



The Anne Arundel County BARRISTER

The Newsletter of the Anne Arundel Bar Association

February/March 2009

Dates to remember

March 17

AABA Family Law Committee Meeting
Attorneys' Lounge
Circuit Court for Anne Arundel County
5:00 pm

March 18

AABA Board of Trustees Meeting
Attorneys' Lounge
Circuit Court for Anne Arundel County
5:00 pm

March 20

AABA ADR Committee
49 West St. Cafe
8:30 am

April 8

AABA Estates & Trusts Committee Meeting
Attorneys' Lounge
Circuit Court for Anne Arundel County
8:30 am

April 17

AABA ADR Committee
49 West St. Cafe
8:30 am

May 2

Barristers' Ball & Silent Auction
Chartwell Country Club,
Severna Park



For meeting details, visit
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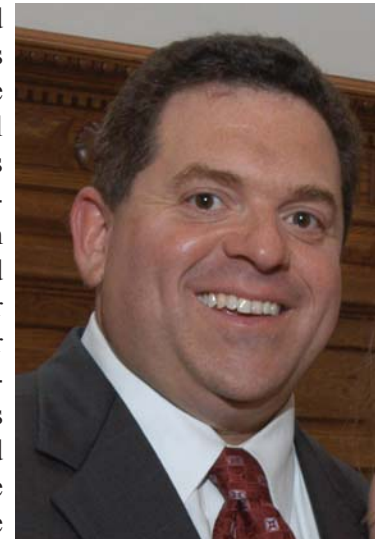
AABA looks to boost community outreach

As President of the Anne Arundel County Bar Association, I was privileged to be asked by the Court of Appeals to move for the admission of a group of new lawyers to the Maryland Bar back in December. As some of you may recall, the attorney who makes the motion also gives a short speech of encouragement and shares some words of wisdom for those about to embark upon their legal careers. It was a nice opportunity to reflect on my 15 years of practice and provide some advice.

One of the items that I discussed with these recent law school graduates was that in practice (unlike in the schools they have attended over the last 19 years) there are no grades or test scores to motivate performance. Lawyers must motivate themselves, aspire to provide the best effort possible, and dedicate themselves to the needs of their clients. I explained to the group that success will be measured by your peers, your clients, and the judges before whom you appear. The consequences for a lack of effort are far greater than getting a "D" on a mid-term. As an attorney, if you fail to provide the time and attention necessary to clients, it could have very real and permanent consequences affecting the lives of the clients you represent. I spoke about the need to always act with civility and professionalism in carrying out your duties as an attorney in an honest, fair, and respectful manner with not only clients but opposing counsel, the court, and other individuals with

whom you may come in contact as a result of the case.

Since I hold the Anne Arundel Bar Association so dear to my heart, I encouraged all the new lawyers to get involved in the MSBA and their local bar associations. As we all know as members of the AABA, in addition to social and networking events, bar associations sponsor continuing legal education programs, as well as organizing and sponsoring charitable and public service



*AABA President
Jonathan P.
Kagan*

President's Message
by Jonathan P. Kagan

projects. The success of these efforts, however, is based on the dedi-

cation and effort of the members to participate in these efforts. As part of this theme, I discussed the importance of finding time to take on pro bono cases throughout their careers. Especially in today's economic climate, the need for pro bono attorneys
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The Barrister

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Practice Notes...

Compiled by Hon. Philip Caroom

Evidence - impeachment of hearsay declarant: Under Rule 5-806, defense counsel should have been permitted to ask detective and non-testifying victim's father if victim had lied about prior sexual encounters, even though counsel lacked extrinsic evidence of this. *Taylor v. State*, - Md. App. - (1/5/09).

Evidence - prior testimony of unavailable witness & discovery violation: Facts- State committed Brady violation when, before first trial, it learned one eyewitness was legally-blind, but did not disclose this. Before new trial granted for this violation, the witness died and State offered prior testimony at new trial. Holding- Strictly applying Rule 5-804(b)(1), CA holds prior testimony admissible as counsel had "opportunity and similar motive" for cross-examination as time of

offense was dark and counsel knew witness had other health issues and medication. *Williams v. State*, - Md. - (12/24/08).

Crimes - vacant "dwelling"- burglary statutes: Overruling *Poff v. State*, 4 Md.App. 186 (1968), CA here holds that an apartment which was occupied two weeks earlier and would be re-rented a few days later still was a "dwelling" within burglary definition, based on owner's intent. *McKenzie v. State*, - Md. - (12/30/08).

Evidence - warrantless searches - "no trespassing" signs & door knocks: Affirming the CSA, the Ca holds that police properly could come up open driveway, despite "no trespass" sign inside fence, to knock on door. When defendant's wife answered door and consented, warrantless search of defendant's garage and rental car was proper. *Jones v. State*, - Md. - (12/23/08).

All bar association members are invited to contribute Practice Notes as to any legal points or information which might be useful to other attorneys. These should be sent to: Attn.- Hon. Philip Caroom, Court House, P.O. Box 2395, Annapolis, Md. 21404 or by email to ctcaro44@aaccounty.org. □



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Trends in technology right here at home

by Kelly Kenney, AABA Barrister Committee

E-learning, E-shopping, E-dating ... it seems like almost anything can be done electronically these days. "E" trends abound in the legal world too. These modern conveniences make life easier (sometimes) and can (but not always) lead to the use of less paper.

After Anne Arundel County was chosen to be the pilot for an e-filing program in the state, the Circuit Court endeavored on a lengthy testing process. Although the conclusion was that e-filing was not feasible for the time being, it will probably be a reality in state courts some time in the future. It already is for those who practice in the federal courts.

For now in Circuit Court, judges may allow electronic filing on an ad hoc basis. In his specially set cases, Judge Paul Hackner allows pleadings to be filed by email, and he

often sends PDF versions of signed orders to counsel. He and his staff also communicate by email with the attorneys in those cases, and most of his criminal case scheduling is done exclusively by email.

The Circuit Court began accepting electronic violations of probation (E-VOP's) about three years ago. Each chambers has a separate E-VOP email address and probation agents send violation reports directly to it. This system has made the process more efficient because the VOP action is initiated much sooner than it was with paper filing.

The criminal bar can expect to see E-PSI's (Presentence Investigation reports) sometime soon. If approved by the bench, these reports will be sent electronically by Parole and Probation to the court, State's Attorneys and defense attorneys. This process will not only allow the PSI's to reach all parties more quickly, it should cut down on copying costs for Parole and Probation. The State's Attorneys Office also has a new "E" trend – it just began providing discovery in electronic form to defense counsel.

On the civil side of things, "E-discovery" now commonly refers to the discovery of "electronically stored information" ("ESI"). ESI was added to the scope of discoverable

The criminal bar can expect to see E-PSI's (Presentence Investigation reports) sometime soon.

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President's Message...

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The AABA is going to participate this year in the Homeless Resource Day on Sat., March 28, at Annapolis Middle School.

is rising in all areas. There are a growing number of individuals and families that severely need legal advice but are unable to afford the services of an attorney. Pro bono opportunities are of great value to new lawyers who are able to obtain some training in areas such as family law, guardianships, special education, domestic violence and foreclosures to name a few, whereby lawyers can receive free training in particular areas and will be given pro bono cases to handle. The programs are set up whereby an attorney would get a mentor to assist in the handling of such cases.

As part of the AABA's efforts this year to increase pro bono involvement as well as our community outreach, we are exploring new programs in which we need the assistance of our members to make it a success. The AABA is going to participate this year in the Homeless Resource Day on Sat., March 28, at Annapolis Middle School. This event started last year and is sponsored by Anne Arundel County Department of Social Services.

It provides essential goods and support services to those who attend. Last year the program was very successful with more than 60 organizations attending and providing valuable necessities and personal services to homeless individuals and families. Joan Bellistri, the Circuit Court Librarian, who is on the Pro Bono Committee this year, is assisting in organizing lawyers to help staff a table at the event to offer some legal advice and address any legal issues attendees may have or at least provide additional information on where these people obtain further free legal advice. If you are interested, please contact Joan or Fran Czajka and we will get you involved.

If you are unavailable for the Homeless Resource Day, the AABA's Pro Bono Committee, in conjunction with the Law Day Committee, is looking at developing a "Lawyers in the Library"

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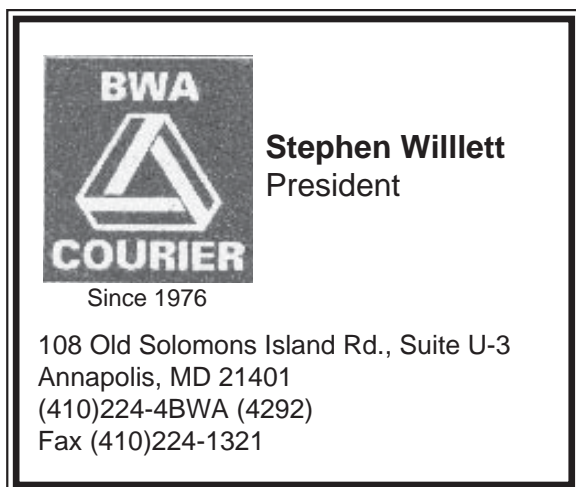
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President's Message...

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Program similar to the one established by the Howard County Bar Association. Under this program, lawyers would hold "office hours" at the Circuit Court Library and members of the public could come to the Library during those hours and receive free limited legal advice. The Howard County program has developed a limited retainer agreement which is signed by the client prior to receiving any advice. The goal is to try to set up the program for the week of Law Day which is the week of April 27, 2009 (Law Day is on Friday, May 1). If the program is successful, the Committee may determine whether it would be worthwhile to set up the program on a regular basis throughout the year as a further service and community outreach effort to the public to assist with providing legal services to those who cannot afford it. If this program interests you, please contact Joan, Fran, or **Gloria Wilson Shelton** who is Chair of the Community Services Division, as well as the Law Day activities.

We hear everyday in the media how times are tight and some of us may be experiencing that impact in our own practices; however, it is more important than ever because of the greater need to try to find the time to give back to the profession. Thank you to the many attorneys who participate. ■

AABA's Lechowicz Award nominations being accepted

Honors professionalism and civility

The Anne Arundel Bar Association is soliciting nominations from the membership for the Edwin A. Lechowicz Memorial Award. This award, presented in memory of AABA Past President (1985) Ed Lechowicz, will recognize a member of the Association who exemplifies the highest standards of professionalism and civility in the practice of law.

Nominees should demonstrate the following attributes: they should (1) actively promote the legal profession through involvement with the Bar Association; (2) be effective and determined advocates for their clients; (3) be courteous and professional in advancing their clients' cause and in dealings with others; (4) be acknowledged for competence in the field(s) of law in which they practice; (5) be well-prepared for appearances before the court or administrative tribunals;

and communicate effectively and professionally with opposing counsel.

Nominations should be sent to the committee chair, P. Tyson Bennett, at 170 Jennifer Road, Suite 245, Annapolis, MD 21401 (Fax 410-573-1171). Nominations should be received by May 1, 2009. The award will be presented at this year's annual meeting of the Bar Association. ■

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The Cold Stove League

With Spring in the air, I decided to devote some space to the baseball off-season. It's called the Hot Stove League, and I'm not sure why. First off, the last time folks did anything around a hot stove was during the Truman administration. Second off, since nobody ever switched teams ever during that time, I don't know what people would really discuss during the offseason. How Ralph Kiner's trick knee was treating him?

Anyway, even though there is a lot more player movement and teams change complexion more than my face at 14, there ironically isn't that much to discuss this off-

season either. Put simply, the Yankees bought everyone. At least everyone who wasn't currently under contract and any decent.

Now I know a lot of people will cry Evil Empire and all that stuff, and as an Orioles fan, I sympathize. Even if the O's were a marginally competent organization, there's Baltimore money and there's New York money. I'm sure teams that have good players that the Yankees would want are even angrier. Personally, I can't find a reason to hate the Yankees. The system stinks, but that's not the Yankees fault.

In any event, so far they have bought

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Even if the O's were a marginally competent organization, there's Baltimore money and there's New York money.

THE WHEELHOUSE

*Sports Commentary by
Jonathan Pasterick*

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The Cold Stove League...

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C.C. Sabathia, A.J. Burnett, and Mark Teixeira (they're still finding a way to turn his first name into initials). And yet, somehow, they'll find a way to not win the World Series. There was some talk of the Yankees simply buying the Tampa Bay Rays, but Bud Selig finally put his foot down and said that somehow that wasn't allowed. So the Yankees will have to wait a few years until all the Rays' contracts are up to buy them. Word is they are focusing first and foremost on B.J. Upton and J.P. Howell, then players with full first names after that.



Pasterick

I suppose the "big news" from the off-

season is Joe Torre's lurid new book about the Yankees. In it, he allegedly said that Alex Rodriguez is a phony choke artist and David Wells is a jerk and George Steinbrenner meddled too much. I don't know what the title of the book is, and I don't intend to read it, but if one of the finalists for the title wasn't "Things Everyone Has Known for a Decade," there should be some truth-in-advertising investigation.

Torre is catching some flack for allegedly airing clubhouse confidences, which is some sort of baseball no-no. But let's be honest, if the whole book is more or less the same dirty secrets as those, the book could have been written by any one of us, and the only difference would be a libel suit. I just hope A-Rod's feelings are hurt badly enough that I can get him at the #3 spot in my fantasy draft. ▣

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The latest criminal plea and sentencing stats

Snapshot of the 2007 Maryland Commission on Sentencing Report

Maryland circuit court criminal cases state-wide are closed with guilty pleas 94.3 percent of the time, according to the 2007 report of Maryland's sentencing guidelines commission. This should come as no surprise to local criminal attorneys.

But some other statistics from the Commission's recently-published report may raise eyebrows: ABA-binding pleas now have risen to 52.9% of all criminal cases.

But the approach most likely to result in a sentence below the sentencing guidelines range is a guilty plea with no agreement. From two most recent years' data, no-agreement sentences fell below the guidelines an averaged 42% of the time, while plea-agreement sentences fell below the guidelines only about 10% of the time.

Counsel may speculate whether these differences result from the bargains' benefit in harder cases, from the pleas' ease with less culpable clients, or from the purely-contrite presentation of the bargainless defendant. ■

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Trends in technology...

Continued from page 3

Companies have had to formulate new preservation and retrieval protocols for electronic records.

information in the Federal Rules in December 2006 and in the Maryland Rules as of January 1, 2008. This has led to “E-preservation”, or the requirement to retain electronic information for litigation. The new rules have not only had a huge impact on lawyers, but also on entities involved in litigation. Companies have had to formulate new preservation and retrieval protocols for electronic records. It is one thing to retain paper, but retrieving electronic information has raised some issues: e-mail systems that routinely delete messages may need to be adjusted for longer retention periods or archiving; retrieval of text or blackberry messages, which are often in the hands of a third party (the wireless provider), is difficult; some discoverable information may be

on an employee’s home computer. The list of issues could go on and on.

Could “E-service” be a possible wave of the future? It is in other countries. An Australian court just recently ruled that defendants could be served through the social networking site Facebook. Certainly, in this day and age, people are more likely to receive notice via an online source than by publication in a newspaper or posting at the courthouse.

Lawyers exchange less paper and more emails, blackberry messages, and PDF files. Likely many already exchange discovery electronically. This article just skims the surface of changes in an “E” world that will constantly evolve. Who knows what might be in store for the future? ■

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