real Property Institute
- 2018 MSBA Immigration Law Section Fall Conference: Federal Court Litigation and SIJS Nuts and Bolts
- Financial Elder Abuse

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MSBA Lawyer Assistance Program Wellness TipSheet

Food, Food and More Food

BY LISA CAPLAN

Anyone who has heard me speak, read one of my tip sheets, or knows me, knows that I really emphasize living with intent. Simply put, know why you are making the choices you are making and then own it.

With the holidays upon us, the celebrations are endless, and, therefore, so is the opportunity to choose to overindulge in all the yummy food. I'll be honest, I love food, and when I go to a social event, the first thing I think about is the food. So how do we manage all the food, maintain some control over our health and weight, and still have a fun holiday season? Simple - we stop running on autopilot and make active choices about what we want to do. For example, are you ok with gaining a few pounds over the holidays? Do you want to maintain your weight? Do you want to exercise more to balance out the extra food you'll enjoy? Whatever you decide works for you is fine, but make a decision, and then you will feel more in control of your life.

Here are some tips on taking control of your food choices over the holiday season:

1. Decide you want to eat and drink whatever you want, and you will deal with the fall out after the holidays. Yes, this is a choice, and if you decide you want to do this then it is perfectly ok and there is no reason to feel guilty.
2. Decide to plan ahead before the celebration on what you want to eat and what you want to skip. For example, you may choose to skip soda and other sugary drinks that have empty calories and eat dessert instead.
3. You may plan to eat other foods in lieu of alcoholic beverages, which are just empty calories.
4. Don't skip breakfast and lunch before a celebration with the intention that you will eat all your calories at the party.

Doing this will cause you to overeat, and end up eating more than you would have if you had eaten something prior to the party. Instead, eat small healthy meals the rest of the day, for example a hardboiled egg, a few almonds and an apple for breakfast and something similar for lunch. Try to avoid foods high in carbohydrates and sugar which will make you crave more sugary foods.

5. Offer to bring a healthy side dish to the party.
6. Plan to exercise the day of the celebration.
7. Drink a 16 oz glass of water before the party to curb your appetite, and give you a chance to check out all the food before you start eating.
8. Choose to focus on the people that are there and not the food. Go to socialize and spend time with friends and family. Take three bites. There is a "three bite rule" that says to count bites not calories. So, if you want to try it, here it is. Choose the foods you want, and then limit yourself to three bites of that food. I have seen people do this with dessert and it can work really well. Since I work with a lot of people who are living in recovery, I think this idea could get out of control by pushing the limits. You could absolutely abuse this by eating huge bites, choosing a hundred foods from the

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Health & Wellness Corner

How Lawyers Can Recognize and Combat Burnout

BY HALEY SHAW

A stressful lifestyle can put people under extreme pressure, to the point that they feel exhausted, empty, burned out, and unable to cope. Stress at work can also cause physical and mental symptoms. Possible causes include feeling permanently overworked or under-challenged, being under time pressure, or having conflicts with colleagues. Extreme commitment that results in people neglecting their own needs may also contribute. Problems caused by stress at work are a common reason for taking sick leave. Tyger Latham, a Washington D.C. based psychologist who treats many lawyers and law students states, "Mental health disorders can profoundly affect attorneys' daily functioning. Irritability, obsessive thoughts, feelings of inadequacy, difficulty concentrating, a sense of worry and impending danger, sleep disturbances, heart palpitations, sweating, fatigue and muscle tension are all side effects of burnout, anxiety, and depression." Some attorneys withdraw from peers, friends and family or engage in "maladaptive coping behaviors," such as self-medicating with alcohol and other substances. These feelings and behaviors slowly lead to burnout in the workplace.

Recognizing burnout is one thing, combating, and curing burnout is another. To recognize burnout assess, yourself by asking:

"Am I extremely exhausted?"

"Do I continually feel down, causing my performance at work to decrease?"

"Do I alienate myself from my coworkers, because I continually feel numb towards my work and the environment I am in?"

"On a scale of 1-10 throughout the day, how often do I feel stressed and frustrated with my work?"

There are **three main areas** of symptoms that are considered to be signs of burnout: exhaustion, alienation from work-related activities, and reduced performance. The good news is that healthy coping mechanisms are available—and are proven to reduce anxiety and depression

For more information about attorneys, burnout and anxiety, check out these useful resources:

- http://www.abajournal.com/magazine/article/how_lawyers_can_avoid_burnout_and_debilitating_anxiety
- <https://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0072470>

among lawyers. Meditation, daily exercise, adequate sleep, diet, and therapy are known to combat and reduce feelings of burnout in the workplace.

We start with meditation.

A mindfulness practice can be as simple as closing your eyes and counting back from 100; or even keeping your eyes open and taking 3-5 deep inhales and exhales, focusing on the present, and not worrying about the future. Meditation does not necessarily mean seated in a cross-legged position in an isolated room. Meditation is a way of life and can be done anywhere. It means focusing on the present, and one's current surroundings to enhance daily actions.

In addition to meditation, **eating both healthfully and mindfully** should not be underrated as a method to combat anxiety, stress, or burnout. According to the ABA, "Most lawyers seat at their desks or in front of the TV." There is no time for rest or digestion. When it comes to mealtime, it's important to pause and do nothing but enjoy your meal. Start with one meal a day with no distractions. I suggest dinner time as a time to reflect on your day and engage in a healthy meal with family or friends.

Rest and high-quality personal time are essential in combating fatigue. Schedule time every week to decompress and clear the mind. This can be accomplished through physical activities such as time at the gym, running, walking, cycling, yoga or martial arts, to name a few. Others include cooking, reading for pleasure, developing a hobby, going to the movies, or spending time in a museum or nature.

These activities can be pursued alone; however, when combined with a partner, family members, or friends, the social interaction can enhance the restful nature of these activities. Even aiming to head to bed at a consistent time daily will increase your awareness throughout the day.

Lastly, lawyers "intellectually know" that sleep, diet, meditation and exercise are important, according to Tyger Latham. "Lawyers know they feel better when they get a good night's sleep. But attorneys sacrifice sleep and healthy habits to meet unrealistic expectations. They skip meals, eat out, and skip exercising. It's a snowball effect. Lawyers may also start to pull away from friends and family, to withdraw. But it's important to feel connected to other people or the problem compounds with isolation and shame." Sometimes expressing feelings of anxiety, burnout, or stress to another person who listens, cares and understands can be enormously therapeutic. If you're struggling with issues of burnout, reach out to the **Lawyer Assistance Program** within the MSBA. This is a free and confidential resource for you to express how you truly feel, so you can live the life you want to live.

Eating properly, sleep, meditation, and exercise are such foundational practices for managing the high-stress environment lawyers deal with. Changing the culture of the profession can go a long way to combat burnout. Thankfully, MSBA President Judge Keith R. Truffer has prioritized investing in the right tools to reduce levels of anxiety, burnout, stress, and depression for MSBA's members.

CONTINUED ON PAGE 23





The Business of Law

Getting Published

Writing to Position Yourself as an Expert

BY TATIA L. GORDON-TROY

We all know that attorneys are taught to think, speak, and write logically and analytically. But as an attorney, what if you could use your logical thinking and analytical skills learned from law school and perfected in practice to promote your firm, market your skills, and position yourself as an expert in your chosen field?

We're talking about using your writing skills to get published. Publishing articles in well-known periodicals or a book for laypeople or fellow attorneys can lead to public speaking engagements, conference panel participation, and especially additional clientele. All of which can help elevate you to the level of expert in your field.

Being a published author, even a self-published one, carries a certain amount of prestige. It also can help you reach your target market, promote the collective experience within your firm, and position yourself as a thought leader.

Writing a Book

Because the practice of law has changed dramatically in the past decade or so, an attorney's approach to it must change as well. It's not enough to simply count on referrals from colleagues to get by. You have to be a good attorney, a good marketer, and a savvy business owner in this competitive field. And a book is a great marketing piece for you and your firm. It's the new business card for the 21st century.

Because you are an attorney, you should write a book. You are a highly educated professional, and your clients and others expect nothing less. A book is your way of standing out in a crowded sea of attorneys performing the same functions and practicing the same field of law.

If that doesn't convince you, there are several business-related reasons why attorneys write books, and each of them relates to growth: (1) to move into a new

and growing market; (2) to build authority in your niche; (3) to build and expand your practice; (4) to attract new clients for your services; or (5) to diversify your income.

Could you accomplish the same with a brochure or a list of FAQs on your website? Not really. Clearly, a book is nothing like a brochure, which is meant to be a concise description of the content typically found on a firm's website. A book, however, allows you to express your legal expertise on a subject, share your opinion, and educate your audience. A book is FAQs on steroids!

Publishing Misconceptions

Many people, including attorneys, harbor misconceptions about publishing, so let's dispel a few here:

❶ Legal books need to be hundreds of pages. No. The length of a book serving the legal community has changed. You do not need to write a 2,000-page tome to be taken seriously.

❷ I'll make money off my book. Maybe, but mostly likely not. However, it's more about the reach the book might have and the opportunities that could present themselves to you and your firm. It's an investment.

❸ I can't practice and write a book. Yes, you can. You simply need to commit to the task and start by developing an outline. Alternatives to writing involve recording your thoughts and having them transcribed, or hiring a writer to pull the information out of you and then massage it into a book.

Writing for Periodicals

No matter how you approach it, writing for promotional purposes is a long-distance run and not a sprint to the "more clientele" finish line.

To that end, some lawyers may feel more comfortable devoting time to writing articles for magazines and websites, because they don't demand the same time commitment as a book. Many articles run between 500 and 1,500 words, a more surmountable challenge for many.

The real challenge is to get your article idea in front of the right person at the right periodical so that your article gets read by the right potential client base. Follow these steps:

1. Google the publications you're interested in and check the website for its circulation and demographics.
2. Locate the executive or managing editor's name and contact information.
3. Prepare and submit your article pitch—a summary of the article you'd like to write for the publication.
4. Find five to 10 publications that meet your needs. Many of these periodicals are constantly looking for submissions and fresh content to fill their pages, especially when they publish on a daily or weekly basis.

If you are seeking a legal audience, contact your local bar or specialty bar associations. For a national legal audience, there are news sites such as Lawyerist, Above the Law, Attorney at Work, and Nolo. For a non-legal audience, try periodicals that are community based. Look closer at the ones that are delivered for free to your door or in your mailbox regularly.

Happy writing! ●

Tatia L. Gordon-Troy, Esq. is a member of the Maryland Bar and a regular contributor to the Bar Bulletin. She develops content and client outreach products for attorneys and law firms and runs her own publishing house, Ramses House Publishing LLC, www.publishingforlawyers.com.

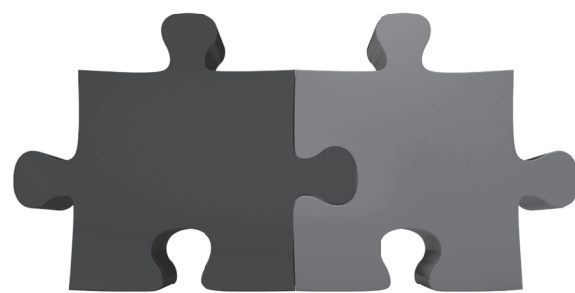


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Expanding LAP CONTINUED FROM PAGE 4

reinvent the wheel to get help. We know the resources that are available. We can help and support them to get the individualized help that they need.”

Since 1981, the MSBA Lawyer Assistance Program - the first state bar program of its kind in the nation - has offered free, confidential counseling to help lawyers, judges, and law students. Services include help for a broad range of problems and personal concerns, including wellness, depression, marital and family issues, alcohol and drug abuse, stress and burn-out, career concerns, gambling,

addiction, compulsive spending, eating disorders, work/life balance, and bereavement. LAP also offers intervention assistance and planning, mentorship for peer support, and education and orientations to the legal community.

LAP is available to all lawyers in Maryland. If you or someone you know is in need of LAP's free, confidential counseling services, please call our 24/7 toll-free line at 1 (888) 388-5459, or contact LAP Director Jim Quinn at (443) 703-3041, jim@msba.org or LAP Counselor Lisa Caplan, LCSW-C, at (443) 703-3042, lisa@msba.org. ●

Executive Director's Column CONTINUED FROM PAGE 2

guess I'm just glad there's an MSBA there for me in more ways than I had realized”.

The MSBA has been there for tens of thousands of attorneys since its founding in 1896. Some exciting new ways to 'be there for

you' are now on the horizon for the MSBA. We may change our look and how we deliver the value but it all comes down to us being there for you.

You are...the MSBA.

Right-to-Farm CONTINUED FROM PAGE 4

flict Resolution Service (ACReS), the official U.S. Department of Agriculture-certified agricultural mediation program for Maryland. These county boards typically consist of five county residents with a mix of both agricultural and nonagricultural backgrounds. Membership requirements vary by county. This informality can provide a setting to work out disputes between neighbors and provide more mutually beneficial solutions to nuisance complaints.

Maryland's right-to-farm law allows counties to develop county right-to-farm ordinances. Twenty-two of Maryland's 23 counties have adopted similar language in their county right-to-farm ordinances. This common ordinance states that if an agricultural operation uses “generally accepted

agricultural management practices” (GAAMPs), the right-to-farm defense applies. Governmental agencies such as the local soil conservation district or the University of Maryland Extension have defined many GAAMPs. For cases where a governmental agency has not authorized any GAAMPs, the practice(s) in question is presumed to be GAAMP, but a neighbor can provide evidence to show that the practice is not generally accepted. For example, if the neighboring farm is using a tillage practice that is no longer considered GAAMP, then the neighbor can call on a governmental agency to show evidence the tillage practice is no longer acceptable.

Right-to-farm laws are not general defenses to any claim

ET ALIA



M. Natalie McSherry

The Maryland Legal Services Corporation (MLSC) board of directors has elected **M. Natalie McSherry**, principal at Kramon & Graham PA, as its Chair. McSherry is the first woman in MLSC's 36-year history to hold this position.



Andrew Jay Graham

Manuel R. Geraldo of Robinson & Geraldo has been honored by The Community Foundation in Prince George's County with their Civic Leadership Award.

Andrew Jay Graham has been selected for the Maryland Legal Services Corporation's 2018 Arthur W. Machen, Jr. Award, recognizing Mr. Graham's extraordinary efforts to improve the access of justice for low-income Marylanders.



Steven M. Klepper

Steven M. Klepper of Kramon & Graham has been awarded the 2018 Tip the Scales of Justice Award from Domestic Violence Legal Empowerment and Advocacy Project (DV LEAP), a nonprofit dedicated to providing justice to victims of domestic abuse.



Alexandria K. Montanio

Alexandria K. Montanio has joined Maryland Volunteer Lawyers Service's (MVLS) Board of Directors.



Deb Seltzer

Marc E. Mandel has joined Fort Myer Construction Corporation as their Chief Operating Officer and General Counsel.

Deb Seltzer has been promoted to Program Director of MLSC.

Athana Kontinos has joined MLSC as Program Coordinator.

Jasmine O'Grady has joined MLSC as Office Assistant.

HWK Law Group has appointed **Tina Lignos** as its newest associate.

David Maher has joined the labor and employment practice at Kahn, Smith & Collins, P.A.

D. Michael Lyles has joined the law firm of Stroud Priest, L.L.C. as a member.

The J. Franklyn Bourne Bar Association has been selected by the Maryland State Conference (MSC) of the National Association for the Advancement of Colored People (NAACP) to be recipient of the 2018 Reginald F. Lewis Corporation Award.

Baltimore-based **Friedman, Framme & Thrush, P.A.**, has been named a Winner for Better Business Bureau of Greater Maryland's 2018 Torch Awards for Ethics.

Attorneys and staff from Farrell & Gunderson, LLC have joined the law firm of Davis, Agnor, Rapaport & Skalny, LLC. **Hugh W. Farrell** and **Eric W. Gunderson**, together with Associate Attorney **G. Harrison Bliss, II** and Legal Nurse Consultant, **Margaret Meehan**, have all joined Davis, Agnor, Rapaport & Skalny.

HWK Law Group and **Lawyers Express Title (LET)** have opened a satellite office in Rockville, MD at 11300 Rockville Pike, Suite 1001, Rockville, MD 20852.



Athana Kontinos



Jasmine O'Grady



Tina Lignos



David Maher



D. Michael Lyles

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

brought against the agricultural or commercial seafood and fishing operations. If a federal, state, or local government is enforcing applicable laws against a qualifying operation, the right-to-farm law will not apply. This exclusion also applies to failure to comply with federal, state, and local health, environmental, and zoning requirements. The right-to-farm law will also not provide a defense when the claim is negligence against the qualifying operation. Right-to-farm laws only provide a

defense in nuisance actions.

Recently, multimillion-dollar judgments involving agricultural operations might have sparked the interest of attorneys, agricultural producers, and others. News of these verdicts has brought a renewed interest in assisting both the agricultural and non-agricultural communities in understanding how these laws operate. In many states, the right-to-farm defense will protect operations similar to the hogs farms like the ones in North Carolina from

nuisance lawsuits. The legal community needs to understand how these defenses work to better assist clients involved in such lawsuits. ●

Paul Goeringer is an Extension Legal Specialist with the College of Agriculture and Natural Resources, University of Maryland. He concentrates on providing outreach on legal issues impacting agriculture to farmers in Maryland.

- The Executive Director of the Islamic Center of Pittsburgh offered to have members of the Muslim community stand guard at Jewish services so that Jews can pray in peace.
- A married couple from Anne Arundel County (of Italian and Mexican descent – neither of whom is Jewish) were at a local bar one evening a few months ago when a patron, unprovoked, referred to the husband as a “Jew-nosed mother f***er.” The husband asked the patron to repeat himself, not believing what he had heard. The patron repeated the “Jew-nosed” slur, which drew the husband’s ire and rebuke. The husband advised the Manager of the incident, but instead of instructing the bigoted patron to leave, the Manager asked the husband whether he was Jewish and, when he reported he was not, told the husband he should not care what the patron had said and instructed him to drop it. The couple was shocked, left the bar/restaurant, and have since refused to patronize the establishment.

The irony of these brutal attacks by “nationalists” is that they claim to be preserving the American way when, in reality, acts of

intolerance fly in the face of what our Founding Fathers aspired for this country. The United States of America was founded on the principle of freedom of religion and equality for all (thankfully, we evolved past the ignominious beginning when skin color and gender were once exempted from the principle of equality).

To fulfill the Jewish principle of Tikkun Olam (“Repair the World”), I challenge each of you to follow the lead of the good people I describe above, fulfill my friend’s goal for our children, answer my daughter’s question about her security in America, fulfill President Washington’s promise, and do the American/patriotic thing – actively promote the American ideal of tolerance and freedom for all, rather than make it a hollow slogan, and speak out against all forms of bigotry, whether it is anti-Semitism, racism, xenophobia, or any other form of hate. One of the lessons from the Holocaust is that remaining silent in the face of bigotry allows bigotry to take hold, fester, and become “acceptable” or the “norm”, which dehumanizes the “other” group and opens the door for murderous rampages. We cannot allow that to happen. ●

The author is a prominent Maryland attorney.

or hearing date. The docket is dedicated to a particular case type and the ADR practitioner is required (by the ADR Office) to have additional training and experience to conduct ADR in these cases.

In the Peace Order cases, mediation is the only ADR process available. Cases are pre-screened by an ADR Office staff member to determine appropriateness for referral to mediation. These cases are identified by the staff member for the judge who has the ultimate authority to determine if a peace order case will go to mediation. Peace orders may be referred to mediation prior to, or at, the temporary or final hearing, and the mediation takes place at the courthouse. Upon referral, the mediator conducts an immediate, confidential screening conversation with each party as a third layer of assessment to determine if the case is appropriate for mediation. Protective order cases, cases with concurrent criminal charges, or cases involving domestic or other allegations of violence are not appropriate for ADR.

In the Municipal Infraction Mediation Program, the County Attorney screens and selects cases based on a predetermined set of criteria; typically dog nuisance-related cases. Cases “flagged” by the County Attorney for mediation are referred on the hearing date. In the Failure to Pay Rent ADR Program, the ADR practitioner receives a case by request of the parties, or by a judge referral or order to ADR. The ADR practitioner is trained to listen for conditions that pose a substantial risk to the life, health or safety of the tenants, and to return the case to the courtroom if these dangerous conditions are being negotiated in exchange for a reduction of the rent.

Specialty docket ADR programs continue to develop through pilot initiatives, and current programs will be expanding into new jurisdictions in 2019 to meet the unique needs of the citizens and of the local court. None of this is possible without the Maryland Judiciary’s long-term commitment to building ADR programs in Maryland. An independent statewide research

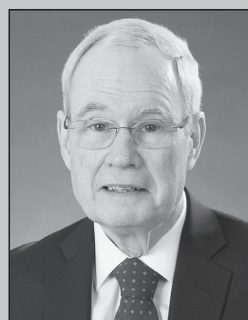
impact study commissioned by the Administrative Office of the Courts that compared attitudes and changes in attitudes of participants who went through ADR and those that went through the standard court process is one example of why. In particular, participants who reached a negotiated agreement in ADR were more likely to be satisfied with the judicial system than those who reached an agreement on their own (without ADR). And in the three to six months following ADR, ADR participants reported an improved relationship and attitude toward the other participant and satisfaction with the judicial system, and these findings held true even in cases that did not reach agreement. For more information about these and other results, the full report is available at www.mdcourts.gov/courtoperations/adrprojects.html ●

Maureen Denihan serves as the Director of the ADR Office, and Andrew Fontanella is the Regional ADR Programs Director for the Eastern Shore of Maryland.

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time. ADDRESS’ scannable surveys are currently being used in six circuit court programs, plus the mediation program in the Court of Special Appeals, and in all of the District Court programs throughout the state. We will continue to roll out ADDRESS to additional court ADR programs, creating a

more robust and comprehensive ADR data collection system for the courts.

The first 20 years have brought much change within our field both locally and nationally. As ADR is thoughtless as an “alternative” form of dispute resolution, and more as an “appropriate”

form of dispute resolution equal to litigation, I can only imagine the changes we will see in the next 20 years. Fasten your seatbelts. ●

Jonathan S. Rosenthal is Director of MACRO. Jonathan has worked at the Maryland Judiciary supporting court ADR since 2002.

provisions of the FAA. Recent case law has also impacted the scope of arbitration. This includes whether consumer arbitrations should be curtailed and whether arbitration should be allowed to restrain a party from joining in a class action. For recent case law, try *AT&T Mobility LLC v.*

Concepcion, 563 U.S. 333 (2011). The end. ●

Judge Frederic N. Smalkin (Ret.), LL.M. (London), is a Member of the Royal Chartered Institute of Arbitrators, and a professor of law and Judge-in-Residence at the University of Baltimore.

The tide of the arbitration was going against the contractor. After much litigation, and a replacement set of attorneys, the contractor moved to dismiss the arbitration against him personally based on his not being a signatory to the construction contract in his individual capacity. As the arbitrator, I issued an Order in which I noted that the contractor misled MHIC about the nature of the arbitration and that the contractor participated in the litigation for an extended period of time without ever raising the defense that he was personally not a party to the contract. I found that he had voluntarily submitted

himself to the jurisdiction of the proceeding. The legal theories behind this decision are assumption and waiver. My decision was upheld on the contractor’s appeal to the Montgomery County Circuit Court.

The American Arbitration Association (AAA) Construction Rule 9(a) and JAMS Rule 8(b) purport to give an arbitrator the authority to determine jurisdictional disputes as to who is a proper party to the arbitration. But can he? Just because an arbitrator decides that a non-consenting non-party to a contract can be forced into arbitration does not make it so.

Only a court can compel a non-signatory to a contract to arbitrate. An arbitrator does not have the authority to decide the issue of arbitrability when the parties have not “clearly and unmistakably” agreed to submit that issue to the arbitrator. The question of arbitrability is to be decided by courts, not the arbitrators themselves. The Supreme Court stated that absent an agreement to the contrary, the question of arbitrability should be decided by the court, rather than the arbitrator, just as it would decide any other question that the parties did not submit to arbitration, namely,

independently.

A court might compel a non-signatory to arbitrate if the non-signing person has personally guaranteed performance under a contract with an arbitration clause. Courts can look at other legal theories such as third-party beneficiary and veil piercing/alter ego. Arbitrators cannot.

When a party is involuntarily brought into an arbitration against its will, it needs to immediately decide if it wants to participate in the arbitration, or contest jurisdiction. Unless the protest is fast, loud and clear, the reluctant respondent may find itself stuck in that forum against

its will. ●

The author wishes to thank members of the MSBA Construction Law Section e-mail discussion list for their invaluable insights on this topic. He also thanks his editor, his wife.

Kenneth A. Vogel, Esq., practices business law and civil litigation in Maryland and Washington, DC. He is also the Maryland and DC state representative of Construction Dispute Resolution Services, an international provider of mediation and arbitration services.

coming, duck, and land an effective counter-punch.

Tests your client’s emotions so he can get them under control. A dry run is like a stress test. It puts your client under pressure so he can see how it feels and how he performs. He can get used to the pace of the process and the pressure created by the neutral and his opponent to come up with the next move. If the veins in his neck start to pop, it is better to find out in the mock session what his trigger points are and how they affect his decision-making. Again, having a written negotiation plan will allow him to react strategically, not emotionally. Additionally, gaining a better understanding of your client’s emotions, as well as hearing a neutral highlight the interests of the opposing party, may be key to settlement.

Develops poise under fire. Practice gives your client confidence. He may feel empowered to speak up in front of the

settlement officer, which will demonstrate his preparedness and emphasize his control of the situation. Part of his confidence comes through feedback from his business associate playing the opposing party. The associate can tell your client how he came across to the “opponent,” what he heard your client say (maybe different from what your client thought he said), and what processes he went through in responding to your client’s moves. This is invaluable information.

Things to Watch Out For Does not take the place of counsel. The neutral does not give legal advice; that is strictly counsel’s role. The dry run may, however, sharpen the legal issues for your client. While playing opposing counsel, you may state the opponent’s arguments in ways your client has not heard or thought about before. This is another way you can help your client avoid being knocked off

balance in the real session.

Adds some cost. There will be some added cost for the neutral’s time and your firm’s time. The expense is worth it if significant money or other business interests are at stake.

Conclusion

Effective counsel will prepare his client for settlement conference by going over procedures, issues, and positions. However, there is nothing like having your client experience it himself. It is hard to learn how to play golf by reading a book; you have to get out and play. You would not start the season by heading straight to a tournament. A dry run is like a practice round with your friends who are all trying to make you a better player. ●

John is the principal of Patuxent Mediation Services, LLC, www.patuxentmediation.com. He may be reached at (410) 772-8821 or johnngreer@patuxentmediation.com.

tay Guy, Director of Community Mediation, Baltimore, states, “Our goal is to reduce interpersonal and physical violence because we realize that folks won’t always agree with each other on everything. We don’t see conflict as negative.”

Community Conversations

When people hear and better understand each other, barriers are reduced. Community conversations on race, and conversations between people of differing political views are happening through community mediation. The bridges built in these conversations help communities work together for progress and solutions.

Law Enforcement and Communities

In Baltimore City, dialogue circles with community members, youth, and police officers, and mediation of certain civilian complaints against officers are taking place. These processes

increase understanding of one another and heal. As reported in the Baltimore Sun, Baltimore police department former spokesman T.J. Smith stated, “Our officers get to hear the young people out, and the young people get to hear the officers out. Beyond that, we may never know how many disputes were resolved that didn’t lead to a violent crime.”

Prisoner Re-entry Programs

Community mediation provides mediation for inmates and their family or other important people in their lives prior to release. Research demonstrates that mediation can significantly reduce the likelihood of recidivism. See: www.marylandmediation.org. When topics like housing, living arrangements, employment, care of children, can be addressed, frayed relationships can be mended and solid plans for rejoining the community can be successfully created.

Recovery from Addiction

Community Mediation

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The strength of relationships can be a significant factor in recovery. Through mediation with family members and other significant relationships, those in recovery have the opportunity to work through past conflicts and make plans for a future that gives hope and purpose.

New research shows that those who use mediation are less likely to be repeat users of police

and court services compared to people in conflicts who did not use mediation. For criminal misdemeanor cases, mediated cases were almost five times less likely to return to criminal court in the subsequent 12 months than those that were not mediated. See the Maryland Judiciary Statewide Evaluation of Alternative Dispute Resolution for research findings on ADR in Maryland: www.mdcourts.gov/courtoperations/adrprojects.html

mdcourts.gov/courtoperations/adrprojects.html

Community mediation collaborates with District Court ADR programs, and receives referrals from a wide range of sources, including community members, courts, organizations and agencies. Mediation is provided by community mediation centers free of charge to Maryland residents.

Community Mediation has at its core the concept that everyone in the community is a potential peacemaker. Community mediation centers provide 50-hour basic mediation training to volunteers interested in serving as community mediators. It is a great way to serve your neighbors and participate in making your community a more peaceful place for all. **For a listing of local centers,**

go to Community Mediation Maryland's website: www.MarylandMediation.org. ●

Cynthia Jurrius is the Executive Director of Mid Shore Community Mediation Center, and the current Chair of the MSBA ADR Section.

CLE Publications

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Appellate Practice for the Maryland Lawyer: State and Federal, 5th Edition

Tailored for both expert practitioners and attorneys who rarely handle appeals in Maryland and federal courts, this book guides one through the entire appellate process both in state and federal courts, providing sample appellate submissions and tips on the standards of review, criminal appeals, appeals from administrative agencies, petitions for certiorari, the appellate brief, record extract (or joint appendix), and oral argument.

Pleading Causes of Action in Maryland, 6th Edition

The Sixth Edition is the authoritative reference for filing causes of action on civil actions on a broad range of subjects. It examines and analyzes cases, statutes, treatises and other reference sources on Maryland law and pleading, and has been revised to address evolving requirements in various areas of practice.

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Replaces all pages in the Fifth Edition, and is Maryland's most

authoritative source of impartial, accurate statements of the law, with brand new, revised and updated instructions, commentary, case law, and statutory references, and allows you to download all instructions.

Finality of Judgments & Other Appellate Trigger Issues, 3rd Edition

The Honorable Kevin F. Arthur, Judge, Court of Special Appeals of Maryland provides essential, updated information and advice as to the timing of appeals and the critical question—"when" is an order appealable.

Gibber on Estate Administration, 6th Edition

This edition significantly expands the treatise with thorough references to new case law and statutory amendments through 2017, reflects new rates and statutory amounts, and includes new and updated samples of all the official forms.

Domestic Violence Cases: Handling Them Effectively in Maryland District and Circuit Courts

Updated by the *House of Ruth Maryland Domestic Violence Legal Clinic and the Maryland State Bar Association Family and Juvenile Law Section*, this recent edition is the first major update since the *2003 Revised Edition*. It is designed to give the practitioners specific litigation skills and strategies in handling a domestic violence case, and includes sample pleadings and forms, and a convenient chart of resources with contact information.

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Hostile Takeover

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family members, attorneys, and government agencies. They should be flexible about the time, location, and format of the mediation and prepared to make physical and other accommodations for participants.

It is helpful to understand the guardianship process, alternatives to guardianship, conditions that affect capacity, government regulations and programs, community resources, and the impact of age- and disability-related biases. With this knowledge, mediators can help parties explore options and appreciate the impact of agreements. For example, they should know that an agreement directing the sale of a house will create income that affects a person's Medicaid eligibility.

Mediators should also be

able to recognize signs of abuse, neglect, and exploitation. Guardianships involve people who may have difficulty communicating or who may be reluctant to report if they are being hurt by a family member or a caregiver. Thorough intakes and preparation are key for a safe and fair process.

Looking Forward

As the volume of guardianship cases increases, we expect more circuit courts and practitioners will turn to mediation and other forms of ADR to avoid protracted litigation and high court costs. Some courts, including Baltimore City, Baltimore County, and Carroll County, already refer guardianship disputes to mediation.

The Guardianship/Vulnerable Adults Workgroup is partnering with the Mediation and

Conflict Resolution Office (MACRO) to explore ways to expand the use of guardianship mediation in other parts of the state. The workgroup hopes to provide courts, practitioners, and families the tools, training, and guidance needed to effectively use mediation to resolve guardianship disputes. Stay tuned.

●
Judge Karen Jensen, retired, Circuit Court Caroline County, is the Chair of the Judiciary's Guardianship and Vulnerable Adults Workgroup.

Nisa Subasinghe is the Domestic and Guardianship Program Manager at the Administrative Office of the Courts, Department of Juvenile and Family Services.

Food

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buffet, or many other creative ways someone who lives with addiction might abuse this. So, use your judgment, you know yourself, and if it doesn't work try something else.

10. Learn to say "no, thank you." Pick and choose which celebrations you really want to attend. If you are invited to ten parties, ask yourself if you really want to go to all of them, and if not, RSVP no to some.

For assistance, please contact the Lawyer Assistance Program for **free, confidential coun-**

seling.

Jim Quinn, Lawyer Assistance Director, (443) 703-3041, jim@msba.org; Lisa Caplan, LCSW-C, Lawyer Assistance Counselor, (443) 703-3042, lisa@msba.org, Toll Free 1(888) 388-5459. ●

Lisa Caplan, LCSW-C has over 20 years experience in her field, and extensive experience working with lawyers and judges in the areas of mental health, substance abuse and trauma.

Combat Burnout

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Judge Truffer states, "As you know by this time, the MSBA is undergoing a period of extraordinary change... during the upcoming year, we want to build upon and accelerate the great strides we have initiated to secure the near and long-term health of the Association." ●

You can visit Haley Shaw's website at www.AmpUpFitness.com, and reach out to her with questions via email at Haley@AmpUpFitness.com.

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