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**WANT MORE MSBA?** 

## **MLSC Annual Awards Recognize Outstanding Service to** Low-Income Marylanders

### BY PATRICK TANDY

More than 200 attorneys and judges from around the state joined the Maryland Legal Service Corporation (MLSC) in honoring the recipients of its 2018 Annual Awards with a special reception held December 3 at the Lord Baltimore Hotel in downtown Baltimore.

66 I am absolutely delighted to see how many of you came out tonight to help us congratulate our wonderful award-winners," said MLSC Executive Director Susan M. Erlichman. This year's recipients included:



- Bonnie Sullivan, Executive Director of Maryland VolunteerLawyers Service, Benjamin L. Cardin Distinguished Service Award
- Mallory Finn, staff attorney with Project HEAL at the Kennedy Krieger Institute, and Matthew Stubenberg, Assistant Director of Legal Technology at the Harvard Law School Access to Justice Lab, Rising Star Awards
- Tacha Marshall, paralegal/ advocacy specialist with Disability Rights Maryland, William L. Marbury Outstanding Advocate Award
- Zeta Center for Healthy and Active Aging, Herbert S. Garten Public Citizen Award
- Harriet Robinson, recently retired MLSC Deputy Director, Special Recognition Award
- GlennIvey,formerMLSCBoard Chair, Award for Outstanding Board Service



Chief Judge Mary Ellen Barbera of the Court of Appeals of Maryland, who emceed the awards presentation, thanked not only the evening's honorees but all those who provide civil legal services to low-income Marylanders for "the essential work you do on behalf of the people of Maryland."

Established in 1982, MLSC  $raises\,funds\,and\,makes\,grants\,to$ nonprofit organizations for the provision of civil legal assistance to low-income Marylanders. Board Chair M. Natalie McSherry said that MLSC's 35 grantees closed more than 202,000 cases in the past year, benefiting nearly 340,000 people.

"Those cases are really life-changing for our clients clients who, often, have never before had an advocate," continued McSherry. "With legal services attorneys and other supporters by their side, these clients won pro-



tection from domestic violence, saved their homes, stopped fraudulent practices, and much more."

McSherry also recognized Erlichman, who this year marked 30 years of service to MLSC.

MLSC is principally funded by Interest on Lawyer Trust Accounts (IOLTA) and surcharges on court filing fees. Title 19, Chapter 400, Rule 19-411 of the Maryland Attorneys' Rules of Professional Conduct ensures that financial institutions that participate in the IOLTA program pay interest rates on IOLTA deposits that are comparable to other similarly situated accounts.

In 2002, MLSC and the Maryland State Bar Association partnered to create the IOLTA Honor Roll, which encourages financial institutions to pay



favorable interest rates to foster the IOLTA program in its mission to ensure that low-income Marylanders have access to critically needed legal aid. Visit mlsc.org/ iolta-honor-roll for more infor $mation\,on\,the\,Honor\,Roll\,and\,its$ member institutions.



Watch the video online at msba.org/MLSC-awards-2018









## BARBULLETIN

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### PRESIDENT'S MESSAGE



### **JANUARY 2018**

MSBA President Judge Keith R. Truffer welcomes you to the New Year with another monthly video message. Tune in for this month's MSBA updates



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

### MSBA ETHICS HOTLINE

### **January**

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### 2019 ANNAPOLIS SUMMIT

MSBA helped to kick off the 2019 Legislative Session as Presenting Sponsor of the 2019 Annapolis Summit, held January 9 at the Governor Calvert House in Annapolis and presented by The Daily Record. MSBA President Judge Keith R. Truffer set the stage for a line-up that included Maryland Governor Larry Hogan, Senate President Mike Miller, and House Speaker Michael Busch in a 90-minute live conversation with interviewer Marc Steiner that addressed some of the most prominent issues facing the state of Maryland. Truffer opened the discussion by touching upon MSBA's role as the voice of the legal profession in Annapolis, while Hogan, Busch, and Miller fielded audience questions that included topics such as education, job training, the environment, affordable health care, the minimum wage, and more. Sponsors also included Alexander & Cleaver, P.A. (Legislative Sponsor) and AARP Maryland (Supporting Sponsor).



Visit flickr.com/marylandbar for additional 2019 Annapolis Summit photos





Often the "justice gap" is thought of as an issue of supply and demand for legal services, rather than a fundamental problem at the core of our democracy.

## The American Academy of Arts and Sciences and Access to Justice

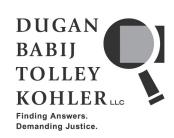
### BY REENA SHAH, ESQ.

Dædalus, the quarterly journal of the American Academy of Arts and Sciences, widely regarded as one of the world's leading intellectual journals, has published the first open access issue in its history – and it is completely devoted to the topic of Access to Justice. The Winter 2019 issue of Dædalus features twenty-four essays that examine the national crisis in civil legal services facing poor and low-income Americans: from the challenges of providing quality legal assistance to more people, to the social and  $economic \, costs \, of an \, of tenun responsive \, legal \, system, \\$ to the opportunities for improvement offered by new technologies, professional innovations, and fresh ways of thinking about the crisis. We are excited to share these thought-provoking articles with you in the MSBA Weekly.

Through the publication, the Academy is signaling the importance of the topic to itself and to society at large. The inclusion of Access to Justice in the journal is part of a larger, ongoing Academy effort to gather information about the national need for improved legal access, study innovations piloted around the country to fill this need, and advance a set of clear, national recommendations for closing the justice gap.

The Academy's focus on Access to Justice is welcome because often the "justice gap" is thought of as an issue of supply and demand for legal services, rather than a fundamental problem at the core of our democracy that requires not just lawyers, but experts from many different disciplines of society to

**CONTINUED ON PAGE 16** 



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## **Dateline**

### **JANUARY**

**16** The Negligence, Insurance & Worker's Compensation Section invites you to attend "Let's Get Serious' WCC Discussion of Serious Disability" on Wednesday, January 16, 2019 beginning at 5:30pm at the Sheraton Columbia, 10207 Wincopin Cir., Columbia, Maryland 21044. The program will include a Serious Disability Primer, discussions on Death Cases, SIF, and Accommodations, and a WCC Hearing Presentation.

**17** The *Tax Controversy Study Group Meeting* will meet from 9:00am to 10:15am at Rosenberg Martin Greenberg, LLP in Baltimore, MD. Joseph Teti, IRS Appeals Officer will discuss IRS Collection Appeals. For more information visit <a href="https://www.msba.org/product/tax-controversy-study-group-meeting-3">www.msba.org/product/tax-controversy-study-group-meeting-3</a>

**22** You're invited to the **State and Local Government Law** *Networking Event.* The event will take place at Baker Donelson, 100 Light Street, Baltimore, MD beginning at 5:00pm. Program topics include "Practical Approaches to Policy Liability." Light refreshments will be served. For more information and/or to register, please visit <a href="https://www.msba.org/SLGNetworking">www.msba.org/SLGNetworking</a>

**22** You're invited to a **Criminal Law & Practice Section Event.** The event will take place at Chiapparelli's Restaurant, 237 South High Street, Baltimore, MD beginning at 6:00pm. The featured speaker is Robert Hur, U.S. Attorney for Maryland. For more information and/or to register, please visit <a href="www.msba.org/product/criminal-law-practice-section-council-2">www.msba.org/product/criminal-law-practice-section-council-2</a>

**23** Join the MSBA Elder Law and Disability Rights Section for a new presentation of *Mental Health and the Law*, at Loyola Graduate Center, Columbia Campus in Columbia, MD from 8:30am to 4:00pm. Get the latest from experienced faculty of diverse backgrounds on topics of Behavioral and Psychological Symptoms of Dementia, Involuntary and Voluntary Confinement of the Mentally Ill, Estate and Incapacity Planning for the Mentally Ill Client and more. For more information and/or to register, please visit <a href="https://www.msba.inreachce.com/Details/Information/9eb12057-ab4b-4af1-8dec-cd4fce3174e7">www.msba.inreachce.com/Details/Information/9eb12057-ab4b-4af1-8dec-cd4fce3174e7</a>

**26** The *Annual Blue Jay Invitational Mock Trial Tournament* will be held on the Johns Hopkins University Campus in Baltimore, MD.

**26** *Polar Bear Plunge.* The MSBA's Young Lawyers Section and Public Awareness Committee WANT YOU to plunge for a great cause! For more information and/or to join the MSBA plunge team visit <a href="https://www.msba.org/PolarBearPlunge">www.msba.org/PolarBearPlunge</a>

**26** The Maryland State Bar Association's Young Lawyers Section, as an affiliate of the Wills for Heroes Foundation, is proud to sponsor the *Wills for Heroes program*. We are looking for volunteer attorneys and notaries to participate in a Wills for Heroes event to benefit the Frederick County first responders and their domestic spouses/partners. Volunteers will receive training from 9:00 a.m. to 10:30 a.m., and then will see clients for one (1) hour appointments starting at 10:30 until 3:30 pm. For more information, visit <a href="www.msba.org/product/wills-for-heroes-3">www.msba.org/product/wills-for-heroes-3</a> or contact Maryland Wills for Heroes coordinator Ashley Stinebaugh at <a href="mailto:AshleyStinebaugh@dlapiper.com">AshleyStinebaugh@dlapiper.com</a> or (410) 580-4167.

**31** Elder Law and Disability Rights section members are invited to attend a *General Section Meeting* from 12:00pm to 2:00pm at the MSBA HQ in Baltimore, MD. For more information and/or to register, please visit <a href="https://www.msba.org/product/elder-law-and-disability-rights-general-section-meeting">www.msba.org/product/elder-law-and-disability-rights-general-section-meeting</a>

**CONTINUED ON PAGE 17** 



#### BY ANNA S. SHOLL, ESQ.

The Board of Governors held their last meeting of calendar year 2018, on Tuesday, December 18, 2018 at the Maryland State House.

As is tradition, the meeting was held in the Senate Chamber. The meeting focused on the upcoming Legislative Session, with the Laws Committee Co-Chair, Meg McKee, Esq. as well as MSBA Director of Legislative Relations, Richard A. Montgomery III, reporting. Both Ms. McKee and Mr. Montgomery provided a brief overview of the Legislative Program for the 2019 Session, which was previously provided to BOG members at the November Board meeting. A copy of the Legislative Program is available on the updated Advocacy page of the MSBA website msba.org/advocacy.

In addition, Mr. Montgomery gave a brief overview regarding the upcoming session, including noting the significant number of freshman legislators. He also reported that there will be a new chair of the judiciary committee, Delegate Luke Clippinger, who plans to put together a formal subcommittee system, which, Mr. Montgomery opined, will be

more efficient way of dealing with bills affecting the judiciary.

After the presentation and discussion, the Board voted to approve the Legislative Program. Approval was unanimous with members of the judiciary abstaining.

Other items covered during the meeting, included a report of the Treasurer, Hon. Mark Scurti, regarding the most recent financial statement. MSBA Secretary, Debbie Potter, Esq., also reported on the nomination process for 2018-19 Officers and Board of Governor vacancies. The remainder of the meeting was conducted during an Executive Session.

The next Board of Governors meeting is scheduled for Tuesday, January 15, 2019 at MSBA Headquarters. For more information on Board of Governors meetings, please visit <a href="mailto:msba.org/BOG">msba.org/BOG</a> for access to approved meeting minutes and upcoming agendas. •







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Best Year in a Decade for Law Firms? Maybe, But Not for Everyone

A report from Citi Private Bank and Hildebrandt Consulting predicts another strong year for law firms in 2019.



**Imported British Program Connects** In-House Lawyers to Each Other

A mentoring program that allows in-house lawyers to support each other's career progress is coming to the U.S. from London, where it's had success at major companies such as Vodafone.



**Here Comes the Digital LSAT** 

The Law School Admission Test will be fully digital by September, with Microsoft Surface Go tablets replacing pencil and paper.



Why 'GC' Should Mean 'Great Communicator'

Many GCs already have begun to play a larger role in corporate communications, as they address all aspects of risk management today. Tangential or episodic involvement, however, is not enough.



## ABA TECHSHOW "Guarding Your Castle: Law Firm Cybersecurity" With Managed Security Service Providers

### **Managed Security Service Providers**

The increased recognition of cyber risk is without doubt a positive development, indicating a much-needed cultural shift for many firms. But the real challenge is in deciding on the right course of action to mitigate the risk and implement an enterprise cybersecurity program. Effectively dealing with cyber risks requires the most valuable of resources – time, expertise, and money.

So what's the best path forward? For many firms, the answer may be a managed security services provider (MSSP). Today's cyber threat environment is daunting. The time, expense, and administrative burden of dealing with cybersecurity issues can be overwhelming. Nevertheless, the issue is not going away any time soon and the risks to law firms, in terms of cost, reputation, business operations, and client relationships, could not

Many organizations today monitor and manage the security of other companies. These

businesses are referred to as "managed security service providers" (MSSP). Gartner, a  $leading\, technology\, research\, and$ advisory firm, describes an MSSP as a company that "provides outsourced monitoring and management of security devices and systems."

Research and Markets estimates that the global market for managed security services will grow from \$14.32 billion in 2014 to \$31.86 billion by 2019, at a Compound Annual Growth Rate (CAGR) of 17.3% from 2014 to 2019. Most of that growth is expected to come from small businesses as a result of the lowcost, cloud-based deployments and advancements in technology designed by MSSPs to meet the needs of smaller organizations. When properly engaged, the utilization of an MSSP can level the playing field for smaller law firms that may need to meet the  $same\,cyber\,security\,standards\,as$ their much larger counterparts.

- Among the services typically provided by an MSSP are:
- Managed firewall
- · Intrusion detection
- · Virtual private network · Vulnerability scanning
- · Anti-virus services

- · Security monitoring
- · Security Information and Event Management (SIEM) (software products and services combined to provide realtime analysis of security alerts generated by applications and network hardware)
- · Security audits
- · Threat detection
- Best practices consulting
- · Disaster recovery, business continuity, business resilience, backup support
- · Regulatory compliance
- Risk management
- · Training and education
- 24/7 Help desk support.

### **Potential Benefits of Using an**

The key potential benefits of an MSSP are:

Up-to-Date Expertise

Like all modern businesses, today's law firms must deal with increasingly sophisticated technological advances and networks, as well as a 24/7 workforce that is becoming more mobile. Lawyers need to work securely and productively, regardless of whether they are in the office, at home, or at an airport. They require around the clock access

**CONTINUED ON PAGE 18** 

### **PBRC PARTNER PROFILE:**



## A conversation with Wendy McDermott, Esq., pro bono attorney

Wendy is part of a team of in-house attorneys at Morgan Stanley that volunteers together at PBRC's immigration clinic.

### Can you tell me a little about what you do in your regular practice?

I work for Morgan Stanley, in the global financial crimes department.

### Does your company support your pro bono work?

One of our firm's core values is "giving back." It's on the door out front and they truly mean it. They really encourage us to volunteer, and they support us in that. That's one thing I absolutely love about

### Which of PBRC's projects do you volunteer with?

I volunteer with the Maryland Immigration Legal Assistance Project (MILAP) at the immigration court here in Baltimore.

### What does that project do?

We meet with children and their families, and we listen to their stories. We learn what brought them to America and what they were seeing in their home country, and we help them figure out the best path to defend against deportation. We try to see if they qualify for asylum or another defense, and we put them in touch with attorneys who can help them with their case.

### What led you to get involved with this project?

When I was a high school teacher in Baltimore City, I had students who were undocumented. They were wonderful students - their families were fantastic, and I could see how hard they were working. But they were also afraid to apply for college, and they didn't know what to do. So a piece of my heart was really drawn to helping that community.

### How does MILAP make it easy to volunteer?

I was very intimidated at first. I don't speak another language. I don't know the specific ins and outs of asylum law. But the project has a great roadmap to guide you in asking questions and responding. They also have fantastic interpreters to help you communicate with the client. You can let them know when you're available, and they are very grateful for any time that you can give them.

### What message would you give to attorneys thinking about volunteering?

You DO have the time. It feels like you don't have the time - it feels like you're so busy during the day, and you might be logging hours, and you have families. Find an hour a month. It is so fulfilling.

As attorneys, we have a responsibility. We have all of this knowledge of the law that the average person doesn't know. They don't know what their rights are. They don't know what their responsibilities are. We have a responsibility to our community to help share that. So find the time - even if it's at home writing a piece, or going to the immigration clinic.

Don't be afraid to do it. The help is there.

## PBRC's featured service opportunity

### **Brief Advice at the Baltimore Immigration Court**

Volunteer attorneys will interview families and unaccompanied children in removal proceedings to make sure they know about their legal options. Interpretation provided.

To get started, take the training: www.probonomd.org/immigration-defenses



The Pro Bono Resource Center of Maryland will match your skills with a wide range of pro bono opportunities.

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## Maryland Lawyers Donate More Than 1.16 Million Hours of Legal Service to Help State's Underserved

#### BY SHARON E. GOLDSMITH. ESQ., EXECUTIVE DIRECTOR. PRO BONO RESOURCE CENTER OF MARYLAND

In the most recent compilation of lawyers' individual reporting forms filed with the Court of Appeals of Maryland from across the state, licensed practitioners donated 1,160,906 hours of volunteer or pro bono legal services to help the state's indigent population. That statistic, according to the CurrentStatus of Pro Bono Service Among Maryland Lawyers, 2017 report, represents an increase of 10,701 hours over the prior calendar year. The report compiling the required reporting of pro bono legal service hours of 40,215 lawyers was recently submitted to the Maryland Court of Appeals by the Administrative Office of the Courts, which monitors lawyers' involvement in probono activity.

For Key Findings of the report, visit the Maryland Judiciary's website: <a href="https://mdcourts.gov/">https://mdcourts.gov/</a> sites/default/files/import/probono/pdfs/keyfindingsprobonoreport2017.pdf

As Maryland Court of Appeals Chief Judge Mary Ellen Barbera noted in a press release announcing the report, "Maryland's attorneys have demonstrated their commitment to probono service, providing more than one million hours of free legal services again last year. Their commitment to meeting the legal services needs of people who cannot afford private counsel enhances access to justice for those they serve pro bono and, ultimately, for all Marylanders. Pro bono service means we come ever closer to keeping the promise of equal justice for

all. We must keep striving until all who need legal services receive them, regardless of income."

However, the increase in hours does not necessarily translate into an increase in the percentage of lawyers involved in pro bono activities. Approximately 52.1% of the lawyers practicing full-time in the state helped people of limited means more likely they were to engage in volunteering, a trend that has continued over the years. As in the past, solo practitioners and small firm members, along with extra-large firms (those with 50 or more lawyers), tended to offer their time and skills more frequently than those in large and midsize firms. Overall, those in the more rural parts of the state,

52.1%

### OF MARYLAND LAWYERS

### provided free or substantially reduced-fee legal services

and other vulnerable populations with free or substantially reduced-fee legal services. While still estimated to be one of the highest rates in the country, it indicates a slight decline in the percentage of lawyers engaging in pro bono work from the year before, and a continuing trend over the last few years. By contrast, lawyers reported increasing their financial contributions to legal services organizations serving people of limited means totaling \$5,634,476.

The majority of those doing  $free \, legal \, work \, dedicated \, from \, 10$ to more than 50 hours. The survey also revealed that the longer attorneys were in practice, the such as Western Maryland and the Eastern Shore, also reported the highest percentage of pro bono involvement.

The report demonstrates that the goal of the professional responsibility rule on pro bono publico (Rule 19-306.1) of offering access to those without the means to hire counsel is being achieved, as approximately 73% of the services rendered involved legal help directly to people of limited means or assisting organizations serving the disadvantaged. The balance of volunteers advanced civil rights causes or offered assistance to other non-profits.

"The volunteer hours and

### **CHANGES IN THE REPORTING PROCESS EFFECTIVE JANUARY 2019**

New rules regarding pro bono and IOLTA reporting have changed to permit the creation of a single compliance schedule. This year, attorneys will not receive pro bono and IOLTA reporting forms in January 2019. Pro bono and IOLTA reporting will now be done on a fiscal year basis and reports will be filed online. Attorneys will receive email notification once per year, in July, notifying them it is time to pay their Client Protection Fund assessment and file their pro bono and IOLTA reports online. Attorneys must pay the Client Protection Fund assessment and file both the reports no later than September 10 each year, for the prior fiscal year period (July 1 - June 30).

To enable the transition from calendar year to fiscal year reporting, pro bono and IOLTA reports filed in 2019 will be for the period from January 1, 2018, through June 30, 2019. After that, the reporting cycle will be for a 12-month period from July 1 – June 30. All pro bono and IOLTA reporting will be done online through the Attorney Information System (AIS). Attorneys must first register in AIS to complete the online reports.

Visit <a href="https://mdcourts.gov/lawyers/ais">https://mdcourts.gov/lawyers/ais</a> for additional information about AIS. To learn more about filing, visit https://mdcourts.gov/probono/probonoreportingrequirement.

financial contributions made by attorneys throughout Maryland help to fill the gap in serving those who simply cannot afford legal services," said Senior Judge Karen Jensen, Chair of the Judiciary's  $Standing Committee on Pro\,Bono$ Legal Service in the Judiciary's Dec. 11 news release. "Local at $torneys\,are\,assisting\,people\,with$ matters that are critical to their lives, including family, consumer, housing, elder care, and other important matters that impact their daily lives or quality of life."

The report further indicates

**CONTINUED ON PAGE 19** 

## Team MSBA Braces for Polar Bear Plunge

Watch highlights from the 2018 MSP Polar Bear Plunge at msba.org/ Plunge2018Video.

View photos from past Polar Bear Plunges at msba.org/PlungePhotos.

In what has become a longstanding tradition, MSBA members will once again join the thousands of Marylanders who brave the icy waters of the Chesapeake Bay every January for a

Comprised of volunteers from the Young Lawyers Section and the Public Awareness Committee, Team MSBA looks to exceed the  $over \$10,\!000\,it\,raised\,last\,year\,for$ Special Olympics Maryland when it takes part in the 23rd Annual Maryland State Police Polar Bear

Plunge on Saturday, January 26, 2019, at Sandy Point State Park in Annapolis.

Each year, more than 10,000 Plungers venture into the frigid Chesapeake in support of the 7,782 Special Olympics Maryland athletes who train and compete free of charge year-round throughout the state. To join Team MSBA in the 23rd Annual MSP Polar Bear Plunge, or to  $support\, the\, cause, visit\, the\, team 's$ fundraising page.



## **How to Respond** to Audits of **Amounts Charged**

#### BY LESLIE M. CUMBER, ESQ.

udits questioning the amounts charged by health care providers can come in many different forms - a provider could receive a payment denial from a Medicare Administrative Contractor (MAC), a request for post-payment review from a Recovery Audit Contractor (RAC), or notice of a comprehensive investigation by a Zone Program Integrity Contractor (ZPIC). All forms are serious, and should be handled carefully, since the mishandling of an audit request can cause significant financial loss for a provider.

### Who is the Auditor?

An audit request should be examined upon receipt to identify the auditor and any applicable deadlines. Identifying the auditor will help determine the type of audit. For example, RAC audits tend to be more serious than MAC audits, and ZPICs are tasked with investigating instances of suspected fraud, waste, and abuse. Once the auditor has been identified, the deadline for responding to the request should also be determined, and if additional time is needed, then an extension should be requested as soon as possible.

### **Collect Documentation**

The request will require certain documentation. The codes, claims, or practitioners that are the subject of the request should be identified, and the requested medical records should be compiled. Even if the amount of  $information\, and\, document at ion$ requested seems manageable, the provider should begin compiling early - it will inevitably take longer than expected.

### **Response Letter**

In addition to submitting the requested documentation, the provider will want to submit a response letter. The response letter should make every plausible challenge to the audit findings. If the auditor has determined that the claims were paid in error because there was no medical necessity, the provider should try to show that there was medical necessity. The CPT Codebook, the relevant local coverage determination, the relevant national

coverage determination, the relevant MLN Matters publication, and other guidelines should be consulted. It may also be bene $ficial \,to\,retain\,an\,expert, who\,can$ attest to the appropriateness of the codes billed.

### **Negotiation and Appeal**

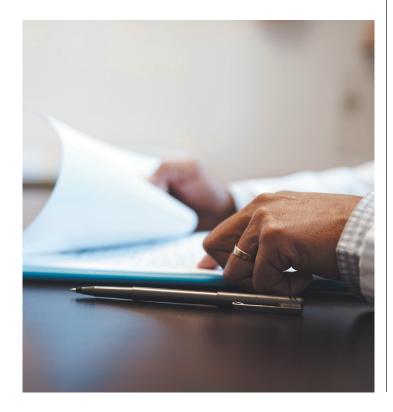
If the auditor's determination is negative, there are appeal op $tions. \, Unfortunately, the \, success$ rate for appeals is low, and re-filing will incur additional costs. Therefore, it is important that the initial response is thorough. Keep in mind that Medicare auditors are often paid on a contingency fee basis, so auditors want to collect as much as possible with as little effort as possible.

Providers should use this to their advantage - they should not be afraid to negotiate.

### **Payment Plans**

Finally, there are payment plans available. If appeal is not pursued, the provider may file for an extended repayment schedule (ERS). An ERS allows repayment of the overpayment over time if a "hardship" would exist in making the repayment. A hardship exists  $when the outstanding {\it repayment}$ (including interest) would be greater than ten percent of the total Medicare payments made to the provider in the previous calendar year. An ERS may be requested for up to a sixty month repayment period. The longer the repayment period, the more documentation is required to prove the hardship.

Leslie M. Cumber is an associate in Gordon Feinblatt's Health Care Practice Group, and can be reached at 410-576-4248 or Icumber@gfrlaw.com.



## Maryland **Facility Licenses No Longer Expire**

### BY MARGARET M. WITHERUP, ESQ.

nder a new Maryland law, effective July 1, 2018, 57 categories of health care facility licenses issued by the Maryland Office of Health Care Quality (OHCQ) are no longer required to be  $renewed\ after\ the\ initial\ license\ has\ been\ approved, effectively\ making$ the licenses non-expiring.

The changes occurred as a part of the Hogan Administration's efforts to reduce and eliminate regulations deemed unnecessary or burdensome. More specifically, OHCQ determined that because the renewal process generally consists of a paper application with no connection to mandatory periodic survey requirements, requiring licenses to be renewed does not necessarily provide useful information regarding the quality of services provided by a licensee.

Consequently, license renewals could be eliminated without endangering the public. Moreover, the elimination of license renewals is intended to decrease OHCQ's administrative burdens, and thereby allow for more timely completion of required surveys and investigations.

Facilities impacted by the elimination of renewal requirements include the following:

- · Assisted Living Facilities
- Community Mental Health Centers
- · Comprehensive Outpatient Rehab Facilities
- Developmental Disability Sites
- · Federally Qualified Health Centers
- Freestanding Ambulatory Surgical Centers
- Group Homes for Adults with Mental Illness
- Health Maintenance Organizations · Home Health Agencies
- Hospices
- · Hospital Laboratories
- Hospitals
- Independent Reference Laboratories
- Long Term Care Facilities
- · Opioid Maintenance Therapy Programs
- Outpatient Mental Health Centers
- · Outpatient Physical Therapy Providers
- Physician Office Laboratories
- · Portable X-ray Providers
- Psychiatric Day Treatment Services

The new law does not affect renewals of CLIA permits required by the Centers for Medicare & Medicaid Services (CMS). Laboratories in the CLIA program must still renew their permits with CMS biannually to maintain their State licensure.

Licensees affected by the new law should have received a new license in the mail with an issue date of July 1, 2018, and an indication that it is non-expiring. Licensees are still responsible for ensuring that their contact information remains current with OHCQ.

Margaret M. Witherup is a member of Gordon Feinblatt's Energy, Environment and Health Care Practice Groups, and can be reached at 410-576-4145 or mwitherup@gfrlaw.com.

## **Apologies Don't** Sink Ships



BY JUSTIN P. KATZ, ESQ.

enerally, an apology or admission of fault by a person is admissible against that person in litigation. Recently, however, as a matter of public policy, some states have promulgated what are commonly referred to as "apology laws". These apology laws typically come into play in medical mal practice cases, when juries are prevented from  $% \left( \mathbf{r}\right) =\mathbf{r}^{\prime }$ hearing evidence of a health care provider's apology.

In 2004, Ohio enacted an "apology law," to prevent the admissibility of health care providers "expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence", following an unexpected medical outcome. In a recent case, Stewart v. Vivian, the Ohio Supreme Court not only rebuffed challenges to the validity of Ohio's apology law, but the court also interpreted the Ohio statute broadly to prevent Ohio juries in medical malpractice cases from hearing about a doctor's apology, even when the apology contains an admission of fault.

Maryland also has an apology law. However, Maryland's apology law does not extend to admissions of fault when expressed within the context of an apology. Maryland's applicable statute has lan $guage\,similar\,to\,Ohio's\,in\,providing\,that\,expressions$ of apology are inadmissible to prove negligence. Maryland's applicable statute has language providing that expressions of apology are inadmissible to prove negligence.

However, Maryland's statute also explicitly states that admissions of "liability or fault" are admissible.

There is, however, always some uncertainty as to whether a statement constitutes an apology or an admission of fault. Therefore, it is always sound advice for any health care provider who is expressing a statement of regret or apology to choose his or her words carefully.

Justin P. Katz is a member of Gordon Feinblatt's Personal Injury Practice Group, and can be reached at 410-576-4102 or jkatz@gfrlaw.com.

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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.

> 240-283-7099 | www.pontiustaxlaw.com john.pontius@pontiustaxlaw.com

## Attention all lawyers in Baltimore County: MDEC is coming!

On February 19, 2019, the Maryland Judiciary is launching Maryland Electronic Courts (MDEC) in Baltimore County.

E-filing will be mandatory for attorneys filing cases in the District Court and the Circuit Courts in Baltimore County, as well as appellate filings that commence in Baltimore County.

MDEC's expansion increases efficiencies and productivity and allows attorneys more time to focus on other critical tasks for their clients.

### MDEC goals include:

- A streamlined electronic process
- Consistency in the user experience
- Greater efficiency in and between courts

Training opportunities and tutorials on how to file and serve electronically with the Maryland Judiciary are available for registered users.

For questions regarding webinar training, contact mdcourts@service-now.com.



**Baltimore County will host an** MDEC E-Filing Registration Fair, January 28 – 30, 2019.

Attorneys can register for e-filing by attending one of the Judiciary's Registration Fairs held from 9 a.m. – 3:30 p.m. at various court locations.

MDEC experts will assist attorneys with registration for e-filing, as well as answer any questions related to MDEC.

Monday, January 28 **Towson Circuit Court Essex District Court Tuesday, January 29** Wednesday, January 30 Catonsville District Court

9 a.m. - 3:30 p.m. at each location







### Continuing Legal Education Opportunities

## Continuing Legal Education Department: Raising the Bar for Education

### BY ANDREA TERRY, ESQ.

Coming up on February 7th is the Family Law and Juvenile Law Sections signature "Family Law University (FLU)". This year's FLU will help family lawyers learn from practitioners and mental health experts to identify and address mental health

issues and trauma in high conflict family law matters. March will see the first series of new Appellate Practice programs to be hosted by the MSBA at different locations around the state, beginning in Montgomery County on March 13, and in Baltimore

City and the Eastern Shore on dates to be determined. Finally, and also in March,  $will be the {\it Real Property Sections biannual}$ program Land Use Institute on March 20 which will cover new developments in construction and real estate law. For more

information and to register go to the MSBA website http://msba.inreachce.com for all upcoming live programs.



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

### **UPCOMING LIVE CLE PROGRAMS**

### Registration is open for:

- Mindfulness as a Foundation for Ethical Lawyering - January 16, 2019 | Columbia, MD
- Mental Health and the Law January 24, 2019 Loyola Graduate Center, Columbia, MD
- Family Law University February 7, 2019 Sheraton Columbia Town Center, Columbia,
- Land Use Institute March 20, 2019 | Sheraton Columbia Town Center, Columbia, MD
- Finance for Lawyers April 1, 2019 | Student Center, University of Baltimore

### Registration Opening Soon!

- Updates in Estate Administration with Allan Gibber - March 12, 2019 | Learning Commons, University of Baltimore
- Appellate Practice in Maryland March 13, 2019, University of Maryland Shady Grove
- **Veteran's Benefits Update** March 27, 2019 Ecker Business Center, Columbia, MD
- Advanced Business Law Institute April 18, 2019 | Columbia, MD
- Hot Tips in Workers' Compensation May 9, 2019 | Columbia, MD

### **VIDEO REPLAYS**

- 2018 Evidence and Family Law: Common Pitfalls and Practice Pointers - January 22, 2019, Baltimore, MD | January 24, 2019, Rockville, MD.
- Mindfulness as a Foundation for Ethical Lawyering - February 19, 2019, Baltimore, MD | February 21, 2019, Rockville, MD.
- Mental Health and the Law March 5, 2019, Baltimore, MD | March 7, 2019, Rockville, MD.
- Veteran's Benefits Update March 19, 2019, Baltimore 9:00 a.m. - 1:00 p.m. and March 21, 2019, Rockville, MD.

### **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 2018 Update
- 2018 Evidence and Family Law: Common Pitfalls and Practice

### **NEW & RECENT PUBLICATION UPDATES**

(All titles available in print and electronically)

### NEW—Intellectual Property for Maryland Business and Litigation Lawyers: What You Need to Know but Didn't Know to Ask, Second Edition

The Handbook is an essential, up to date and highly practical  $resource that \, explains \, everything \, about \, intellectual \, property$ law to business lawyers, litigators and business persons who need to understand patents, trademarks, copyrights and other forms of intellectual property.

### NEW-Civil Pre-Trial Practice, 2029 Revised Edition (with downloadable forms)

This is an essential reference to civil practice beginning with the initial contact with a potential client up to trial. The author provides the "nuts and bolts" for handling a lawsuit, including legal research, service of process, discovery, settlement negotiations, pre-trial motions and trial preparation

### 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).

### NEW—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.

### 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

Order your copies today @ msba.inreachce.com

### **UPCOMING LIVE WEBCASTS**

- Mindfulness as a Foundation for Ethical Lawyering January 16, 2019
- Mental Health and the Law January 24, 2019
- Updates in Estate Administration with Allan Gibber March 12, 2019Veteran's Benefits Update - March 27, 2019
- Finance for Lawyers April 1, 2019
- Hot Tips in Workers' Compensation May 9, 2019



## Solo Does Not Have to Mean Alone

### **BY LISA CAPLAN**

Being alone and being lonely are two very different things. One can be very happy and content being alone and spending time with oneself. Being alone can be very relaxing and a time to recharge and decompress. On the other hand, being lonely is feeling very unsettled and having a void and incompleteness. Being lonely can happen when you are by yourself or in a room full of people.

Loneliness is a bigger issue in the legal profession than in other professions. According  $to \, the \, Washington \, Post, Lawyers \,$ outranked other professionals on a "loneliness scale" in a survey of more than 1,600 workers. The Harvard Business Review also found that "Holders of professional degrees in law and  $medicine\ were\ the\ lone liest-25$ percent lonelier than people with bachelor's degrees, and 20 percent lonelier than those with

Solo practitioners may be at a greater risk of loneliness due to the long work hours and social

isolation. The Lawyers Assistance Program at the MSBA has assembled the following tips to help solo practitioners combat loneliness:

- 1. Rent office space in a larger firm, a suite with multiple solo attorneys, or in a new co-working space. Our clients that rent space in a suite with multiple solo attorneys find that they are more productive when they have other people around to talk and socialize with. They have also noted it helps them feel a sense of camaraderie and support.
- $2.\ Jointhe MSBASolo \& Small Firm$

Section and/or other MSBA Sections and the Sections' Email Discussion List. The ability to chat with other solo and small firm practitioners, even virtually, can reduce the feeling of loneliness.

- 3. Build social time into your schedule, by adding social outings with family or friends, or attending networking events with colleagues to your calendar. We are generally more accountable if somethingis scheduled on our calendars.
- 4. Tackle procrastination. Many lawyersweseetellusabouttheir struggle with procrastination,



which can lead to longer work hours and having to work on nights and weekends. Find an organizational method that works for you. Structuring your day helps you to be more

productive, and allows you more free time.

5. Set boundaries with your clients. Include a written protocol as part of your

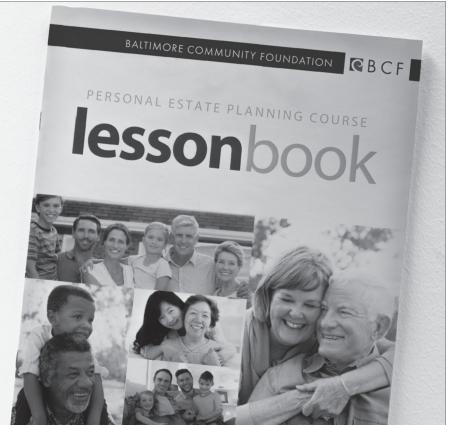
**CONTINUED ON PAGE 19** 

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## **Maximizing Your Social Media Presence**

### BY TATIA L. GORDON-TROY, ESQ.

Social media marketing demands more than just the occasional post or advertisement; in fact, it's become so complicated it could be considered a science in and of itself. And with all this talk of algorithms—hence the reason why social media is so complicated—who really knows what works and what doesn't?

I say pretty much no one. Every social medium has its own algorithm and it changes frequently to keep users on their toes, but you'll find plenty of articles written by people sharing their opinions about the inner mechanics of LinkedIn, Twitter, Facebook, Instagram, SnapChat, Pinterest, and many others. And you know the saying: opinions are like ---holes; everyone has one.

So instead of attempting to decipher the algorithms behind LinkedIn, Twitter, or Facebook, let's focus on some aspects we know will help you maximize your time spent on these social media sites.

### **LinkedIn Tips**

LinkedIn was developed as a way to connect businesspeople with other businesspeople or employers with future employees. Maintain a professional presence and stick to posting content that will promote your business.

In order to take full advantage of LinkedIn, you must:

**1** Optimize your profile. This means that once you've set up your account, make sure you follow all the steps to completing your profile. LinkedIn has a nasty habit of reminding you to complete the steps you've skipped by showing you what percentage of your profile is complete. For years, my profile sat at about 50 percent complete until I finally got serious about  $making Linked In \, a \, regular \, part \, of \,$ my marketing routine. Unfortu $nately, the \, algorithm \, gods \, do \, take \,$ notice and prefer fully completed profiles over incomplete ones.

Optimizing your profile also requires that you include an image, preferably of your current self, not the self who existed 25 years ago. Maybe the algorithm won't notice, but any new clients meeting you for the first time after seeing your Linked In profile

might be a little taken aback.

2 Personalize your connection requests. LinkedIn makes it easy to send invitations to other LinkedIn users at the click of a button. But if you take a moment to review a person's profile, find something interesting about that person or something you have in common, and use that information to personalize your invitation, you will garner quicker responses and make the connection more meaningful.

### **Facebook Tips**

Recently, Facebook changed the way it disseminates information to its users. This hurt quite a few small businesses that had become dependent on Facebook. But many businesses are still finding ways to use Facebook to its fullest.

One such way is Facebook Live. "Live" is a real-time broadcast of you speaking to your Facebook community. Many businesses are taking advantage of this free service.

At least one attorney I know uses Facebook Live to broadcast weekly at a time when she knows most of her ideal clients will be available. She promotes the "show" in advance, then prepares a statement and takes questions from her audience. The audience submits questions via post and she chooses which ones she will read aloud and answer on the spot. She is careful not to provide legal advice and repeats her disclaimer throughout the show. She  $invites\,those\,with\,more\,complex$  $questions \, to \, contact \, her \, of fice \, for \,$ a consultation.

Facebook Live takes some preparation, but when something this cool is free to use, why not try it?

### **Twitter Tips**

Twitter is a great place to start a conversation in the shortest

way possible—280 characters or less. Starting a conversation can be as simple as sharing an article along with your opinion on the subject matter. Twitter is where opinions are in extreme abundance, so don't be afraid to offer yours.

Controversy also reigns supreme on Twitter. It seems the more controversial the tweet. the more traction it gets, and the more noticeable it becomes to mainstream media.

Many a news story has been written based on a tweet that went viral with the majority of that story's content consisting of screenshots of numerous responses to the tweet.

Could this be considered journalism? Probably not—at least not in my book. But a viral tweet could quickly catapult you and your firm's visibility. But don't be controversial simply for the sake of being controversial. Make sure your tweet still offers good, honest content.

These are only a few tips for making social media work for you. There are many articles and books that cover how to use the different sites to build your business.

But the features change rapidly, so make sure you have the basics covered for the sites you want to include in your marketingplan. Next time, I'll cover how to make an even bigger impact.

Tatia L. Gordon-Troy, Esq. transforms attorneys into published authors and knows how to use storytelling to market attorneys and their practices. She runs her own publishing and marketing firm, Ramses House Publishing LLC, www.publishingforlawyers. com. Tatia is a member of the Marvland Bar and a regular contributor to MSBA publications.



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### ET ALIA



Renee Bronfein Ades

Renee Bronfein Ades joins Wright, Constable & Skeen as a Partner in the Family Law Group. Ms. Ades focuses her practice on family law with an emphasis on high net-worth individuals.

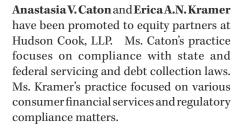
> Nicole T. Livingston joins Elville and Associates, P.C. as an Associate Attorney. Ms. Livingston's legal practice is focused on Elder Law, Estate Planning, Special Needs Planning, Tax Planning, Guardianship, Asset Protection, and Wealth Preservation.

> Swata Gandhi Joins Saul Ewing Arnstein & Lehr's Business and Finance Practice. Ms. Gandhi concentrates her practice in general business and commercial law.

> Theresa M. Lippy joined the law firm of Coon & Cole, LLC as an associate.

> Gary C. Norman, Esq. L.L.M. has been elected by the Board of Commissioners at the Maryland Commission on Civil Rights as its next Chair.

> Joseph M. Selba has become a partner with Tydings & Rosenberg LLP effective January 1, 2019. Mr. Selba's practice focuses on bankruptcy and creditors' rights, as well as commercial litigation.



Aaron Blank, Sarah Cline and Joy Einstein have been elected as Shareholders of Shulman Rogers.





Theresa M. Lippy



Joseph M. Selba



Sarah Cline



Joy Einstein

Send your latest news and updates to Anna Sholl for inclusion in Et Alia: anna@msba.org.

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## MSBA Past President Mike Preston Passes Away



MSBA Past President (1998-1999). Charles Michael "Mike" Preston passed away on December 6, 2018, at his home. He was 73.

Admitted to the Maryland Bar in 1970. Preston practiced law in Carroll County for 48 years, and served as President of the Carroll County Bar Association in 1985-

"[Mike Preston] was known throughout Maryland as a gifted lawyer who possessed a wonderful temperament, regardless of the

venue or complexity of the case," recalls fellow MSBA Past President Richard H. Sothoron, Jr.

A celebration of Preston's life took place at Pritts Funeral Home & Chapel in Westminster on December 12, followed by private interment in Kriders United Church of Christ Cemetery. Memorial contributions may be made in Preston's name to either Carroll Hospice(www.carrollhospice.org) or the Bladder Cancer Advocacy Network (www.bcan.org/donate).



## 66 Mike Preston was known throughout Maryland as a gifted lawyer.

### Access to Justice

**CONTINUED FROM PAGE 3** 

solve. The Academy's involvement in the Access to Justice problem is also a cause for hope because of the stature of the Academy and its ability to analyze complex social, political and intellectual topics in a multi-disciplinary and non-partisan way.

The Academy is one of the oldest learned societies in the United States. It was founded in 1780, during the American Revolution. by John Adams, John Hancock and 60 other scholar-patriots who contributed prominently to the establishment of the new nation, its government and the United States Constitution, and who understood that a new republic would require institutions

able to gather knowledge and  $advance \, learning \, in \, service \, of \, the \,$ public good.

Today, it is charged with a dual function: to elect to membership the finest minds and most influential leaders, drawn from science, scholarship, business, public affairs, and the arts, from each generation, and to conduct policy studies in response to the needs of society. The Academy's elected members join with other experts in cross-disciplinary efforts to produce reflective, independent, and pragmatic studies that in formpublic policy and advance the public good.

The involvement of the Academy in the Access to Justice effort is the latest sign of a growing national and even global understanding of how critical the Access to Justice issue is and how it undergirds many of our society's efforts towards a healthy democracy grounded in the rule of law. For example, in 2015, the United Nations adopted the Sustainable Development Goals, which for the first time included an Access to Justice goal, underscoring the interrelationship of justice to our understanding of global well-being and sustainability. Further in 2016, when the first Trump budget zeroed out funding for the Legal Services Corporation, the Congressionally funded entity that

**CONTINUED ON PAGE 17** 

### NOMINATION AND ELECTION OF MSBA BOARD OF GOVERNORS 2018-2019

DISTRICT	NUMBER OF GOVERNORS TO WHICH ENTITLED	CLASS I ELECTED ODD YEARS	CLASS II ELECTED EVEN YEARS
FIRST Baltimore City	7	4	2
SECOND Dorchester Somerset Wicomico Worcester	1	1	
THIRD Caroline Kent Queen Anne's Talbot	1	1	
FOURTH Calvert Charles St. Mary's	1		1
FIFTH Prince George's	2	1	1
SIXTH Montgomery	7	2	6
SEVENTH Anne Arundel	3	2	1
EIGHTH Baltimore County	5	3	2
NINTH Harford Cecil	1		1
TENTH Howard	2	1	1
ELEVENTH Carroll Frederick	1		1
TWELFTH Allegany Garrett Washington	1	1	
YOUNG LAWYERS	3	2	1

PURSUANT TO THE REGULATIONS governing the nomination and election of the MSBA Board of Governors, the membership is hereby notified that nominations are sought for all Districts which are listed under Class I of this chart. (Class II governors are elected in evennumbered years and Class I governors in odd-numbered years.) The MSBA bylaws require that all nomination petitions must be received by the Executive Director no later than 5:00 p.m. on February 12, 2019. If the election is necessary, ballots must be cast or postmarked no later than March 29, 2019, and received no later than April 3, 2019. If you are interested in being nominated by a local bar association or individual petitions, you may request a nominating petition from Victor L. Velazquez, Executive Director, MSBA, 520 West Fayette Street, Baltimore, Maryland 21201; (410) 685-7878 or (800) 492-1964; or victor@msba.org.

### Access to Justice

### **CONTINUED FROM PAGE 16**

provides the majority of funding for civil legal aid organizations across the country, leaders from both sides of the aisle and from a multitude of sectors that are not traditionally associated with legal services – including sports, business and economics - penned op-eds and successfully advocated to not only continue, but increase, funding for civil legal aid around the country.

As awareness about Access to Justice issues grow, so grows the understanding that we need many different voices - Democrats and Republicans - and voices from a multitude of disciplines, speaking up for how important it is for our society to fulfill the promise of equal justice for all and helping us through their range of expertiseto solve this complex and vexing problem. The Maryland Access to Justice Commission, like the 40 other Commissions across the country, is integrally involved in the project to help raise more awareness about Access to Justice issues and have more diverse voic $es\, speak\, about\, their importance\, to$ our democracy.

### Dateline

**CONTINUED FROM PAGE 4** 

### **FEBRUARY**

- 1 The Young Lawyers' Section, PBRC and Veritext Legal Solutions invite you to attend Litigation Skills Lunch & Learn: Strategies for Written Discovery beginning at 12:00pm at Lerch, Early & Brewer, Chtd., 7600 Wisconsin Ave., Bethesda, MD. Training will include interrogatories, requests for production of documents, and requests for admission. Speakers include, Magistrate Keith J. Rose, Montgomery County Circuit Court, & Michael Goecke, Esq., Goecke, Lerch, Early & Brewer, Chtd. For more information and/or to register for this event, please visit  $\underline{www.msba.org/product/litiga-}$ tion-skills-lunch-learn-strategies-for-written-discovery-civil
- **7** You're invited to attend *Family Law University* from 8:45am to 4:00pm at Sheraton Hotel in Columbia. For more information and/ or to register, please visit  $\underline{www.msba.org/FamilyLawUniversity}$
- 12 The *Tax Controversy Study Group Meeting* will meet from 9:00am to 10:15am at Rosenberg Martin Greenberg, LLP in Baltimore, MD. Elissa Borges, Assistant General Counsel, DC Office of Tax and Revenue ("OTR") will provide a DC OTR Update. For more  $information\ please\ visit\ \underline{www.msba.org/product/tax-controver-}$ sy-study-group-meeting-4
- 19 You are invited to attend the MSBA Mid-Year Meeting. Registration is complimentary to the first 100 member registrants. The meeting will be held at Sheraton North Hotel, 903 Dulaney Valley Road, Towson, MD with registration beginning at 11:00am. Programs will include a luncheon, CLE opportunities, and a networking reception. For more information and/or to register, please visit www.msba.org/product/msba-2019-mid-year-meeting
- 23 The MSBA Young Lawyers' Section and Montgomery County Bar Association present the Zengo Charity Ride and Happy Hour. The ride will begin at 1:00pm at Zengo, an indoor cycling venue located at 4866 Cordell Avenue, Bethesda, MD. This 50 minute, full body workout takes place in a fun, energetic atmosphere. After the ride, there will be a social happy hour at 2:00pm at Brickside Food and Drink, just steps away from Zengo. All proceeds will benefit Comfort Cases, a local charity that provides a proper bag filled with comfort and essential items for the brave youth in foster care as  $% \left( x\right) =\left( x\right) +\left( x\right) +$ they journey to find their forever home. For more information and/ or to register please visit  $\underline{www.msba.org/product/charity-ride}$
- **27** The *ABA TECHSHOW 2019* kicks off in the Windy City, Chicago, Ill. MSBA Members receive a discount off registration when they use promo code EP1909. For more information and/or to register visit www.techshow.com

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to confidential data and files, utilizing any number of devices, such as smartphones, tablets, and laptops. Keeping up with the cyber security risks created by this dynamic environment, and providing on-demand technical support, creates tremendous challenges for in-house law firm IT teams.

An MSSP can bring up-todate expertise to their clients. Their dedicated security professionals usually are highly trained and in a much better position to stay abreast of the latest security trends than in-house personnel. MSSPs often require their employees to obtain and maintain key cyber security certifications, such as CISSP, CISM and Comp-TIA's Security+. Some MSSPs also encourage team members to pursue advanced credentials to  $stay\,ahead\,of\,trends\,and\,industry$ best practices.

In contrast, in-house IT teams often have a variety of job responsibilities in addition to cybersecurity, creating a dynamic in which their time is split between managing IT and security issues. As a result, cybersecurity knowledge can begin to lag.

 $MSSPs\,usually\,employ\,teams$ of professionals, with expertise across core areas such as perimeter and application security, vulnerability scanning, threat detection and compliance monitoring. They ideally will have years of experience in various key positions such as security analyst, security engineer, and penetration tester. When a group of professionals bring their collective years of experience to an MSSP team, the whole definitely is greater than the sum. This increases the odds that the MSSP has experience in dealing with a wide range of cyber security issues and current threats. Utilizing an MSSP also provides an opportunity for internal personnel to collaborate with teams on skilled cybersecurity professionals on a daily basis.

Utilization of an MSSP also eliminates the difficult task of hiring and retaining in-house cybersecurity personnel. According to Cybersecurity Ventures, there will be 3.5 million unfilled positions in information security by 2021, up from roughly 1 million in 2014. To state the obvious, competing for qualified personnel — who will stay with the firm for long haul — is an increasingly difficult challenge for any law firm.

Proactive Approach

MSSPs that use cloud-based infrastructure to deliver services have the agility, flexibility and a resilient in frastructure to cost-effectively manage hundreds or thousands of clients at once. They also have the ability to be extremely proactive on behalf of their clients. For example, if a new zero-day threat is discovered at one client site, the MSSP can quickly apply the appropriate patches or remedies across its entire client base. In-house teams  $often \, have \, to \, wait \, until \, the \, threat$ is publicized, which may be too late. The infrastructure utilized  $by many MSSPs \, also \, puts \, them \, in \,$ a better position to support firms with multiple offices in various geographical locations.

### **Unified Solution**

Today's cyber threats arise from numerous phenomena, including mobility, Bring Your Own Device (BYOD), and increased connectivity via the Internet of Things (IoT). The number and variety of threats have led many law firms to outsource the management of the related cyber security risks to specialized third-party services providers. But retaining and supervising a patchwork of vendors can be inefficient and create an ongoing administrative burden. A single MSSP, however, can provided a single, unified solution to the plethora of risks associated with modern law firm practice. The MSSP can also provide a central hub for security best practices and technology expertise.

### Cost Savings

To be sure, cyber security is not inexpensive, whether run internally or externally. But because MSSPs are able to spread the costs associated with analysts, security appliances,  $applications, and facilities \, across \,$ their entire customer base, significant cost savings are likely to be achieved for clients. A proactive service provided by an MSSP also may save the firm from costs arising from a cyber incident that could have been prevented. And by moving from the somewhat variable and reactive IT costs of running cyber security internally to a predictable and set monthly costs, firms may be better able to budget and plan their cyber security spend.

This does not mean, however, that all MSSP services will be contained in their monthly

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### **Selecting an MSSP**

It is important to conduct thorough and rigorous due diligence when selecting an MSSP. After all, the firm's reputation and client relationships may well depend on how well the MSSP can do its job. It is important to look not just for a qualified and competent MSSP; working with an MSSP is a collaborative effort with the law firm, so a good culture fit is also critical.

Here are some important issues to discuss with any MSSP under consideration:

- The MSSP should provide the full suite of cyber security services desired by the firm. (It's important for the law firm to identify these in advance.) In addition, look for an MSSP with a deep and wellcredentialed bench and 24/7 support. And since some MSSPs partner with other companies to  $provide \, a \, more \, comprehensive \, set \, of \, service \, of ferings, firms \, should \, inquire \, as \, to \, how \, those \, partners$ were vetted and ensure that ultimate responsibility rests with the MSSP itself.
- · Delve into their real-world experience. In addition to looking for an MSSP with deep expertise in all things cyber, we recommend seeking an MSSP that has substantial experience working specifically  $with \ law \ firms. \ In \ order \ to \ provide \ the \ most \ appropriate \ solutions, the \ MSSP \ must \ fully \ understand$ the law firm business model. Be sure to dive deeply into to the work the MSSP has done in the legal sector and to ask for — and check — references. Inquire not only about the MSSP's competence, but also ask about its responsiveness, employee turnover, ability to stay within budget, etc. We also encourage firms to proactively seek MSSP recommendations from other law firms.
- $\bullet \ \ The MSSP also should have a thorough knowledge of data privacy and security regulations of concern$ to the law firm. Some MSSPs have cloud offerings that are PCI and HIPAA compliant. The MSSP should be able to assist with analyzing security needs for data retention, disclosure and access, as well as reviewing the surrounding infrastructure and employee practices. The MSSP should  $collaborate\ with\ the\ firm\ to\ implement\ appropriate\ controls\ to\ safeguard\ protected\ information$ in a compliant fashion.
- Question how the MSSP will work with the law firm's existing systems. Firms should not find out after-the-fact that the MSSP does not have the expertise to provide support to those systems.
- $\bullet \ \ \text{Ask if the MSSP is willing to sign a service level agreement (SLA) with a seamless exit strategy? Will$ they agree to purchase cyber insurance that protects the law firm?
- Review their policies and procedures to ensure that they're well documented, organized, and clear.
- · Discuss what type of reporting will be provided to the firm. How often will reports be received (e.g.,monthly vs. quarterly) and what information will be included? Are the reports customizable to the needs and desires of the law firm?
- · Ask about the MSSP's flexibility to cut back on services that prove to be underutilized and to scale up in the event of a change in the law firm environment, such as through an acquisition.
- $\bullet \ \ Inquire \ as \ to \ how incidents \ are \ handled. \ Does \ the \ firm \ prefer \ initial \ handling \ by \ low-level \ personnel$ or by senior managers?
- $\bullet \ \ Ask for copies of third-party evaluations, risk assessments, and audits. Consider touring their facilities.$
- To avoid conflict issues, ensure that that MSSP is vendor-neutral.
- · Ask if the MSSP runs background checks on their employees? This is important because the MSSP likely will be entrusted with highly confidential and protected information.
- · How long are system log files maintained? How much log file storage is offered?
- · Ask for a time estimate to be up and running if you decide to retain the MSSP.
- $\bullet \ \ What services are included in the monthly fee? \ What are the fees associated with additional services?$
- · What contract lengths are offered? Are there discounts associated with any particular contract lengths?
- What is the dispute resolution process?
- · Does the MSSP appoint a single account manager who is responsible for its relationship with the law firm? This can be especially important if the MSSP partners with other vendors to service the law firm account.
- · Will the MSSP contractually agree to provide timely notice of a security incident?

### MSSP COST WORKSHEET

Infrastructure	Internal Cost	Supporting Vendor Cost	MSSP Cost
Servers			
Database administration			
Backup software			
Anti-virus & Anti-malware tools			
Power			
Facilities			
Operational / Administrative	Internal Costs	Supporting Vendor Costs	Cost
Network			
Systems			
Staffing	Internal Costs	Supporting Vendor Costs	MSSP Cost
Salaries			
Staffing fees			
Overhead			

### **ABA TECHSHOW**

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fee. Additional charges may be incurred to deal with a security incident, system upgrade, or a change in the firm's network environment, such as through the acquisition of another firm.

Utilizing an MSSP also can result in significantly reduced costs for infrastructure, operations, administration and personnel. Law firms can eliminate many up-front capital expense investments, perpetual licenses fees, and staffing costs through outsources to an MSSP.

The decision to retain an

MSSP should not be based entirely on cost, but it would deny reality to imply that costs are not a significant factor to be considered when making that decision. A carefully thought-out analysis, comparing the costs of providing cyber security services in-house,

through a patchwork of internal resources and external vendors or through an MSSP, should be a mandatory part of the decision-making process.

On page 19, we provide a proposed worksheet that law firms can use to conduct an

MSSP cost-benefit analysis. For a more valuable comparison, we recommend that firms compile costs over a two- or three-year time period.

Read more about technology and the profession at www.TECHSHOW.com/blog.

### Pro Bono Reporting

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that lawyers actively volunteer and financially support legal services in their local communities. It also reveals challenges for lawyers to engage in probono service. For example: 1) the types  $of law \, many \, attorneys \, practice \, do \,$ not necessarily correlate to the areas of greatest legal need; 2) a substantial number of lawyers licensed in Maryland are retired or practicing outside of the state; 3) a large percentage of lawyers are in government service where there are limitations placed on outside practices and potential conflicts of interest; and 4) many lawyers claim that they simply lacked the time or preferred to do

non-legal charitable work.

To make volunteer opportunities easily accessible statewide, the Judiciary's Standing Committee on Pro Bono Legal Service works with the Pro Bono Resource Center of Maryland (PBRC), the pro bono arm of the Maryland State Bar Association, and other legal services programs to ensure that training, mentoring, malpractice insurance, and service-learning opportunities are available on a local level. Lawvers who want more information on getting involved in pro bono work can contact PBRC at www. probonomd.org or aspeedie@ probonomd.org.

### Solo

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engagement agreement that indicates when your office open, and when you return calls and emails. If you answer your phone at 10pm they will keep calling at 10pm. Lawyers with these written protocols  $found \, them \, to \, be \, very \, helpful \, in \,$ setting expectations with their clients. Setting expectations on your availability will allow you to enjoy time with family and friends in the evenings and on weekends.

6. Provide your client with regularly scheduled updates on their matter, which will helpreduce client calls asking for updates. Regularly scheduled updates will help to lower your client's anxiety, and will reduce the number of client calls seeking updates on their matters.

- 7. Find an activity or volunteer with an organization. Activities and volunteer opportunities allow us to socialize with others that have similar interests.
- 8. Diversify your social group. Have friends that are not lawyers. When lawyers get together, just like any other professional group, they tend to talk "shop". By diversifying your social group, you can leave the shop talk behind.
- 9. Call the Lawyer Assistance Program. Everyone is different and has different challenges.

We can help you figure out what works best for you.

For assistance, please contact the Lawyer Assistance Program for free, confidential counseling. We have a network of counselors throughout Maryland. Jim Quinn, Lawyer Assistance Director, (443) 703-3041,jim@msba.org;LisaCaplan, LCSW-C, Associate Director, (443) 703-3042, lisa@msba.org. 24/7 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





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**MLSC Annual Awards Recognize** Page 1 **Outstanding Service to Low-Income Marylanders** 

**Guarding Your Castle: Law Firm Cybersecurity** Page 5

**Team MSBA Braces for Polar Bear Plunge** Page 9

How will you respond?

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ANNAPOLIS, MD 21401-7479 Your Name, Esquire 1 High Anxiety Ct. Baltimore, MD 21201 *Կիվերգիցվիս||իսզիլել* PRIVATE AND CONFIDENTIAL Our victories don't make headlines. Our clients don't boast about our work. But, behind the scenes, lawyers have trusted our responses for years.



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