



The Anne Arundel County BARRISTER

The Newsletter of the Anne Arundel Bar Association

January 2007

Dates to remember

Jan. 10
AABA Estates & Trusts Meeting
Attorneys' Lounge
Circuit Court for
Anne Arundel County
8:30 am

Jan. 15
**Court Holiday:
Martin Luther King, Jr.**
Court and AABA offices
closed.

Jan. 16
**AABA Family Law
Committee Meeting**
Attorneys' Lounge
Circuit Court for
Anne Arundel County
5:00 pm

Jan. 17
**AABA Board of Trustees
Meeting**
Attorneys' Lounge
Circuit Court for
Anne Arundel County
5:00 pm

Jan. 19
**AABAADR Committee
Meeting**
49 West Street Cafe,
Annapolis
8:30 am

Jan. 31
**AABA CLE: Intellectual
Property**
Attorneys' Lounge
Circuit Court for
Anne Arundel County
5:30 pm



For calendar updates, visit
www.aabar.org

Sugar, ah honey, honey

*You are my candy girl,
And you got me wanting you.
When I kissed you girl,
I knew how sweet a kiss could be.
(I knew how sweet a kiss could be.)
Like the summer sunshine,
Pour your sweetness over me.
(Pour your sweetness over me.)*

Sugar, Sugar
The Archies 1969

Happy New Year! I hope 2007 is a healthy, happy and prosperous year for you and yours. Before we leave 2006 behind, I will put on my Bob Cratchitt accounting cap and give you a brief year end report from the Association.

We operated inside our always balanced budget for the year thanks to the generous and vital support of our sponsors. The Lawyer Referral Service is successful and provides a needed community service. Many insightful and practical Continuing Legal Education (CLE) programs were presented by our members and they were well attended. The creation and coordination of those courses are credited to a great job by Peter Holland and John Gardner. All of our charitable events were successful. Our membership increased. The Barrister is informative and pertinent to the local legal community despite my rambling narratives and pictures of my children. Saul McCormick was nominated and elected as the President-elect, at a

special meeting of the membership held prior to the December 20 Holiday Party.

Fran Czajka, the executive director, is back at the helm. Her little Paulo is doing just fine. He is pure sunshine. Melanie Tucker, the Lawyer Referral Service Coordinator and Denise Hofstedt, the Director of



Communications, did an admirable job of pinch hitting for Fran while she was on maternity leave.

Please remember to thank them both for a job well done when you speak to them.

To recap, it was a good year, and the Association is being well served by its Board of Trustees.

Recently, I had the great honor to move for the admission to the Maryland Bar a group of about 80 lawyers in waiting. The group I addressed, passed the Summer 2006 Bar Exam,

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The Barrister

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Practice Notes...

Compiled by Hon. Philip Caroom

Torts - breach of duty of good faith: The CSA holds that there is no such thing as an independent cause of action for breach of duty of good faith." Instead, this phrase merely refers to interpretation of traditional causes of action, such as breach of contract. *Mount Vernon Properties v. Branch Banking & Trust*, 170 Md. App. 457 (2006).

Family law- advance award of attorney's fees for appeal: The CSA holds that Maryland law permits advance order for appellate counsel fees for a spouse defending her award on appeal. *Ridgeway v. Ridgeway*, 171 Md. App. 373 (2006).

Family law - domestic partners"- visitation: Facts- Two women lived as domestic partners for many years. One legally adopted a child, but the other only acted as "de facto" parent for 5 years. Holding-Although not proving sufficient "exceptional circumstances" to take custody away from fit legal parent, "de facto parent" still is entitled to visitation under case law (*S.F. v. M.D.*, 132 Md. App. 99, at 112 (2000)). *Janice M. v. Margaret K.*, 171 Md. App. 528 (2006).

Immigration - simple drug possession: Reversing many federal precedents, the U.S. Supreme Court here holds (8-1) that a state drug possession conviction is not an aggravated felony" which automatically leads to deportation. *Lopez v. Gonzales*, — U.S. — (12/5/06).

Criminal evidence - traffic arrest - search incident of passengers/containers: Facts- Police

arrested driver for suspended license, then searched her coat pockets finding CDS. This search result was offered as probable cause to search of passenger's clothing, even though passenger already had stepped from car. Holding-Under *Belton* and its progeny, "the whole of the passenger compartment... is subject to search, including any items or containers and the content thereof, belonging to the driver or an occupant regardless of whether he or she has been placed under arrest or is within or has been ordered out of the vehicle." *Purnell v. State*, — Md.App. — (12/4/06).

Criminal procedure- defendant's refusal to provide blood - belated discovery by State: 1) Defendant's refusal to cooperate with blood sample, despite warrant permitting this, was admissible as evidence of guilty knowledge. 2) Facts- After close of time for discovery from State per Rule 4-263(h), FBI agent gave State's Attorney's office a new report, previously unknown. Prosecutor disclosed this new evidence to defense on same day. Holding- No violation of rule occurred and no sanction was required when disclosure was this prompt. (NB: Certiorari has been granted.) *Thomas v. State*, 168 Md. App. 682 (2006).

All bar association members are invited to contribute Practice Notes as to any legal points or information which might be useful to other attorneys. Send them to: Hon. Philip Caroom, Court House, P.O. Box 2395, Annapolis, Md. 21404; or ctcaro44@aaccounty.org



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New year, new legislative season

by Bill Katcef, AABA member

On Wednesday, Jan. 10, 2007, the Maryland General Assembly will begin its 2007 session.

As is the case with the convening of a new legislature, the General Assembly will be a mixture of seasoned veterans and a host of untested rookies. Some returning members will be assuming leadership positions for the first time and some will be moving from the House of Delegates to the State Senate.

Thomas V. "Mike" Miller Jr. will begin his 21st session as President of the Senate. He announced in November that he will not be a candidate for reelection to a 10th term when his current term expires in 2010.

Michael E. Busch will take the gavel for a fifth year as Speaker of the House of Delegates. His position provides Anne Arundel County with significant legislative clout.

With the inauguration of Martin O'Malley as Governor on Jan. 17, the period of divided state government comes to an end. Robert Ehrlich's election four years ago provided Republicans with the hope that a real two party system would finally emerge in Annapolis. Those hopes have been temporarily put on hold as Maryland again demonstrated that it is one of bluest of the blue states by turning out a Republican governor and reducing the number of Republicans in the House and Senate.

Now, what will all that mean to anyone reading this article as well as any other resident of this State? The easy answer is that no one really knows. Reports are that the State will find itself short of earlier expectations with regard to revenues. The failure of Congress to pass many appropriations bills will make it difficult for the states to know how much aid to expect from the federal government.

With all that in mind, what issues will be on the front legislative burners? Will Governor-Elect O'Malley's apparent support for a slot machine bill assure enough Democratic support to get one passed? Will the General Assembly tackle issues pertaining to drivers licenses for those illegally in this country? What about comparative negligence, contested judicial elections and limitations on jury trial prayers from the District Court?

With the influx of new legislators, history might suggest that there is a need for a get acquainted session where can they familiarize themselves with their colleagues, the issues and the legislative pro-

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...as Maryland again demonstrated that it is one of bluest of the blue states by turning out a Republican governor and reducing the number of Republicans in the House and Senate.

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Advocacy in ADR – The zealous lawyer

by Dave Simison, AABA Member

Alternative Dispute Resolution is changing the definition of effective representation. Zealous advocacy of our clients' interests may serve them well in the courtroom, but may actually interfere with obtaining a favorable result in ADR. It is said that the best attorneys keep their clients out of the courtroom. Whether that is true or not, an attorney who knows the growing and continually refining field of ADR is in the best position to advise clients appropriately and effectively, if not "zealously."

Generally, ADR can be viewed as any resolution process that occurs outside the courtroom. Arbitration is probably the oldest form of ADR, or at least the form with which most attorneys are familiar. In Arbitration, facts are submitted to an Arbitrator to make a decision that is either binding or non-binding. The advantage of Arbitration is the speed and informality of the process. Because the arbitrator is a fact-finder, the attorney's role in presenting the facts is crucial. Zealous advocacy has a role in arbitration. Whose facts are accepted can control the outcome — hence the need for a voice, "advocacy."

The attorney's role in mediation, however, is less clear. Even as we speak, the field of mediation is undergoing changes and refinement. Many attorneys fail to appreciate or understand the differences between mediation and arbitration. To confound matters, many "mediators" approach their mediation in much the same way as an arbitrator does, their mediation merely becomes a kinder gentler arbitration. However, understanding the differences between arbitration and me-

diation is crucial to understanding the role of successful legal counsel in the context of mediation.

These days there is general agreement in the mediation community that mediation takes one of three forms, although the lines between them does tend to blur at times. Evaluative mediation is the mediation previously referred to as a "kindler and gentler" form of arbitration. The mediator often hears from each side without formal presentation of "evidence" and then helps the parties achieve a result they find acceptable. In evaluative mediation it is not uncommon for the mediator to assess the facts and based upon the mediator's experience suggest results that approximate the mediator's guess of a trial outcome. In evaluative mediation the mediator's "experience" in the field being mediated is used to offer the parties the mediator's judgment of probable outcome. In evaluative mediation, legal counsel's participation is important to assure that the mediator has all of

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It is said that the best attorneys keep their clients out of the courtroom.

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Member Notes

H. Richard Duden III, an attorney with the law firm of Hyatt & Weber, LLP, has been appointed by Governor Robert L. Ehrlich as the newest member of the State Ethics Commission. Duden's term will last until July 2009.

"All of Dick's associates at the firm are very pleased with his appointment," said Alan Hyatt, managing partner of Hyatt & Weber. "It recognizes the fine legal work he has done and the high standards to which we members of the firm hold ourselves accountable."



Dick Duden

Richard C. Goodwin was elected Vice Chair of the National Conference of the Administrative Judiciary at the Annual Meeting of the American Bar Association in Honolulu, Hawaii in August 2006. In October, he was elected as a representative of the Vice Chairs to the Section Officers Conference of the American Bar Association. Judge Goodwin serves as a U.S. Administrative Law Judge with the U.S. Department of Transportation in Washington, D.C.



Hon. Richard Goodwin

Circuit Court announces new emergency procedure

Effective immediately, the Circuit Court for Anne Arundel County is implementing a new procedure for handling emergency family law matters. As before, Motions for Emergency relief will be accepted for filing in the Civil Clerk's Office every day of the week during normal business hours. However, the Motions for Emergency Relief will be heard on the record before a Master In Chancery only on **Mondays, Wednesdays and Fridays** at 1:30 p.m. Motions for Emergency Relief will no longer be reviewed by the Family Law Administrator or the Family Law Case Administrator prior to being forwarded to the Master for hearing. Any questions regarding this change may be referred to Jennifer Cassel, Family Law Administrator, at 410-222-1448.

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President's Message...

Continued from page 1

Mark your calendars for St. Patrick's Day weekend, March 16-18, destination Hershey, Pa.

cleared the Character Review Committee and were sworn in and licensed on December 13th. After speaking with some of the "world's newest lawyers" I was impressed and made ill at the same time. Some of these "children" were born in the 1980s. All of the candidates I spoke with were respectful, intelligent and seemed to know exactly what type of law that they wanted to practice. At that age, it took me a half hour to decide if Miller Lite "tasted great" or was "less filling." Deciding on a career was simply too taxing.

When addressing the candidates, under the watchful eye of Anne Arundel County's Judge Clayton Greene Jr. and the rest of his red-robed compatriots, I was nervous. I knew I had to come up with something good to say, but all I could think of was Rodney Dangerfield's line from the movie *Back to School*. He said to the graduates in the movie "Look out for number one, and don't step in number two." No, I didn't say it. I told them all something about the Law being noble and lawyers are the guardians of the law and so on. I think they bought it.

Seriously, if you are looking to hire a new attorney, all of the Circuit Court Law Clerks that had not already done so, passed the exam and now have their license. One of the great pleasures of my job at the Circuit Courthouse, is getting to know

and work with the 11 new clerks each year. They are a talented and cohesive group, and there just might be a couple of good softball players in that crew.

Some late-breaking news, which brings honor to our association, is that Dick Duden, of Hyatt & Weber, was appointed by Gov. Robert L. Ehrlich Jr. to the State Ethics Commission. Dick is a member of the AABA Board of Trustees, serves as the Bar's historian, and still hits a decent line drive at the ballpark. Give Dick a big "WAHOOWA" shout out the next time you see him, unless of course, you are in Court where maybe a little golf clap will suffice.

Bar Weekend Preview

On to 2007. Bar Weekend is fast approaching. Mark your calendars for St. Patrick's Day

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Make your Bar Weekend hotel room & Spa reservations *now*

Bar Weekend is set for March 16-18 at the Hotel Hershey in Hershey, Pa. If you or your spouse would like to spend time at the popular Chocolate Spa at the Hotel Hershey -- you should make your reservations **now**. Those Saturday slots fill up fast. At the same time, you can reserve your room at our discounted room rate of \$169. Call the main hotel number to make both kinds of reservations, 717-533-2171

A Bar Weekend brochure with loads of details and conference registration information will be sent to all members in January.

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289 F.SUPP.2D 706 (D. Md. 2003)

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President's Message...

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weekend, March 16-18, destination Hershey, Pa. The Association has reserved rooms at the beautiful Hotel Hershey, an architectural marvel, with a nice indoor pool, a first class spa, and there is that whole chocolate thing. The Bar Weekend Committee has planned several social events and has cast a splendid CLE program.

Professor Byron Warnken of the University of Baltimore School of Law will be the featured presenter. He teaches Criminal Law and Constitutional Criminal Procedure, and is often called upon by the media to comment upon high profile cases. He is known as a tough professor who makes great use of the Socratic method. When I was a first year student in the waning summer of 1988, some were afraid to go to his class. After working for five years post-college, I wasn't sure I was ready to re-enter the academic world. However, there I sat, a first week law student in Warnken's class,

struggling to read a one page handout. My confidence was wavering.

The exercise was simple. Read the fact pattern and identify the various crimes, their elements and possible defenses. Halfway through my reading of the handout, I see a hand shoot up in the air. The hand belongs to a guy named Dave who is sitting right next to me. Professor Warnken smells a rookie mistake and moves in for the kill. But the guy answers all the questions, and identifies all the elements and defenses correctly. Confidence has left the building. I'm thinking, "What did I get myself into? These youngsters are too smart for me." Then I look at the two guys sitting to my left and they are playing Hangman. That is the moment I knew I would survive law school.

I found out firsthand that Professor Warnken is a talented, hard-working instructor that cares about his students and goes out of his way to help them. I think you will enjoy his presentation. So clear the calendar, pack the bags, and prepare for leprechauns, peppermint patties and good times with your colleagues. Life is about to become a little sweeter.

*Pour a little sugar on it yeah,
Pour a little sugar on it honey,
Pour a little sugar on it baby,
I'm gonna make your life so sweet,
yeah, yeah, yeah.*

My good friend Paul said "At least I won the Hangman game." See you in Hershey. ■

Then I look at the two guys sitting to my left and they are playing Hangman. That is the moment I knew I would survive law school.



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Public defenders capture flag football Holiday Bowl title

Pete and Heather Terech teamed up to produce a fun filled charitable event that was billed as the 2006 Holiday Bowl. Four flag football teams competed for the right to be crowned Holiday Bowl champion. The games were played on Saturday Dec.

the players and distributed by Heather to kids who would otherwise go without this year.

On the field, the Terechs were also impressive and led the Public defender's squad to victory in the seven on seven games played on a 60-yard field. Shawn Gaither took home the MVP honors with several long runs and some screen passes for big gainers. Bill Davis played quarterback and Dennis O'Connell, Pete Terech and Sara Woodworth did all of the tackling and blocking. The PD's narrowly defeated a team comprised mostly of Law Clerks and Cohens in the first round. Adam Cohen was stopped on the one-yard line on the last play of the game in what would have been a game tying touchdown. The championship pitted a team consisting of Circuit Courthouse employees, such as Mac McCreary and Brian Andre of the Sheriff's office and Touchdown Lisa Preston of the Civil department. They fought valiantly but fell one touchdown short. Judge Manck's law clerk, Jong Kim stopped Jim Kafchinski short of the goal line on the last drive, and the PD's reigned supreme. A good time was had and a good cause served at the 2006 Holiday Bowl. ■



16 in the balmy late fall weather. Heather Terech organized a donation drive to benefit children committed to the Department of Social Services and Department of Juvenile Services. Hats, gloves, stationary, deodorant and other supplies were donated by

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Advocacy in ADR...

Continued from page 4

the facts before the mediator offers a view of the outcome. In evaluative mediation, there is a role for advocacy even if the toned-down process makes zealous action seem inappropriate.

A second common form of mediation is facilitative mediation. It is said in facilitative mediations the parties “own” the mediation. In facilitative mediation, the solution the parties achieve with the help and guidance of the mediator is the goal — irrespective of the possible or even probable judicial outcome. In facilitative mediation, the mediator guides the conversation of the parties helping to tone down argument and adjust focus on identifying the underlying issues in the dispute to achieve a “win-win.” In facilitative mediation it is recognized that often there is more involved than money. Facilitative mediation aims for a result the parties create — a result that meets their respective interests and needs. Many times interests and needs are non-monetary. Although ignorance is bliss, parties going into facilitative mediation are well-served by their legal counsel when the parties are fully briefed on their legal rights and responsibilities. In facilitative mediation there really is no place for “zealous advocacy,” since the goal is to foster communication and understanding rather than to achieve a monetary outcome. It is inappropriate for a facilitative mediator to lead the parties into a

binding agreement without participation of legal counsel or to suggest outcomes. However, and because of that, legal counsel can relax and need not participate or appear at a facilitative mediation, knowing that any agreement reached by the party is tentative and non-binding until reviewed by legal counsel. The attorney should confirm with the mediator in advance that the mediator will not present the parties with a binding document without benefit of legal counsel. Once the appropriate assurances are provided, the attorney can leave the mediation in the hands of the client, trusting the client will achieve an agreement that meets the client’s needs and interests.

The third common form of mediation is known as transformative mediation. The goal in transformative mediation is to transform the oppositional outlook of the parties. Transformative mediation will often focus on underlying emotions more than facilitative and evaluative mediation. In transformative mediation, the hope and expectation is that the parties will acknowledge the other person, their needs, interests and values and the relationship will transform from one of conflict to one of mutual recognition — the financial outcome becomes irrelevant because the relationship is being cured. Transformative mediations that do not result in a

Continued on page 11

Transformative mediation will often focus on underlying emotions more than facilitative and evaluative mediation.

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Welcome new members

The following applications were approved for membership in the AABA at the September and October Board of Trustees meetings:

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Advocacy in ADR...

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“settlement” can still be seen as successful, if the parties have attained a mutual understanding and respect. In transformative mediation, the role of legal counsel is much the same as in facilitative mediation — the attorney need do nothing more than assure that before the mediation, the client is well versed in their legal rights and responsibilities. The attorney is free to attend the needs of other clients while mediation occurs.

In sum, zealous advocacy has a role only when the outcome is a function of the underlying “facts.” Accordingly, zealous advocacy has a role in arbitration and a lesser role in evaluative mediation. However, when facilitative or transformative mediation is involved, legal counsel is most effective when they provide their client a good briefing of rights and responsibilities in advance of the mediation and then get out of the way thereafter. In the end, it is always legal counsel’s responsibility to learn which type of mediation is being conducted and then to act accordingly. ▣

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Legislative season...

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cess. Perhaps then, after acquiring knowledge of the legislative lay of the land, the legislators can really begin doing the people’s business.

For those of us who live—or at least spend a lot of time—in Annapolis, we’ll notice some of the ancillary signs that the General Assembly is in session. The traffic may seem heavier, parking may be even more difficult to find and the lines at Subway will be almost out the door. But for political junkies, lobbyists and restaurant owners this is the holiday season.

Hopefully, come ninety days from now, and the General Assembly adjourns sine die, we the citizens of this state can say we were well served by the efforts of our elected representatives. ▣

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All Attorneys who practice civil law in the **District Court for Prince George’s County** are invited to meet with judges of the District Court, the Clerk of the District Court, the supervisor of civil cases and other court personnel in order to make suggestions on how our operation may be made more efficient, what deficiencies may exist, and for new ideas to improve the way in which civil cases are currently being handled in Prince George’s County. The meeting will be held at 3:00 pm on Wed., March 7, 2007 in Courtroom 357B, Courthouse, Upper Marlboro.

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