



MSBA

# BARBULLETIN

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## MSBA Hosts Solo & Small Firm Summit



### SOLO + SMALL FIRM SUMMIT

By the numbers:

ATTENDEES

140+

EXHIBITORS

25+

SUBSTANTIVE PROGRAMS

15

CLE CREDITS

5

UNIQUE TRACKS

3

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3. Grow your practice

On Friday, November 8, 2019, the MSBA in conjunction with the Solo & Small Firm Practice Section, hosted its Solo & Small Firm Summit at Live! Casino & Hotel in Arundel Mills, Maryland. The Solo & Small Firm Summit was designed to bring practitioners up to speed on the skills and

strategies necessary to Start, Run, or Grow a Solo or Small Firm in Maryland. Sessions included Accounting 101 for Lawyers, MDEC for Civil & Criminal Matters, Ethical Marketing, Low-Cost Legal Research, Disaster Planning and more.

Attendees enjoyed the ability to select from 15 different pro-

grams from three unique tracks. In addition, 25 exhibitors were on site to assist attendees with solutions for website design, practice management software, retirement planning, insurance needs and more.

During lunch, Solo & Small Firm Practice Section Chair, Susan Land, presented the David Hjortsberg Award. The purpose of the Hjortsberg Award is to acknowledge, commend, and express appreciation for solo and small firm practitioners who raise the bar of professionalism, civility, intelligence, respect, and community commitment for all. This year's recipient was Irwin Kramer, Esq., who also appeared as faculty, presenting a session on "Running a Risk Adverse Firm".

Details for the 2020 Solo & Small Firm Summit will be available soon. ●



➔ If you missed the 2019 Solo & Small Firm Summit, the "Start Your Law Firm" track will be available soon through the MSBA website to view on-demand.

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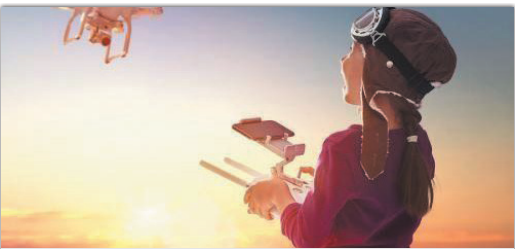
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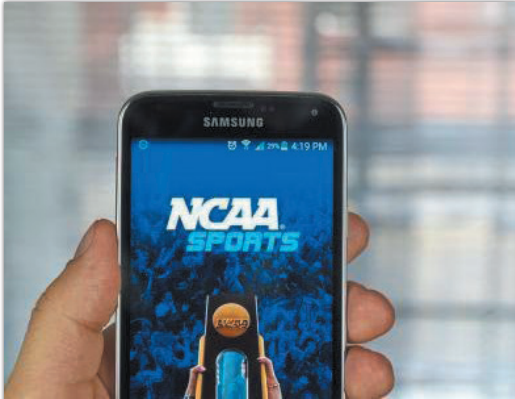
### Recreational Drone Laws Still Facing Potential Major Changes

Throughout 2019, interpretations of the FAA Reauthorization Act of 2018 resulted in sweeping changes to recreational operation of unmanned aerial vehicles (UAVs), or drones.



### Diversity Takes Center Stage at Corporate Counsel Conference

Embracing diversity and breaking down racial and gender barriers in the workplace were hot topics among the dozens of panels put on this week at the Association of Corporate Counsel's annual conference in Phoenix.



### NCAA Board of Governors Approves Policy Permitting College Athletes to Benefit From Use of Name, Image, and Likeness

The NCAA Board of Governors has unanimously approved a policy which will "permit students participating in athletics the opportunity to benefit from the use of their name, image and likeness in a manner consistent with the collegiate model."



### The Anatomy of Biometric Laws: What U.S. Companies Need To Know in 2020

As more and more states seek to expand biometric privacy protection, plaintiffs begin to explore new claims under these legislative schemes. Companies, therefore, must proactively monitor their compliance with emerging privacy laws.

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## MSBA ETHICS HOTLINE

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**Christopher S. Young**  
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410-290-0707

**Raul M. Bhat**  
*Montgomery County*  
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**Patricia (Trish) M. Weaver**  
*Montgomery County*  
301-951-9360

### January

**Robert F. Miller**  
*Baltimore County*  
410-823-1800

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**Joshua G. Berman**  
*District of Columbia*  
202-482-4772

**Timothy F. Maloney**  
*Prince George's*  
240-553-1206

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](mailto:tweaver@paleyrothman.com). Opinions of the Ethics Committee are available online at [www.msba.org/ethics](http://www.msba.org/ethics). Please consult the Rules and MSBA Ethics Opinion Website before calling.





## PRESIDENT'S MESSAGE



DECEMBER 2019

MSBA President Judge Keith R. Truffer shares his updates in his monthly video message.

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



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# Dateline

## DECEMBER

**17** MSBA Board of Governors Meeting

**25** Christmas - Courts and MSBA Offices Closed

## JANUARY

**1** New Year's Day - Courts and MSBA Offices Closed

**4** The MSBA Young Lawyers Section presents the "Wills for Heroes" Event. More information coming soon. Visit [www.msba.org/Wills-for-Heroes-1-4](http://www.msba.org/Wills-for-Heroes-1-4) for updates.

**16** The MSBA and the Calvert County Bar Association Present: *Connections!* Join us for a social & networking event, open to all attorneys (member & non-member) in Calvert County for an opportunity to meet MSBA President Dana Williams, Esq., Calvert County Bar Association President, David Wiegel, Esq., President-Elect Amy Lorenzini, Esq., and MSBA Executive Director, Victor Velazquez. Mingle, network, and participate in a brief discussion on the value of being a member as well as things to come! To register for this complimentary event, please visit: [www.msba.org/Connections-Calvert](http://www.msba.org/Connections-Calvert)

**20** Martin Luther King Jr. Day - Courts and MSBA Offices Closed

**21** MSBA Board of Governors Meeting

**25** Join the MSBA YLS Public Service Committee and the MSBA Public Awareness Committee for the 2020 Special Olympics Maryland Polar Bear Plunge! Take the plunge and join "Team MSBA" or donate to "Team MSBA" by visiting [www.msba.org/PolarBearPlunge](http://www.msba.org/PolarBearPlunge).

**30** The MSBA Department of Learning and Publications is offering an all new presentation *Financial Issues in Divorce – Taxation, Valuation, Equalization: Navigating Potential Asset and Income Obstacles in Divorce Negotiations* on Thursday, January 30, 2020 at the Ecker Business Center in Columbia, MD! Let us help you walk through the trifold landmines of taxation, valuation and equalization and develop a clearer understanding of how financial concepts and nuances can impact outcomes. Presented by Jamie S. Lapin, CFP®, CDFA®, AIF® For more information and/or to register, please visit [www.msba.org/Financial-Issues-in-Divorce](http://www.msba.org/Financial-Issues-in-Divorce).

**30** The MSBA Estate & Trust Law Section Study Group presents "Estate Planning for the LGBT Community" presented by Lee Carpenter, Esq., Saul Ewing Arnstein & Lehr, LLP. Participants can attend either in Baltimore or Bethesda. For more information and/or to register please visit: [www.msba.org/ET-Study-Group](http://www.msba.org/ET-Study-Group).

## Immigration Legal Defense Funds: Why They Matter and Why We Need More



BY KALA FRYMAN\*

\*Ms. Fryman is a student at the University of Baltimore School of Law and an active member of the law school's A2JC Student Engagement Committee. The Student Engagement Committee is excited to plan and engage in another another year of Alternative Spring Break at UB Law where students will volunteer their time during Spring Break to advance access to justice in MD! For more information on Student Engagement, contact Reena Shah at [reena@msba.org](mailto:reena@msba.org).

If you are a U.S. citizen (naturalized or born in the United States), try to imagine the following scenarios. Imagine that you are in a foreign country and may or may not have legal status in that country. Maybe you've only just arrived, or you've lived there for many years and have established roots in that country. Maybe you are a minor child and are seeking to reunite with the rest of your family or a parent. Maybe your children and family members are citizens of that country and have never lived elsewhere. Maybe you own a business or property in that country. Maybe you went to that country seeking asylum due to fear of persecution. Maybe you just wanted more opportunities. Now imagine that you are facing deportation in that country and are not only precluded from the right to appointed counsel, but are also otherwise unable to retain an attorney due to factors such as lack of resources, finances, language and cultural barriers, etc. You are now faced with navigating the legal system of a foreign country on your own and the outcome could alter the course of the rest of your life.

This is the reality of many individuals and families in immigration removal proceedings in the United States. Unrepresented individuals run the gamut of asylum seekers, unaccompanied minors and even lawful permanent residents – all facing deportation

and expertise of counsel. As expressed by the Vera Institute's toolkit on universal representation, the right to appointed counsel, which the U.S. Supreme Court describes as "necessary to insure fundamental human rights of life and liberty," has thus

Only **5%** of individuals representing themselves in immigration court were successful in winning relief from deportation

or removal and forced to face the nebulous process of navigating the immigration system alone. According to data from 2007-2012, only 5% of individuals representing themselves in immigration court were successful in winning relief from deportation<sup>1</sup>. The lack of appointed counsel in immigration proceedings has resulted in mass deportations, even when forms of relief may have been possible with the aid

far only been applied in criminal proceedings- yet the complexities of immigration law and the severe consequences at stake make it unjust and unreasonable to expect individuals to represent themselves in immigration court.<sup>2</sup> Detained immigrants face even more obstacles in securing representation and 70% of detained immigrants are unable to secure counsel.<sup>3</sup> Detention

CONTINUED ON PAGE 22



# LEGAL & ANNUAL SUMMIT & MEETING

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## PRO BONO PROFILE

### PBRC PARTNER PROFILE:



Heather Krick, Esq.  
MSBA Member, PBRC Volunteer

#### With which of PBRC's projects do you volunteer?

I work with the Maryland Immigrant Legal Assistance Project (MILAP). The project provides legal screenings twice each week in the Immigration Court in Baltimore. We provide an initial interview and consultation, to see if the clients have any potential immigration relief available to them. After the screening, we refer the clients to other nonprofits that handle the specific kinds of relief they may have available to them.

#### What led you to get involved in the MILAP project?

Just curiosity. I wanted to learn more about immigration and how it works. Many of the clients are unaccompanied children. They can be really young, from elementary school age to teenagers. We see a wide range coming in.

#### Has the clinic provided a good learning experience?

Yes, I have learned a great deal through the trainings and through providing client consultations. The experience has led me to take further trainings to learn more about how to handle the specific types of immigration relief and processes.

#### What has stood out to you from the experience of helping the clients?

I can see the relief on my clients' faces when they're finally able to talk to an attorney. Sometimes they've gone elsewhere and haven't been able to talk to an attorney, or they first heard about the clinic when they showed up at court for their hearing.

The work provides a personal perspective on what these clients are facing and why they're coming to the United States. There are so many shocking situations – from children having to move from place to place unable to find safety, to having to travel very far to go to school, with the risk of getting stopped and recruited by gangs and threatened. Some children witness the abuse of a parent or are prevented from going to school.

You can see it on their faces when they're able to talk to someone about the options they have. They leave with more information, and they're grateful for help in knowing the next steps to take. It's so good to have a part in helping them to find some relief.

#### What does the project do to make it easier to volunteer?

MILAP makes the volunteer experience accessible by providing all the training that you need. They have in-court consultations on two days every week. They're very clear and thorough about what they need from you, what your role is, and how you can help the clients during the clinic.

#### What you do you think other people should know about PBRC?

PBRC is a great resource for learning new things and getting valuable experience with new topics. They provide hands-on experience that another type of training or CLE might not provide. I think learning by doing is the best way, and PBRC allows you to do just that.

If you want to be involved, or if you're curious about it, then do it! It's easy and accessible. There are plenty of opportunities to volunteer. The Maryland Immigrant Legal Assistance Project is at the courthouse twice each week, so there are plenty of opportunities to serve there.

MILAP provides a good way to get client contact and to get an introduction to what our immigrant clients are going through. ●

## PBRC's featured service opportunity

Volunteering with the Maryland Immigrant Legal Assistance Project  
[probonomd.org/milap](http://probonomd.org/milap)

For more information about volunteering in Maryland, contact:  
Annie Speedie, PBRC Director of Programming:  
[aspeedie@probonomd.org](mailto:aspeedie@probonomd.org), 443-703-3051.



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# 2020 MSBA Legislative Preview

BY RICHARD A. MONTGOMERY III, MSBA DIRECTOR OF LEGISLATIVE & GOVERNMENTAL RELATIONS

## Historic Leadership Transition

### House of Delegates

On April 8, 2019, as the legislative community in Annapolis was attempting to process the news of the passing of House Speaker Michael E. Busch, then-Speaker Pro Tem Adrienne Jones assumed the unenviable task of assuming the House gavel to preside over the final day of legislative activity in the House. Fast-forward to May 1, 2019, when the General Assembly held a one-day Special Session, principally for the purpose of allowing the House of Delegates to elect a new Speaker. Despite there being multiple candidates to succeed Speaker Busch, initially no candidate appeared to have assembled a plurality of votes among the majority Democratic Caucus. After several hours of apparently spirited discussion, the Caucus rallied behind Delegate Adrienne Jones and elected her to be the next Speaker, despite her initial reticence to declare herself a candidate to succeed Busch. Delegate Jones becomes both the first woman, and the first African American to serve as Speaker of the House of Delegates.

### House Speaker Adrienne Jones

For those of you who are unfamiliar with Speaker Jones, she is a native of Cowdensville, Maryland, one of the oldest African American communities in Baltimore County (often regarded as part of Arbutus). She was first elected to the House of Delegates in 1997, serving the bulk of that time on the House Appropriations Committee. She rose to House Leadership in 2003, being appointed to the Legislative Policy Committee. The recitation of her General Assembly leadership posts held is as long as your arm, as is the list of her community and civic involvement. Notably, from a bar perspective, Speaker Jones served as a member of the Trial Court Judicial Nominating Commission for the 3rd Commission District, from 1991 to 1995.

### House Leadership post changes

In early September 2019, Speaker Jones stated that while she intends to retain all 6 current Standing Committee Chairs in their current assignments, she has also announced a long list of House Leadership post changes. The key changes announced include:

- Del. Sheree Sample-Hughes (D-Lower Shore) as Speaker pro tem
- Del. Eric G. Luedtke (D-Montgomery) as House Majority Leader; Del. Kathleen Dumais who had served in that role will be Vice-chair of the House Economic Matters Committee, as well as House Chair of the Joint Ethics Committee
- Del. Erek Barron as House Chair of the Joint Committee on Fair Practices

### Senate of Maryland

On October 24, 2019, Senate President Thomas V. Mike Miller announced that he would be stepping down from his post as President of the Senate of Maryland, but would be retaining his Senate seat, representing District 27 (Prince George's, Charles, & Calvert Counties). Miller, who has been battling prostate cancer for nearly 2 years and has served as presiding officer of the Senate since 1987, stated that the advancement of his cancer has made it impractical to attempt to continue the arduous workload of overseeing the Senate. Sen. Miller has stated that he is looking forward to "just being a Senator again." Yet, he has stated that his top priority is passing the key provisions of the Kirwan Commission proposals on education funding during the 2020 session.

At a Democratic Senate Caucus meeting earlier that week, a unanimous agreement was reached that Senator William (Bill) Ferguson would be their nominee to succeed Miller when the body convenes on January 8, 2020. His nomination will be put before the entire Senate at that time. No opposition is expected from the Republican minority in the Senate.

### Senate President-nominee Bill Ferguson

Former Baltimore City Councilman Bill Ferguson was first elected to the Maryland Senate in District 46 (Baltimore City) in 2010, in what many regarded as a stunning upset of 6-term Senator George Della, Jr. Since coming to Annapolis, Ferguson, an attorney and teacher, has remained a staunch, but diplomatic voice for education funding and innovation, for which he was known while serving on the City Council. Sen. Ferguson has risen quickly into Senate Leadership, and most recently served as vice-chair of the Senate Budget & Taxation Committee.

### Senate Leadership post change

To date, Senate President-nominee has announced only one change in Senate Leadership, which has been the elevation of Sen. Guy Guzzone (D - Howard Co.) to be the new Chair of the Senate Budget & Taxation Committee, replacing Sen. Nancy King (D - Montgomery Co.). Sen. Ferguson has indicated that other changes will be announced prior to commencement of the 2020 session.

## Commission on Innovation and Excellence in Education

### (Kirwan Commission)

Every session of the Maryland General Assembly is dominated by one issue that will come to define that session. The 2020 session will be dominated by the legislature's deliberations over the recommendation of the **Commission on Innovation and Excellence in Education**, widely known as the **Kirwan Commission**, after its chairman, William E. "Brit" Kirwan, a former chancellor of the University System of Maryland and former president of the University of Maryland, College Park. Kirwan was appointed by Gov. Larry Hogan, along with Senate President Mike Miller, and then-Speaker of the House Mike Busch.

During the 2016 session, the General Assembly created the Commission, charging it with the task of making recommendations on how to prepare K – 12 students for either college or the workforce in a manner that they are prepared to "meet the challenges of a changing global economy."

The 26-member Kirwan Commission, which concluded its work in late-November 2019, was comprised of several state lawmakers, the State School Superintendent, the Secretary of the MD Department of Budget & Management, the Chancellor of the University of Maryland System, as well as representatives from state and local school boards, teachers' unions, and other K- 12 stakeholders.



## MSBA Members in the 2020 Maryland General Assembly

### Senate of Maryland (6).

Senate President Thomas Miller Jr. (D), Bobby Zirkin (D), Susan Lee (D), Bob Cassilly (R), Jill Carter (D), Chris West (R).

### House of Delegates (34).

Dan Cox (R), Jon Cardin (D), Vanessa Atterbeary (D), Jen Terrasa (D), Kathleen Dumais (D), Marc Korman (D), David Moon (D), Nicole Williams (D), Geraldine Valentino-Smith (D), Erek Barron (D), C.T. Wilson (D), Debra Davis (D), J. Sandy Bartlett (D), Michael Malone (R), Susan McComas (R), Johnny Mautz (R), Kirill Reznik (D), Samuel Rosenberg (D), Keith Haynes (D), Charles Sydnor III (D), Stephanie Smith (D), Luke Clippinger (D), Brooke Elizabeth Lierman (D), Wanika Fisher (D).



### Kirwan Commission Recommendations

The Kirwan Commission studied educational policy for 2 years, which encompassed study of successful innovative educational initiatives worldwide.

Key recommendations of the Kirwan Commission include:

- Expand prekindergarten to all 4-year-olds, as well as 3-year-olds from economically disadvantaged families.
- Elevate the standards to become a teacher and raising teacher salaries.
- Reimagining high school curricula to offer students training for well-paying jobs right after graduation.
- Establish more “community schools” with enhanced services for students and their families.
- Provide greater support for special education students and schools with higher concentrations of disadvantaged families.
- Create accountability programs to ensure that funds for education are applied as designated.

The Commission recommendations specify phasing-in new and enhanced programs over a period of 10 years. It expects that by the year 2030 the state and local school system would be contributing a total of approximately \$3.9 billion over current formulae. The Commission estimates that the State share over the life of the Kirwan funding increases would be roughly \$2.8 billion, while the burden to local governments would be approximately \$1.2 billion. The Commission was not charged with determining a funding mechanism for their recommended educational enhancements. Therein lies the rub.

### Early Opposition

Governor Hogan and fiscal conservatives in the legislature already have vociferously opposed the cost of the plan, noting the necessity for state tax increases to fund the Commission initiatives. Local governments which generate most of their tax revenue from county property taxes, and a modest local income tax, have expressed even greater cost concerns. Leaders of most counties across the State believe that they are already at the limits of their taxing capacity.

Because the Maryland Constitution requires the General Assembly to pass a balanced budget every year, the Governor and General Assembly will start the 2020 session with an enormous challenge on their hands in developing a multiyear budget plan to accommodate the Kirwan Commission recommendations.

### Options for Funding Kirwan

Many of the supporters of the Kirwan, which include the Maryland State Education Association (MSEA), the American Civil Liberties Union (ACLU), and Advocates for Children & Youth (ACY), note that there are numerous options for funding that plan that could serve as alternative to either prevent or minimize tax increases at the State and/or local level. Most often mentioned in that discussion are assessing a sales tax on internet sales, or the possible legalization of sports betting in Maryland. Outgoing Senate President Mike Miller has publicly stated that funding of the Kirwan Commission recommendations stands among his highest priorities of the 2020 session.

## Contested Judicial Elections

Among the many constitutional amendments likely to be reintroduced in this upcoming election year will be measured to eliminate contested elections for circuit court judgeships. For nearly three decades the MSBA has supported the elimination of contested judicial elections, in favor of a retention election system, such as that which applies to District Court and appellate judges in the State.

The principal reasons for MSBA support for replacing contested elections with retention elections include: 1) judges serve the public by interpreting the law, and are not part of “representative government,” carrying out the political wishes of specific communities; and 2) the campaign process for contested elections turns judicial candidates into politicians, and the people from whom they are most likely to raise campaign funds (lawyers) are likely to be the people they encounter before them in court.

Because any measure to alter the manner in which Maryland selects circuit court judges must be introduced in the form of a constitutional amendment, such a

bill must be passed by the General Assembly, but also ratified by the voters at referendum. Further, the General Assembly generally does not act upon bills that are constitutional amendments in non-election years (although that trend has diminished in recent years).

During the 2019 session, the MSBA supported Senate Bill 246 (Sen. Kramer), which would have replaced contested elections for circuit court judges with 10-year retention elections, but the measure failed in the Senate Judicial Proceedings Committee. We expect similar legislation to be introduced in both chambers of the legislation in the 2020 session.

**House Judiciary Committee Chairman Luke Clippinger** moderated a **Town Hall Discussion on Contested Judicial Elections** at the June 2019 **MSBA Legal Summit and Annual Meeting in Ocean City**. To say the least, the discussion was spirited. I believe that it is safe to say that Chairman Clippinger sampled a fair cross-section of competing opinions on the subject within the MSBA.

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## Asbestos Caseloads

In 2019 the MSBA opposed a late-introduced Senate Bill 1049 - Civil Actions – Office of Asbestos Case Mediation and Resolution, filed ostensibly, to address the asbestos-related case backlog in Baltimore City. Aside from having been filed 2 months after the Senate bill introduction deadline (to deal with a widely known condition), the MSBA opposed the bill because its provisions encroached upon the authority of the Judiciary to manage caseloads, by mandating mediation of cases already filed in circuit court. Moreover, by establishing a new Executive Branch agency and mandatory mediation, the bill would have hindered access to the courts. The bill was later heavily amended by the House, and ultimately failed.

All during the period that the bill was being considered, and since, progress has been made toward reducing the case backlog by the Baltimore City Circuit Court, which has established a goal of hearing 500 cases per month, dating from June 2019. The court reported the latest status of its efforts to reduce the case backlog in a hearing before the House Judiciary Committee in early November.

Attorneys representing plaintiffs have sought consolidation of the nearly 28,000 pending cases, while attorneys representing defendant companies contend that consolidation would serve only to meld into the consolidation cases that are not meritorious.

During the 2020 session I would expect to see either a budget measure, or a proposed statutory change related to addressing the current volume of asbestos-related injury claims.

## Comparative Negligence

While not seen recently in Annapolis, there is a widespread belief that one of the most controversial issues facing the business and legal communities may make a return in 2020. That issue is comparative negligence.

When the Court of Appeals considered case of *Coleman v. Soccer Association of Columbia Court of Appeals* No. 9, Sept. Term, 2012; Decided: July 09, 2013, the issue before the Court was “should the Court ameliorate or repudiate the doctrine of contributory negligence and replace it with a comparative negligence regime?” Ultimately, the Court did not act in that manner, and instead concluded that such a determination was more appropriately a matter for the General Assembly to decide, either by allowing the status quo to prevail, or by making a statutory change:

“For this Court to change the common law and abrogate the contributory negligence defense in negligence actions, in the face of the General Assembly’s repeated refusal to do so, would be totally inconsistent with the Court’s long-standing jurisprudence.” ~ Judge Eldridge writing for the Court.

Earlier on, during the 2007 Session, legislation was introduced to take Maryland from its current fault system of contributory negligence, to a modified form of comparative negligence. Under the provisions of the 2007 proposals, a plaintiff, whose comparative fault for the injury that he or she incurred, would not be barred from recovery if his or her fault were less than that of the defendant, or the combined fault of multiple defendants.

Maryland is one of the 5 remaining jurisdictions that utilize a contributory negligence system. The other 4 are Alabama, the District of Columbia, North Carolina and Virginia. Although the Maryland General Assembly has considered comparative negligence legislation many times over the past four decades, prior to the 2007 regular Session no comparative negligence legislation had been introduced since the 2002 session. In many of the past introductions, comparative negligence bills have been amended to include provisions of law relating to joint and several liability. Such was not the case in 2007. Both the House and Senate bills died quietly in Committee. More recently there has been legislation that would have established a contributory negligence standard by statute. Those measures have failed, as well. Despite interest from a number of legislators in both chambers to consider moving Maryland toward joining other states in adopting comparative negligence, I have seen little reason to believe that such a change is likely without a multiyear deliberation process within the General Assembly.

## Prison Mental Health Funding

In the 2018 session, the General Assembly passed **House Bill 111 - Maryland Department of Health – Defendants Found Incompetent to Stand Trial or Not Criminally Responsible – Commitment (Chapter 188)** which provided that if a court commits a (pretrial) defendant to the Health Department because the defendant is determined to be incompetent to stand trial, or is not criminally responsible, the Department shall admit the defendant to a designated MDH facility for care, not more than 10 days after MDH received the Order. Further, under the bill, MDH must notify the Court of the date that the defendant was admitted to the designated facility.

The provisions of House Bill 111 from 2018 dealt with *arrestees*, but not with involuntary admission to mental health facilities of individuals already incarcerated within the Department of Corrections. For that reason, **Senator Jill Carter and Delegate Charles Sydnor cross-filed bills (Senate Bill 402 / House Bill 306)** in an effort to provide intervention care in the form of involuntary commitment of individuals already incarcerated in state correctional facilities, under a commitment regime patterned upon the 2018 legislation that applied to defendants. The Carter / Sydnor bill had a potentially significant fiscal impact to the State, however, there is the potential that a portion of the cost of the legislation could be offset by grant funding. Earlier this fall, the House Judiciary Committee reviewed provisions of the Carter / Sydnor proposal, and I anticipate an enhanced effort in 2020 to pass legislation in this area.

## 2020 Committee on Laws

Irrande Altema	Jared Marx
Kevin Arthur	Margaret McKee
Craig Ballew	Hon. Timothy Meredith
David Cahn	Richard Montgomery
Gary Christopher	Hon. Elizabeth Morris
Hon. William Dunn	Robert Mueller
Susan Durbin	Richard Neuworth
Gardner Duvall	Hon. Steven Platt
Christy Fisher	Laura Rhodes
Hon. Lawrence Hill	Hon. Steven Salant
Katherine Howard	Margaret Teahan
Kelly Iverson	David Weinstein
Christopher Kehoe	David Wildberger
Hon. John Kenney	Thomas Yost

## Court Fines and Fees – Juveniles

### Fines as revenue

The 2015 study of the Ferguson, Missouri Police Department, by the U. S. Department of Justice, Civil Rights Division (*Investigation of the Ferguson Police Department, United States Department of Justice, Civil Rights Division, March 4, 2015*) found, among other things, that the Department’s activities were heavily focused on generating revenue. Moreover, DOJ/CRD concluded that there was distinct racial animus at the core of many of the Department’s charging practices, as well as its propensity for racially uneven assessment of fines and fees, disproportionately affecting youth of color.

Since that 2015 DOJ/CRD study, legal and social scholars have noted that such charging and fee/court cost assessment patterns are not peculiar to Ferguson. The DOJ/CRD study found that similar municipal dependence upon fees can be found all across the nation. Further, scholars and activists have noted that the impact of fines and fees on youth from middle-class families might constitute a major family inconvenience, but that those same fines and fees can be overwhelming for disadvantaged families, especially when applied to youth from single-parent families and homeless youth. (see *Following Horrific Violence, Something More is Required of Us, Michelle Alexander, July 9, 2016*)

Many public policy observers have come to regard this phenomenon as having, for youth, the same effect that excessive bail has upon a large segment of the adult nonviolent offender population – recidivism, chronic unemployment, and, in essence, a “poverty trap.” (see *Young People Who Can’t Pay Court Fees Are Getting Trapped in The Criminal Justice System, Paul McLeod, BuzzFeed News, May 6, 2019*)

To address this nationwide issue, Congressman Tony Cardenas (D – California) has introduced legislation in the U. S. House of Representatives, *H. R. 2300 - The End Debtor’s Prison for Kids Act*, which would authorize up to \$500 million in annual federal funds to end juvenile justice fees. would offer the states grants to fund mental and behavioral health programs in exchange for ending similar practices at the state and local level. I expect to see similar legislation introduced in Maryland during the 2020 session.



## New Lawyers in the Legislature

At the time of this writing, there is a net gain of one attorney over the legislative interim. On May 19, 2019 Delegate **Shaneka Henson** was appointed to fill the District 30 seat left vacant by the passing of Speaker Mike Busch. And on November 14, 2019 Governor Hogan appointed Prince George's County attorney **Nicole Williams** to replace former District 22 Del. Tawanna Gaines, who resigned after being charged with a federal campaign finance violation.

**Del. Steve Lafferty** from District 42A left the General Assembly to join the administration of Baltimore County Executive John Olszewski, becoming Chief Sustainability Officer the county. Steve's role is to lead Baltimore County's efforts to minimize the impact to climate change in the County.

## Governor's Legislative Office – Keiffer Mitchell

In November 2019, Governor Hogan announced that his longtime Chief Legislative Officer, former State Senator Chris Shank would be leaving his Legislative Office to return to the private sector. In the same announcement the Governor announced that former Baltimore Delegate Keiffer J. Mitchell, Jr. has been elevated to serve as his chief legislative aide, replacing Shank. Mitchell, a Democrat, has a long history of working "across the aisle," which was notable during his tenure in the General Assembly, serving on the House Judiciary and House Economics Committees.

## New General Assembly Website

Earlier this fall, the General Assembly announced a revamping of its website. The new General Assembly website is scheduled to launch in January 2020, just before the start of the 2020 session. The last overhaul of the website occurred just prior to the 2013 session. Despite a few hiccups, I would describe the transition as having been rather smooth overall. However, since 2013, more and more organizations, and perhaps private citizens, utilize 3rd party legislative tracking software platforms that are driven by the status updates to the General Assembly site. So, if your organization uses 3rd party tracking software for internal use, or especially to drive real-time updates on your website, please ensure that your tracking software provider is aware of the upcoming changes to the General Assembly site.

The new General Assembly website: [www.mgaleg.maryland.gov/mgawebsite](http://www.mgaleg.maryland.gov/mgawebsite).

## Other Issues to Watch in 2020

- Opioid Abuse – Prevention, Treatment & Recovery Measures
- Vaping – Ban, or No Ban
- Cameras in the Courtroom
- Preakness / Pimlico & Laurel Redevelopment
- Sports Betting Legalization
- Elevating the Permissible Age for Marriage
- Medicare & Medicaid Waiver Legislation ●



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# Maryland General Assembly

## State Senate

Senator	Dist.	Jurisdiction
Malcolm Augustine	47	Prince George's County
Jack Bailey	29	Calvert, Charles & St Mary's County
Pamela Beidle	32	Anne Arundel County
Joanne Benson	24	Prince George's County
Mary Beth Carozza	38	Somerset, Wicomico & Worcester Counties
Jill Carter	41	Baltimore City
Bob Cassilly	34	Cecil & Harford Counties
Adelaide Eckardt	37	Caroline, Dorchester, Talbot & Wicomico Counties
George Edwards	1	Allegany, Garret & Washington Counties
Sarah Elfreth	30	Anne Arundel County
Arthur Ellis	28	Charles County
Brian Feldman	15	Montgomery County
William Ferguson IV	46	Baltimore City
Jason Gallion	35	Cecil County
Melony Griffith	25	Prince George's County
Guy Guzzone	13	Howard County
Antonio Hayes	40	Baltimore City
Katie Hester	9	Carroll & Howard Counties
Michael Hough	4	Fredick & Carroll Counties
J.B. Jennings	7	Baltimore & Harford Counties
Stephen Jershey Jr.	36	Carline, Cecil, Ken & Queen Anne's Counties
Cheryl Keagen	17	Montgomery County
Delores Kelley	10	Baltimore County
Nancy King	39	Montgomery County
Katherine Klausmeir	8	Baltimore County
Benjamin Kramer	19	Montgomery County
Clarence Lam	12	Baltimore and Howard Counties
Susan Lee	16	Montgomery County
Cory McCary	45	Baltimore City
Thomas Miller Jr.	27	Calvert & Prince George's
Shirley Nathan-Pulliam	44	Baltimore City
Obie Patterson	26	Prince George's County
Douglas Peters	23	Prince George's County
Paul Pinsky	22	Prince George's County
Justin Ready	5	Baltimore & Carroll Counties
Edward Reilly	33	Anne Arundel County
Jim Rosapepe	21	Anne Arundel & Prince George's County
Johnny Ray Salling	6	Baltimore County
Andrew Serafini	2	Washington County
Bryan Simonaire	31	Anne Arundel County
William Smith	20	Montgomery County
Jeff Waldstreicher	18	Montgomery County
Mary Washington	43	Baltimore City
Chris West	42	Baltimore County
Ronald Young	3	Fredick & Washington County
Bobby Zirkin	11	Baltimore County
Craig Zucker	14	Montgomery County

## House of Delegates

Delegate	Dist.	Jurisdiction
Gabriel Acevero	39	Montgomery County
Christopher Adams	37B	Caroline, Dorchester, Talbot & Wicomico Counties
Curt Anderson	43	Baltimore City
Carl Anderton Jr.	38B	Wicomico & Worcester Counties
Steve Arentz	36	Caroline, Cecil, Kent, & Queen Anne's Counties
Lauren Arikan	7	Baltimore & Harford Counties
Dalya Attar	41	Baltimore City
Vanessa Atterbeary	13	Howard County
Heather Bagnall	33	Anne Arundel County
Ben Barnes	21	Anne Arundel & Prince George's Counties
Darryl Barnes	25	Prince George's County
Erek Barron	24	Prince George's County
J. Sandy Bartlett	32	Anne Arundel County
Kumar Barve	17	Montgomery County
Wendell Beitzel	1A	Garrett & Allegany County
Harry Bhandari	8	Baltimore County
Joseph Botler III	8	Baltimore County
Regina Boyce	43	Baltimore City
Talmdge Branch	45	Baltimore City
Tony Bridges	41	Baltimore City
Benjamin Brooks	10	Baltimore County
Jason Buckel	1B	Allegany County
Alice Cain	30A	Anne Arundel County
Jon Cardin	11	Baltimore County
Edward "Ned" Carey	31A	Anne Arundel County
Alfred Carr Jr.	18	Montgomery County
Andrew Cassilly	35B	Harford County
Mark Chang	32	Anne Arundel County
Lorig Charkoudian	20	Montgomery County
Nick Charles	25	Prince George's County
Brian Chisholm	31B	Anne Arundel County
Barrie Ciliberti	4	Carroll & Frederick Counties
Jerry Clerk	29C	Calvert & St. Mary's Counties
Luke Clippinger	46	Baltimore City
Frank Conaway Jr.	40	Baltimore City
Paul Corderman	2B	Washington County
Dan Cox	4	Carroll & Frederick Counties
Brian Crosby	29B	St. Mary's County
Charlotte Crutchfield	19	Montgomery County
Bonnie Cullison	19	Montgomery County
Dereck Davis	25	Prince George's County
Debra Davis	28	Charles County
Kathleen Dumais	15	Montgomery County
Eric Ebersole	12	Baltimore & Howard County
Jessica Feldmark	12	Baltimore & Howard County
Diana Fennell	47A	Prince George's County
Mark Fisher	27C	Calvert County
Wanika Fisher	47B	Prince George's County
Catherine M. Forbes	42A	Baltimore County
David Fraser-Hidalgo	15	Montgomery County
Jeff Ghrist	36	Caroline, Cecil, Kent, & Queen Anne's Counties
James "Jim" Gilchrist	17	Montgomery County
Cheryl Glenn	45	Baltimore City



## House of Delegates (continued)

Delegate	Dist.	Jurisdiction
Robin Grammer	6	Baltimore County
Michele Guyton	42B	Baltimore County
Andrea Harrison	24	Prince George's County
Wayne Hartman	38C	Wicomico & Worcester Counties
Keith Haynes	44A	Baltimore City
Anne Healey	22	Prince George's County
Shaneka Henson	30A	Anne Arundel County
Shelly Hettleman	11	Baltimore County
Terri Hill	12	Baltimore & Howard County
Marvin Holems Jr.	23B	Prince George's County
Kevin Homberger	35A	Harford County
Seth Howard	30B	Anne Arundel County
Rick Impallaria	7	Baltimore & Harford Counties
Julian Ivey	47A	Prince George's County
Michael A. Jackson	27B	Calvert & Prince George's Counties
Carl Jackson	8	Baltimore
Jay Jacobs	36	Caroline, Cecil, Kent, & Queen Anne's Counties
Jay Jalisi	10	Baltimore County
Steve Johnson	34A	Cecil & Harford Counties
Adrienne Jones	10	Baltimore County
Anne Kaiser	14	Montgomery County
Ariana Kelly	16	Montgomery County
Ken Kerr	3B	Frederick & Washington County
Nicholaus Kipke	31B	Anne Arundel County
Trent Kittleman	9A	Howard County
Marc Korman	16	Montgomery County
Susan Krebs	5	Baltimore & Carroll Counties
Carol Krimm	3A	Frederick County
Mary Lehman	21	Anne Arundel & Prince George's Counties
Jazz Lewis	24	Prince George's County
Robbyn Lewis	46	Baltimore City
Brooke Elizabeth Lierman	46	Baltimore City
Mary Ann Lisanti	34A	Cecil & Harford Counties
Bob Long	6	Baltimore County
Lesley Lopez	39	Montgomery County
Sara Love	16	Montgomery County
Eric Luedtke	14	Montgomery County
Michael Malone	33	Anne Arundel County
Nino Mangione	42B	Baltimore County
Johnny Mautz	37B	Caroline, Dorchester, Talbot & Wicomico Counties
Susan McComas	34B	Cecil County
Mike McKay	1C	Allegany & Washington County
Maggie McIntosh	43	Baltimore City
Ric Metzgar	6	Baltimore County
Warren Miller	9A	Howard County

Delegate	Dist.	Jurisdiction
David Moon	20	Montgomery County
Matt Morgan	29A	Charles & St. Mary's Counties
Nick Mosby	40	Baltimore City
Charles Otto	38A	Somerset & Wicomico Counties
Julie Palakovich Carr	17	Montgomery County
Neil Parrott	2A	Washington County
Edith Patterson	28	Charles County
Joseline Pena-Melnyk	21	Anne Arundel & Prince George's Counties
Shane Pendergrass	13	Howard County
Jesse Pippy	4	Carroll & Frederick Counties
Elizabeth Proctor	27A	Calvert & Prince George's Counties
Lily Qi	15	Montgomery County
Pamela Queen	14	Montgomery County
Teresa Reilly	35B	Harford County
Kirill Reznik	39	Montgomery County
Mike Rogers	32	Anne Arundel County
April Rose	5	Baltimore & Carroll Counties
Samuel Rosenberg	41	Baltimore City
Sid Saab	33	Anne Arundel County
Sheree Sample-Hughes	37A	Dorchester & Wicomico Counties
Emily Shetty	18	Montgomery County
Haven Shoemaker	5	Baltimore & Carroll Counties
Stephanie Smith	45	Baltimore City
Jared Solomon	18	Montgomery County
Dana Stein	11	Baltimore County
Vaughn Stewart	19	Montgomery County
Charles Sydnor III	44B	Baltimore City
Kathy Szeliga	7	Baltimore & Harford Counties
Jen Terrasa	13	Howard County
Veronica Turner	26	Prince George's County
Kris Valderrama	26	Prince George's County
Geraldine Valentino-Smith	23A	Prince George's County
Jay Walker	26	Prince George's County
Alonzo Washington	22	Prince George's County
Ron Watson	23B	Prince George's County
Courtney Watson	9B	Carroll County
Melissa Wells	40	Baltimore City
Jheanelle Wilkins	20	Montgomery County
C.T. Wilson	28	Charles County
William Wivell	2A	Washington County
Karen Lewis Young	3A	Frederick County
Pat Young	44B	Baltimore City
Nicole Williams	22	Prince George's County

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# Exelon and State of Maryland Look to Resolve Water Quality Certification Dispute

BY PAUL W. SMAIL

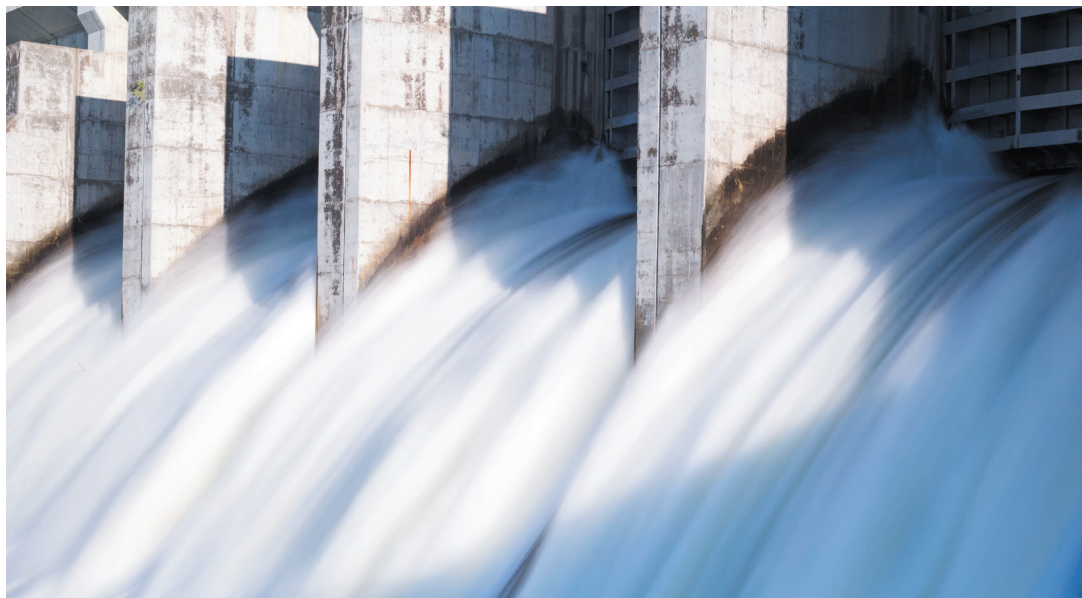
*Exelon Generation Company, LLC ("Exelon") and the State of Maryland recently entered into a multimillion-dollar settlement agreement to resolve federal and State litigation, along with two administrative actions, stemming from the State's Water Quality Certification for the Conowingo Hydroelectric Project.*

The Water Quality Certification ("Certification") was one of the final outstanding items in the relicensing process for the Conowingo Project, which Exelon initiated over a decade ago. Exelon was required to request the Certification pursuant to Section 401 of the Clean Water Act from states adjacent to the Project where its activity may result in a "discharge" to state waters. The goal of this provision in the Clean Water Act is to ensure that operation of the Project, or any federally licensed activity, will not harm state water quality. Maryland issued the Certification on April 27, 2018.

Among other things, the primary issue contested by Exelon was a requirement in the Certification that the corporation take responsibility for downstream water quality impacts resulting from nutrients and sediment released by the Conowingo Dam under certain environmental conditions.

When Conowingo Dam came online in 1928, neither the Clean Water Act nor the Chesapeake Bay TMDL could have been contemplated by its designers or constructors. For decades the dam trapped much of the sediment and nutrient pollution carried

CONTINUED ON PAGE 23



## Chapter 12 of the United States Bankruptcy Code:

### The Tax Benefits - Promoting the Likelihood of a More Successful Reorganization of Family Farms and Family Fishing Operations

BY BUD STEPHEN TAYMAN

*A version of this article was originally published in the March, 2018 Edition of the MSBA Bar Bulletin. It has been expanded to include additional tax benefits and is re-published here.*

Chapter 12 of the United States Bankruptcy Code (the "Code") was established to help family farmers and family fishermen in economic difficulty reorganize their debts without losing their farms or commercial fishing operations. Chapter 12 offers unique bankruptcy relief, not available under any other Chapter of the Code. It contains the best parts of Chapter 13 and Chapter 11 resulting in a powerful arsenal of debt and asset reorganization tools.

This article focuses on the tax benefits of proceeding under Chapter 12 which impact capital gain tax and transfer and recordation tax respectively.

#### Capital Gain Tax - Code, § 1232(a)

Solely applicable to Chapter 12 and pursuant to Code, § 1232(a), capital gain tax on the sale of assets used in the debtor's farming and fishing operation (collectively, "Farm And Fishing Assets") is treated as a dischargeable, general unsecured debt. General unsecured debts are often payable *pro rata* with the unpaid amount covered by the bankruptcy discharge. Therefore, this benefit is a significant departure from the usual treatment of capital gain taxes in bankruptcy, in which such taxes are often priority taxes, non-dischargeable, and payable in full.

Until October 26, 2017, this

favorable tax treatment was held to apply solely to sales of Farm And Fishing Assets which had taken place *prior to* the filing of the bankruptcy case ("Prepetition"), and not to sales of Farm And Fishing Assets taking place *after* the filing of the bankruptcy case ("Postpetition"). This required capital gain tax from Postpetition sales of Farm And Fishing Assets to be paid in full outside of the bankruptcy case and not administered through the Chapter 12 Plan. This often created a severe financial hardship. In regard to such sales, it appeared that the Code gave a benefit with one hand, and took it back with the other.

As a result, on October 26, 2017, Public Law 115-72,

§1005(a), 131 Stat. 1232. Clarification Of Rule Allowing Discharge To Governmental Claims Arising From The Disposition Of Farm Assets Under Chapter 12 Bankruptcies was enacted into law (the "Postpetition Capital Gain Tax Amendment").

The Postpetition Capital Gain Tax Amendment created Code, § 1232(a) as a new section of the Code, and made *both* Prepetition and Postpetition sales of Farm and Fishing Assets subject to the above-described favorable tax treatment in Chapter 12. The only limitation is that Postpetition sales *must occur prior to entry of the debtor's bankruptcy discharge*.

By including Postpetition sales of Farm And Fishing Assets

to the existing capital gain tax benefits which already existed under Chapter 12, the Postpetition Capital Gain Tax Amendment represented a significant further enhancement of the tax benefits of Chapter 12.

This enables asset downsizing decisions to be made during the pendency of the case without the necessity of paying capital gains taxes in full. This is significant. Particularly in regard to farmland, land sales generally result in a large capital gain due to a low cost basis, by virtue of the fact that prior to the sale, the land had often been held in the family for many years. In turn, the dischargeability of capital gain tax eliminates potentially

CONTINUED ON PAGE 23



# MSBA Ag Law Section Members Well Represented at National Meeting

BY PAUL GOERINGER, EXTENSION LEGAL SPECIALIST, UNIVERSITY OF MARYLAND

The American Agricultural Law Association (AALA) recently held its 40th Annual Agricultural Law Symposium in Washington, D.C. The AALA serves as the premier association for agricultural law and policy professionals. The annual educational symposium offers an opportunity to understand the latest issues impacting the farming community. This year's symposium was the best attended in the association's history. The MSBA's Agriculture Law section was well represented at the symposium.

Members of the MSBA Agriculture Law section presented on issues including bankruptcy, the Clean Water Act, food safety, and intellectual property. Council members Bud Tayman and Brooke Schumm spoke on bankruptcy issues with Kate Masterton moderating the panel. Council member Scott Yager discussed the Supreme Court arguments in *County of Maui, Hawaii v. Hawaii Wildlife Fund*, a case that could expand the reach of the Clean Water Act. Finally, council member Corinne Pouliquen highlights the issues

that ag-tech companies can face protecting intellectual property with council member Jan Berlage, serving as a moderator for the panel. Sarah Everhart highlighted issues with the implementation of the Food Safety Modernization Act's Produce Safety Rule. The section and several section members' firms sponsored a break during the Symposium's pre-conference sessions at the USDA Jefferson Auditorium.

The AALA will be in Kansas City, Missouri, in 2020 and is already seeking proposals for sessions. Many of the

Agriculture Law section members are already considering options for 2020 and considering submitting proposals on developing issues they face in their practices. If you handle an issue that potentially impacts agriculture, consider putting in a proposal and presenting at this event. More details are available at [www.aglaw-assn.org/category/events](http://www.aglaw-assn.org/category/events). ●

**If you haven't renewed your membership, your benefits will expire soon – but it doesn't have to end here.**

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It only takes a few minutes to renew online at [MSBA.ORG/RENEW](http://MSBA.ORG/RENEW)







## Continuing Legal Education Opportunities

Learning & Publications Department:  
Raising the Bar for Education

BY ANDREA TERRY, ESQ.

We're wrapping up 2019 with a sold out Deposition Practice & Procedure training at which young lawyers learned to prepare and depose fact and expert witnesses under the tutelage of some of the state's best litigators, lead by long time program chair Neil Dilloff, Esq. The program materials were excerpted from Dilloff's publication "Civil Pre-trial Practice" a popular litigation guide published for the MSBA

which can be found at <http://bit.ly/2s9VV49MSBA>. Like so many of our volunteers Neil contributes his time and expertise to help fellow attorneys develop and maintain their professional knowledge and skill, and we're so grateful for their commitment.

You may have seen our new registration page for the upcoming 2020 live, webcast and on-de-

mand programs - the schedule is below. This new delivery system will enable you to register for all your accredited programming and buy publications with your MSBA account log-in credentials, rather than needing a separate sign on for CLE purchases as the prior registration platform required. Best wishes for a happy and restful holiday season.



Additional information and online registration available at [msba.inreachce.com](http://msba.inreachce.com)

## UPCOMING LIVE CLE PROGRAMS

Registration is open for:

- **Financial Issues in Divorce – Taxation, Valuation, Equalization: Navigating Potential Asset and Income Obstacles in Divorce Negotiations** | January 30, 2020 | Columbia
- **Hot Tips in Family Law** | February 12, 2020 | Columbia

Registration Opening Soon!

- **Adult Guardianships** | February 19, 2020 | Columbia
- **Basic Income and Estate Tax Planning** | February 25, 2020 | Columbia
- **20 Hour Child Access Mediation Training** | April 21-23, 2020 | Columbia
- **2020 Employment Law Institute** | April 29, 2020 | Columbia
- **2020 Advanced Business Law Institute** | April 30, 2020 | Columbia
- **2020 Hot Tips in Workers' Compensation** | May 14, 2020 | Columbia
- **2020 Advanced Estate Planning Institute** | May 19, 2020 | Columbia



Additional information and online registration available at [www.msba.org/calendar](http://www.msba.org/calendar)

## NEW ONLINE, ON-DEMAND

- **Family Practice Update** - presented live on August 22, 2019
- **2019 Handling Drinking and Driving Cases in Maryland** - presented live August 28, 2019
- **How to Conduct an Effective Workplace Investigation** - presented live October 3, 2019
- **Nuts and Bolts of Medicaid** - presented live October 10, 2019

NEW & RECENT PUBLICATION UPDATES  
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**Maryland Divorce & Separation Law, Tenth Edition**—The NEW Tenth Edition of this definitive work is the Family Law practitioner's comprehensive reference book and guide on divorce and separation law in Maryland. The book sets forth the legal principles and procedures for handling family law actions, including divorce, separation, child custody, child support, adoption and paternity matters, from the initial contact with a potential client through appeal. Updated by expert practitioners, it provides tips and forms and is an easy-to-follow guide on Family Law.

**Workers' Compensation Manual, Nineteenth Edition**—The *Workers' Compensation Manual* has been the authoritative workers' compensation reference for Maryland attorneys for more than three decades. The text provides clear and concise explanations of substantive law, while also emphasizing practical advice for lawyers at every stage of representation. The new 19th Edition brings this Manual up to date with all of the most relevant development in workers' compensation law through September 2015 including current benefit amounts and helpful accident rate charts.

**Civil Practice & Procedure in the District Court of Maryland, 2019 Edition**—This new, updated book, published with the input and review of the District Court itself, provides the "nuts and bolts" for handling all aspects of a civil case in District Court. It is a handy, easy-to-follow guide for relatively new, experienced and all who practice in the District Court.

CONTINUED ON PAGE 19

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# Easy Tips to Stay Active in the Winter

BY LISA CAPLAN, LCSW-C

It can be difficult to stay active in the winter. It's cold outside and the last thing you want to do is leave the warmth and comfort of your home to go workout. Getting moving during the winter months is great for your body and your mood. Staying active decreases stress, increases energy, reduces the winter blues, and can help you sleep at night, as well as provide many other health benefits. So, no more excuses. It's time to get moving! All it takes is a little "thinking outside of the box" and being creative.

**1 Be safe.** Make sure you check with your doctor before starting an exercise program.

**2 Take the stairs.** This is an easy way to incorporate exercise into your day.

**3 Initiate a step challenge** at your firm, among friends, or family. This is a fun way to encourage everyone to keep moving.

**4 Find a buddy.** We all need motivation and exercising with someone else helps you stick to your plan. You also don't want to let your buddy down because they are relying on you.

**5 Plan a weekly walk at your work.** Put it on the calendar and include your coworkers. This is a great way to increase morale, connect with your coworkers, and stay healthy.

**6 Walk the mall.** Leave your wallet at home, put on your tennis shoes, and use the mall as an indoor track. Some malls accommodate walkers before stores open in the mornings.

**7 Think of exercise as something you incorporate into your entire day.** For example, parking farther away, taking the stairs, vacuuming. Build it in wherever you can each day.

**8 Sign up for a walk, run, bike ride or triathlon** for the Spring. This will encourage you to train for the event.

**9 Community centers** are a great place to look for something new to try like yoga, dance, boot camp, etc., and can be relatively inexpensive.

**10 Join an indoor pool.** Swimming is a great form of low-impact exercise. You can also run or walk in the water, which both offer great resistance without the impact.

**11 Create a home gym.** Fill your gym with safe, easy to use equipment. To keep your costs down, look for gently used equipment. There are great DVDs, YouTube videos, as well as fitness shows you can watch. Even the MSBA has joined into the fitness video craze - you can find free, short videos on our YouTube Channel: [www.youtube.com/MDStateBar](http://www.youtube.com/MDStateBar).

**12 Get outdoors.** Whether you like to run, walk, or enjoy winter sports, getting outside in the fresh air is a wonderful way to be active and enjoy the outdoors. Don't forget to dress appropriately. Dressing in layers works really well.

**13 Try something new** that you have always wanted to try, like ice skating, indoor rock climbing, or a new class.

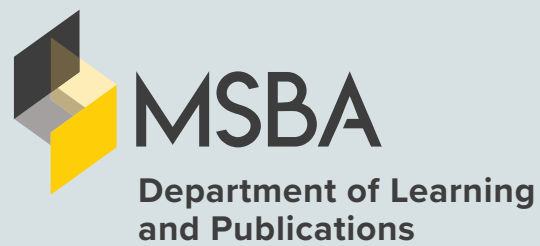
**14 Whatever you decide to do, just keep moving.** Doing small amounts of exercise throughout the day is great for boosting your mood, and it all adds up to a healthier you!



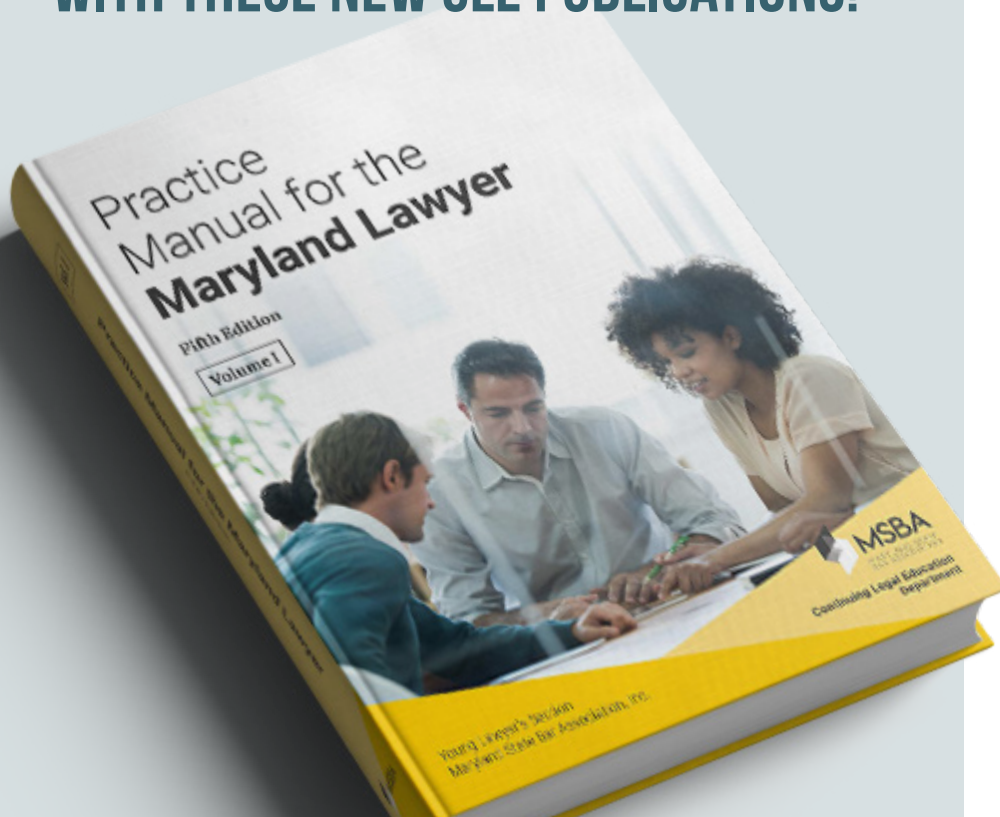
For assistance, please contact the Lawyer Assistance Program for **free, confidential counseling**. We have a network of counselors throughout Maryland. Jim Quinn, Director, (443) 703-3041, [jim@msba.org](mailto:jim@msba.org); Lisa Caplan, LCSW-C, Associate Director, (443) 703-3042, [lisa@msba.org](mailto:lisa@msba.org). Toll Free confidential line 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. In her free time she enjoys spending time with family and friends, paddle boarding, sailing, rock climbing and doing triathlons.*

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Stacie E. Tobin

**Venable LLP** is pleased to announce that **Stacie E. Tobin**, a partner in the Commercial Litigation Practice, has been named partner-in-charge of the Baltimore office. Ms. Tobin brings extensive litigation experience spanning a diverse range of matters and has tried dozens of cases to verdict while serving as first-chair counsel or co-counsel before federal and state courts across the United States. She represents companies, manufacturers, and financial services clients as part of her commercial litigation practice. She has also counseled heavy equipment manufacturers, automobile and watercraft manufacturers, pharmaceutical companies, and tobacco companies in product liability disputes.



Ricky Adams

**Richard “Ricky” Adams** has joined **O’Byrne Law, LLC** as an associate attorney. His practice is focused in the areas of estate planning, elder law, Medicaid planning, estate, probate & trust administration, adult guardianship, and special needs planning. Ricky is a Board Member for the Baltimore County Provider Council and the Maryland LGBT Chamber of Commerce. He is also a member of numerous organizations, including the Maryland State Bar Association, the Bar Association of Baltimore City, the Baltimore County Bar Association, the National LGBT Bar Association, the LGBTQ Bar Association of Maryland, and the Baltimore Estate Planning Council. Ricky received the Volunteer of the Year Award in 2018 from the Baltimore City Senior Legal Services, was named a Generation J.D. Leadership in Law winner by The Daily Record in 2019, and was named a Super Lawyers Rising Star in Estate Planning and Probate in 2019. He is licensed to practice in Maryland.

**Pessin Katz Law, P.A. (PK Law)** is excited to welcome attorney **Zoe V. Kerasidis** to the firm. Ms. Kerasidis joins the firm as an Associate in the firm’s Wealth Preservation Group. Ms. Kerasidis advises and assists clients in assessing assets and estate planning goals through consultation and drafting of various estate planning documents, such as wills, trusts, powers of attorney and advance directives. She is a licensed Maryland Associate Real Estate Broker and has experience analyzing and advising real estate and title professionals in residential and commercial real estate transactions and residential development companies in analyzing and drafting requisite community association and governance documentation.

Columbia-based **Carney, Kelehan, Bresler, Bennett and Scherr LLP** was ranked among the “Best Law Firms” by U.S. News & World Report magazine and Best Lawyers, the oldest peer-review publication in the legal profession. CarneyKelehan was ranked in Baltimore’s first tier for real estate law and second tier for business organizations law and construction law.

**Maryland Volunteer Lawyers Service (MVLS)**, the largest provider of pro bono civil legal services to low-income Marylanders, today announced the election of three new members to its Board of Directors, including **Namha Edwards, Kamil Ismail and Amy M. McClain**. MVLS’s Board of Directors is responsible for governance and directing the organization’s strategic plan to deliver life changing pro bono legal services to Marylanders with limited income.



Zoe V. Kerasidis



Namha Edwards



Kamil Ismail



Amy M. McClain

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### Access to Justice CONTINUED FROM PAGE 4

centers are typically located in remote areas where there are not many attorneys available in general, least of all those equipped to handle immigration cases. Additionally, internet and telephone access are restricted and very expensive in detention centers, which presents additional logistic difficulties for detained individuals to obtain documents from their home country or even research removal defense options for their case<sup>4</sup>.

To address this issue and lack of representation, many jurisdictions across the United States have created legal defense funds with the goal to assist immigrants in securing counsel for immigration proceedings. The Vera Institute for Justice's Safety and Fairness for Everyone includes 12 cities and counties in eight states — California, Colorado,

Texas, Wisconsin, Illinois, Ohio, Georgia and Maryland and is steadily growing.<sup>5</sup> Fairfax County, Virginia is one of the latest counties to create a legal defense fund and began with \$200,000 earlier this year.<sup>6</sup> In Maryland, there are currently active legal defense funds for immigrants in Baltimore City, Montgomery County and Prince George's County. Safe City Baltimore was created in 2017 in the wake of President Trump's executive

order ramping up ICE raids. The Safe City Baltimore Fund was established by the Open Society Institute Baltimore (OSI) in partnership with the Baltimore City Mayor's Office of Immigrant Affairs (MIMA) and the Vera Institute.<sup>7</sup> Prince George's County and Montgomery County also have some of the largest budgets for immigrant defense funds in the region.<sup>8</sup>

The impetus for legal defense funds is simple— with so much

at stake for individuals and families, the process should be fair. Due process is a key pillar in the American justice system and should apply to everyone on American soil, regardless of immigration status. The Access to Justice Commission is committed to expanding legal defense funds for immigrants throughout Maryland and ensuring that they continue to operate and serve those in need. ●

<sup>1</sup> <https://perma.cc/7J65-CZCM>

<sup>2</sup> <https://www.vera.org/advancing-universal-representation-toolkit/the-case-for-universal-representation-1>

<sup>3</sup> Transactional Records Access Clearinghouse (TRAC), "Who Is Represented in Immigration Court?" figure 1, October 16, 2017, <https://perma.cc/HPX7-GPF6>.

<sup>4</sup> <https://www.vera.org/advancing-universal-representation-toolkit/the-case-for-universal-representation-1>

<sup>5</sup> <https://apnews.com/79811e5eab7c4e3186462d6bdd74c62b>

<sup>6</sup> <https://nextcity.org/daily/entry/the-cities-funding-legal-defense-for-immigrants>

<sup>7</sup> [https://www.osibaltimore.org/annual\\_report/2017-impact-report/safe-city-baltimore-supporting-local-immigrants/](https://www.osibaltimore.org/annual_report/2017-impact-report/safe-city-baltimore-supporting-local-immigrants/)

<sup>8</sup> [https://www.washingtonpost.com/local/md-politics/legal-funding-for-immigrants-in-detention-a-debate-that-divided-this-wealthy-md-suburb-makes-a-return/2019/08/29/6d9ae2bc-c859-11e9-a1fe-ca46e8d573c0\\_story.html](https://www.washingtonpost.com/local/md-politics/legal-funding-for-immigrants-in-detention-a-debate-that-divided-this-wealthy-md-suburb-makes-a-return/2019/08/29/6d9ae2bc-c859-11e9-a1fe-ca46e8d573c0_story.html)



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## Exelon

CONTINUED FROM PAGE 15

by the Susquehanna River and prevented it from reaching the main stem of the Chesapeake Bay. In the mid-1990s, researchers estimated that the three upstream Susquehanna dams, including the Conowingo Dam, were trapping about two percent of the nitrogen (most of the nitrogen is dissolved in the water column), 40 percent of the phosphorus, and 70 percent of the sediment that would have entered the Bay from the Susquehanna River. In other words, while not designed to do so, the Conowingo Dam had inadvertently helped reduce contributions of sediment and phosphorus to the Chesapeake.

Over the decades since its construction, the sediment storage capacity of the reservoir behind the dam gradually declined. According to the 2016 report which presented the findings of the Lower Susquehanna River Watershed Assessment led by the Corps of Engineers and the Maryland Department of the Environment, the Conowingo Dam is now in a state of “dynamic equilibrium,” meaning that it is no longer trapping sediment and associated nutrients over the long term. Thus, during high river flow events, such as major storms, some of that stored sediment is scoured and washed downstream. The phosphorus bound with that sediment in turn feeds algal blooms in the main stem of the Chesapeake Bay. The algae then die and contribute to depressed dissolved oxygen levels in that portion of the Bay which affect aquatic life. Such water quality conditions are primarily what the Chesapeake Bay TMDL was created to address.

It is undisputed that the Conowingo Dam directly affects water quality conditions and aquatic habitat through its presence on the river, such as altering river flow and impeding fish and eel passage. It is also clear that the bulk of the nutrients and sediment flowing down the Susquehanna River originate from non-point sources such as agriculture in Pennsylvania and New York. What remains disputed is the extent to which the operation of the Conowingo Project affects the form and timing of the delivery of the sediments and nutrients trapped behind Conowingo Dam. In the Certification, the State of Maryland attributed impacts to downstream water quality from

sediment and nutrients released through scouring during storm events and required Exelon to reduce nitrogen discharges by six million pounds and phosphorus discharges by 260,000 pounds or pay an annual fee in-lieu at \$17.00 per pound of nitrogen and \$270.00 per pound of phosphorus. Exelon vigorously contested these and other conditions and filed two judicial actions: one in the U.S. District Court for District of Columbia and another in the Circuit Court of Baltimore City. Exelon also filed a “Protective Petition for Reconsideration and Administrative Appeal” with the Maryland Department of the Environment (“the Department”) in which it requested that the Department reconsider and stay its decision to issue the Certification. Two environmental advocacy organizations aggrieved by what they described as shortcomings in the Certification also filed for reconsideration of its terms by the Department. Finally, Exelon filed a Petition for Declaratory Order with the Federal Energy Regulatory Commission (“FERC” or the “Commission”) on February 28, 2019 requesting that the Commission find that the State of Maryland waived its authority to issue the Water Quality Certification based on the recent decision by the United States Court of Appeals for the District of Columbia Circuit in *Hoopa Valley Tribe v. FERC*, 913 F.3d 1099 (D.C. Cir. 2019). In that case, the Court of Appeals held that the withdrawal and resubmittal of section 401 Water Quality Certifications does not avoid waiver under the Clean Water Act which requires that the State must act on the application within one year. 33 U.S.C. § 1341(a)(1). While we can argue whether the operative facts

in *Hoopa Valley* are distinguishable from those here, this last proceeding could have had implications beyond the matter at issue should it have been litigated or appealed, given the current federal Administration’s views on state application of section 401 Water Quality Certifications on federally licensed energy projects such as natural gas pipelines. The enforcement of a hard, one-year deadline for a state to approve or deny a licensee’s application for a Water Quality Certification could result in numerous opportunities for environmental litigation in Maryland and throughout the nation should states start denying certifications for complex projects outright in lieu of a longer-term analysis of a project’s water quality impacts.

Is the Conowingo saga nearing its close - at least for the next fifty years? Stakeholders and members of the public have until January 17, 2020 to weigh in by filing comments with FERC on the settlement agreement. Reply comments are due by January 31, 2020, after which time the license may be issued upon the resolution of any contested issues in the settlement and a finding by the Commission “that the settlement appears to be fair and reasonable and in the public interest.” ●

*Paul W. Smail is the Director of Litigation at the Chesapeake Bay Foundation and a Member of the MSBA’s Energy and Environmental Law Section. The foregoing summary does not constitute legal advice and the views and opinions expressed are those of the author and do not necessarily reflect the official policy or position of the Chesapeake Bay Foundation, Inc.*

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## CLE Publications

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**Practice Manual for the Maryland Lawyer, Fifth Edition**—This first update since the 2012 Fourth Edition brings the Practice Manual up to the minute! The best how-to-guide and fundamental reference on the essentials of Maryland law practice, the Practice Manual is the ultimate practical, nuts and bolts resource. Since 1981 it has served as both a cornerstone for new lawyers who are building real-world know-how and a touchstone for seasoned practitioners who trust its reliable, concise authority. Its two volumes include sixteen chapters covering key practice areas of law, with over 1400 pages of practical information and how-to pointers from experienced, accomplished Maryland practitioners. The publication includes more than 300 forms (there is an option to purchase the book with downloadable forms) to give you a valuable head start on drafting almost every basic practice document.

**Criminal Practice & Procedure in the District Court of Maryland, 2019 Edition**—This new, updated book, published with the help and review of the District Court itself, provides the “nuts and bolts” for handling all aspects of a criminal case in District Court. It is a handy, easy-to-follow guide for practitioners relatively new and experienced and all who practice in the District Court.

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## Chapter 12

CONTINUED FROM PAGE 15

significant debt and promotes the likelihood of a more successful Chapter 12 reorganization.

### Recordation and Transfer Tax - Code, § 1231(a)

Pursuant to Code, § 1231(a), transfer and recordation taxes are not applicable to a sale of any asset requiring the payment of transfer and recordation taxes as long as the sale is made pursuant to the provisions of a confirmed Chapter 12 plan. The most obvious asset involved in this tax benefit is the sale of real property. Unlike the capital gain tax benefit described above, this tax benefit is not unique to Chapter 12 but also applies in Chapter 11 cases, through virtually identical language contained in Code, § 1146(a). The advantages of this tax benefit cannot be overstated. ●

*Bud Stephen Tayman focuses his practice on all aspects of bankruptcy representation in bankruptcy cases filed under chapters 7, 11, 12, and 13. Mr. Tayman is board-certified in both consumer and business bankruptcy law by the American Board of Certification, a Charter Member of the Bankruptcy Bar Association of the District of Maryland, and a sustaining member of the American Bankruptcy Institute. Mr. Tayman is also a member of the Councils of both the Consumer Bankruptcy Section and the Agriculture Law Section of the MSBA. Mr. Tayman maintains offices in Germantown, Maryland and may be reached at btayman@taymanlaw.com.*

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