In the 1966 general election, Maryland voters changed the State’s Constitution to enable the creation of the Maryland Court of Special Appeals. The following January, the General Assembly and the Governor began organizing, funding and staffing our state’s intermediate appellate court.

On January 6, 2017, the Court of Special Appeals celebrated the 50th anniversary of its creation at a ceremony in the majestic chambers of the House of Delegates at the State Capitol in Annapolis. It was my great honor to attend this celebration as the representative of the Baltimore County Bar Association.

At the dawn of the 1960’s, America was celebrating a decade of virtually unprecedented peace and prosperity, and was looking forward to more of the same. The hopeful anticipation of our mission to get to the moon, with the technological advances the mission generated, was mitigated by war in Southeast Asia, social and political upheaval and assassinations. A decade that began as the stuff of dreams quickly became very serious indeed.

One hundred years after the abolition of slavery, our country was still struggling with civil rights. We were struggling not only to articulate and practice equality through vehicles such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965, but also to understand and interpret the fundamental civil liberties guaranteed in the Bill of Rights. Eventually, the Supreme Court would be called on to weigh in on these important issues, which today seem so fundamental.

Continued on page 2
Before the Warren Court, Supreme Court jurisprudence only sparingly applied the protections of the first eight Amendments of the Constitution against the powers of the states. The Warren Court would alter Constitutional jurisprudence – and criminal procedure in particular - by applying these protections not only against the powers of the federal government, but also against the police powers of the states. As the Court persisted in this discipline, it crafted landmark decisions such as Brady v. Maryland, Mapp v. Ohio, Miranda v. Arizona, Escobedo v. Illinois, Gideon v. Wainwright, Katz v. United States and Terry v. Ohio.

Because these “new” procedural protections now applied to the police powers of the states and state court proceedings, state courts across the country, including Maryland’s fell under a huge burden of work.

Fortunately, Maryland had leaders in government who recognized the facts on the ground and were able to respond. The work of those visionary leaders would lead to the creation of the intermediate appellate court and eventually a right of appeal from all final judgments of the Maryland’s circuit courts.

Once the groundbreaking Warren Court decisions and their progeny were incorporated and normalized, the Court of Special Appeals began to hear civil appeals in addition to criminal or “special” appeals. The Court’s workload has continued to since its founding. In 2015, the latest year for which numbers are available, the Court of Special Appeals disposed of more than 2,100 cases, and its decisions were upheld by the Court of Appeals more than 98% of the time. In 1966, the Court had only 5 judges: Today there are 15.

Speakers at the event included Chief Judge Peter B. Krauser, Chief Judge of the Court of Appeals Mary Ellen Barbera: Senate President Thomas V. (Mike) Miller, Speaker of the House of Delegates Michael E. Busch, U.S. Representative Steny H. Hoyer and Governor Lawrence J. (Larry) Hogan Jr. Judge Patrick L. Woodward served as Master of Ceremonies. In attendance, among many other dignitaries and VIPs, were former Governor Harry R. Hughes and former Attorney General Joseph P. Curran Jr., who were members of the General Assembly at the time the Court of Special Appeals was created.

I greatly appreciated the opportunity to celebrate the first 50 years of the Court of Special Appeals, to listen to the wonderful speakers and to learn a little history along the way.

Rob Thompson, 2016-2017 BCBA President

Banquet Photos Available ...


A VERY SPECIAL THANK YOU to Master Terri Beck Myles Friedman & Arnie Hokofsky for their combined photographic talents in preserving this special evening for us. Feel free to download, print and share any photos.
Calendar of Events

February 2017

7  Condemnation and Eminent Domain, Noon, Grand Jury Room
8  New Admittees Swearing-In Ceremony, 4 p.m., Courtroom TBD
8  Lawyer in the Lobby, Free Walk-in Clinic, 4:30-6:30 p.m.
   Volunteers: Brady Locher, Richard Lynas, Larry Polen
8  Running Club, 5:30 p.m., meet at 401 Washington Avenue (lobby)
9  Bench/Bar Committee Meeting, 8 a.m., Judicial Conference Rm 412
9  Cars, Cops & Stops w/Prof. Byron L. Warnken, 5 p.m., Grand Jury Room
14  Executive Council Meeting, 8 a.m., Judicial Conference Room 412
15  Magistrate Panel Discussion w/Magistrates Schenker, Furnari & Weathersbee,
   5:30 p.m., Courtroom 17, County Courts Building, 401 Bosley Avenue
16  Bar Foundation Meeting, 3:30 p.m., Ceremonial Courtroom No. 5
16  Stated Meeting, 4:30 p.m., Ceremonial Courtroom No. 5
20  COURTS & BAR OFFICE CLOSED (Presidents’ Day)
23  Generate More Referrals for Your Practice, Noon, Grand Jury Room
23  Family Law: QUADROS, 5 p.m., Grand Jury Room
28  CLE: Cyber Security, Hacking & Wire Fraud, Noon, Grand Jury Room
28  E&T: ABLE Accounts and Special Needs Planning, 5 p.m., Grand Jury Room

March 2017

3  Young Lawyers Chamber Chat (Criminal Law), Noon, 4th Floor Conf Room
7  Post-conviction Services, Noon, Grand Jury Room
8  Running Club, 5:30 p.m., meet at 401 Washington Avenue (lobby)
9  Bench/Bar Committee Meeting, 8 a.m., Judicial Conference Rm 412
9  Workers’ Comp 101 & Vocational Rehabilitation, Noon, Grand Jury Room
10  Young Lawyers Chamber Chat (Civil & Family Law), Noon
21  E&T: Recent Developments in Estate Administration, 5 p.m.
31  Civics & Law Academy, CCBC Owings Mills

April 2017

2  Young Lawyers Bull & Oyster Roast and Silent Auction, 2-6 p.m.
12  Running Club, 5:30 p.m., meet in Patriot Plaza at Courthouse Fountain
13  Bench/Bar Committee Meeting, 8 a.m., Judicial Conference Rm 412
25  Civility & Advocacy: Not Mutually Exclusive, 5 p.m., Courtroom TBD
26  E&T: Clients with Diminished Capacity, 5 p.m., Grand Jury Room

The Advocate is a monthly publication of the Baltimore County Bar Association informing its members about current events relating to law. Articles do not necessarily reflect the official position of the BCBA and publication does not constitute an endorsement of views expressed.

The contents of advertisements are the responsibility of the advertisers and are not recommendations or endorsements by The Advocate.

Publication deadline: 10th of the month preceding publication.
COURT NOTICES

Circuit Court for Baltimore County

Chambers of
Kathleen Gallogly Cox
Circuit Administrative Judge &
County Administrative Judge

County Courts Building
Towson, Maryland 21204
410-887-6510

The following Judges will serve in the Family Division for six months effective July 1, 2017:

Judge Ruth A. Jakubowski
Judge Michael J. Finifter
Judge Robert E. Cahill, Jr.
Judge H. Patrick Stringer, Jr.
Judge Sherrie R. Bailey
Judge Nancy M. Purpura

The following Judges will serve in the Family Division for six months effective January 1, 2018:

Judge Dennis M. Robinson, Jr.
Judge C. Carey Deeley, Jr.
Judge Vicki Ballou-Watts
Judge Judith C. Enser
Judge Paul J. Hanley
Judge Julie L. Glass

2017 MARYLAND JUDICIAL CONFERENCE

Please be advised that all of the Judges of the State of Maryland will be attending the Maryland Judicial Conference on Monday, June 12 through Wednesday, June 14, 2017 and, therefore, there will be no judges available on those dates.
April 2, 2017 is the Young Lawyers’ Annual Bull & Oyster Roast and Silent Auction held at the American Legion in Towson from 2 to 6 p.m. This is the Young Lawyers biggest fundraising event for the Baltimore County Bar Association’s designated charity for 2016-2017, which is the Women’s Law Center. All proceeds from the Silent Auction benefit the Women’s Law Center. *This year we have a goal to raise $10,000.* We need our members’ help to make this event a huge success.

This year we are doing things a bit differently. Before April 2 we are putting together several baskets, each with a different theme, which will include weekend getaways, wine, Baltimore goodies, etc. These baskets can be bid on through an online auction. We want our members to get an early start on seeing the available items and placing their bids in hopes to win the item. On the day of the Bull & Oyster Roast there will be more items available for bidding.

The online auction website is [http://bcbauction.com/](http://bcbauction.com/). Please check the site frequently for updates.

The Young Lawyers are soliciting donations from law firms and local businesses to either create a themed basket, donate an item to be part of a basket or make a monetary donation so that a committee member may create a basket on behalf of that firm or business.

On the day of the event, we rely on volunteers to help things run smoothly with set up and clean up, the various games and raffles and greeting and checking in guests. If you are interested in making a silent auction donation or being a volunteer, please contact the Young Lawyers Committee Chair Alaina Storie at 410-339-4100 or AStorie@TNSFamilyLaw.com.

Who can resist these smiles?!

Kid-friendly event, making it fun for the entire family!

Wheels and raffle tickets for the “adults!”
Baltimore County Bar Association

SAVE THE DATE

Like us on Facebook & Instagram, Follow us on Twitter "BaltCoBar"

Game at the Yard
Orioles vs. Astros
August 21
1:35 p.m.

Bar Kick Off Party
Green Turtle
September 22
5 p.m.

Ravens Tailgate
October 9
1 p.m.

Pro Bono Volunteer Appreciation Reception & Awards
October 26
6-8 p.m.

Crab Feast
October 27
6 p.m.

Memorial Service
November 17
3:30 p.m.

National Adoption Day
November 19
11 a.m.

Holiday Party
Towson Tavern
December 1
6-8 p.m.

Young Lawyers Holiday Lunch
December 8
12-2 p.m.

Annual Black Tie Banquet
Hunt Valley Inn
January 26, 2017
7 p.m.

Young Lawyers Bull & Oyster Roast
April 2, 2017
2-6 p.m.

Wines Around the World
Notre Dame Prep
April 20, 2017
6-8 p.m.

Law Day Breakfast & Noon Ceremonies
May 1, 2017

Golf Tournament & Beginners' Clinic
June 1, 2017
12 p.m.

Register online!
www.bcba.org
I hope everyone enjoyed the holiday season with family and friends. I send my best wishes for a healthy, happy and prosperous 2017.

The 2017 Miami Midyear Meeting will be held in Miami, Florida, February 1 - 6, 2017 at the Hyatt Regency. The House of Delegates will meet on Monday, February 6, 2017 at 8:30 a.m. The complete Resolutions with Reports Book is available electronically on the ABA's House of Delegates website. Simply click on the resolution number to view the full report. After the meeting, I will provide you with a summary of the actions.

If you have a particular interest in, or an opinion about any of these matters, please let me know, and I will share them with the members of the Maryland delegation to the House.

If you would like to become more involved in any of the Associations' entities, including its various Sections, please contact me.

Best Regards, Barbara Kerr Howe, ABA Maryland State Delegate

BREAKING NEWS .... SAVE THE DATE

96TH ANNUAL BLACK TIE BANQUET
THURSDAY, JANUARY 25, 2018
HUNT VALLEY INN
245 SHAWAN ROAD, HUNT VALLEY, MD

SERVING THOSE WHO SERVED US
A DAY OF SERVICE FOR MARYLAND VETERANS

THE 2017 MSBA LEADERSHIP ACADEMY CLASS PRESENTS:
SERVING THOSE WHO SERVED US: A DAY OF SERVICE FOR
MARYLAND’S VETERANS
Open to attorneys and other Advocates

When
Thursday, March 30, 2017
8:30 a.m. - 5:00 p.m.

Where
University of Baltimore School of Law
Moot Court Courtroom
1401 North Charles Street
Baltimore, MD 21201

More information
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msbaleaders@gmail.com

Receive free legal training on trauma-informed advocacy at a morning symposium and provide needed services to Maryland’s vets at an afternoon expungement clinic!

Welcoming Remarks
Hon. Beverly J. Woodard,
Veterans Treatment Court
Circuit Court for Prince George’s County

Plenary Panel on Trauma-Informed Lawyering for Veterans

Breakout Session 1: The Ins and Outs of Serving Military Clients
Breakout Session 2: Working with Veterans in Maryland's Veterans Treatment Courts
Expungement Training

LUNCH

Afternoon Expungement Clinic
1:30-5:00 p.m.

Volunteer attorneys receive malpractice insurance through MVLS, access to attorney advisors at the Expungement Clinic, and free legal skills training in the morning!

Registration is open now!
Register online at http://www.msbaleaders.com/registration
Committee News

CLE COMMITTEE

February 23, 2017, Noon, Generate More Referrals for Your Practice. Lunch provided by The Growth Coach.


To Be Scheduled, Magical Mystery Tour of the Circuit Court Clerk’s Offices, A walking tour and overview presented by Circuit Court Clerk Julie Ensor.

To Be Scheduled, Where Have All the Assignment Offices Gone? A walking tour of the new location in Mezzanine 08, and brief overview of each office: DCM, Civil, Central and Criminal Assignment.

CRIMINAL LAW COMMITTEE

February 9, 2017, 5 p.m., Cars, Cops & Stops, presented by Prof. Byron L. Warnken

March 7, 2017, 5 p.m., Post-Conviction Services: Home Detention, SCRAM Monitoring, Inter-Lock, Re-Entry Programs, Residential Rehabilitation Programs, Bail Bonds, etc. Sponsored Happy Hour at CVP

May 17, 2017, 5 p.m., Administrative Hearings, presented by Neil Jacobs.

FAMILY LAW COMMITTEE


February 23, 2016, 5 p.m., The A-Zs of QDROS. Speaker: John R. Paliga, Esquire, Gordon, Feinblatt LLC.

LAW DAY COMMITTEE

The 14th Amendment: Transforming American Democracy

May 1, 2017, 7:30 a.m., Breakfast at DLA Piper. Speaker: Judge Paul W. Grimm

May 1, 2017, Noon Ceremony & Awards, Ceremonial Courtroom No. 5, Towson

Nominations for the Judith P. Ritchey Award must be submitted by March 1, 2017. Criteria and more information can be found in the Committee Report area of the BCBA website.

LAWYER REFERRAL & INFORMATION SERVICE

Please note that the 2016-2017 Lawyer Referral & Information Service (LRIS) renewal information

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Committee News

is now available. Click here to open and print out the application. If you are a current member, you must renew each year. If you are not a member of LRIS and wish to join, now is a great time! Contact Rachel Ruocco at 410-337-9100 or rachel@bcba.org if you have any questions about LRIS.

**MEMBERSHIP & ADMISSIONS**

February 8, 2017, 4 p.m., *New Admittees’ Swearing In Ceremony*, County Courts Building, Courtroom TBD. Reception immediately following on Mezzanine Bridge & BCBA Executive Offices

**MEMORIAL & RECOGNITION COMMITTEE**

Please notify Doris Barnes at the Bar Office of the passing of any BCBA member. If this information is received in a timely manner, it will be emailed to the members. Thank you.

Those members who will be honored at next year’s service on November 16, 2017, at 3:30 p.m., include:

Judge Christian M. Kahl
Constance K. Putzel

**Negligence, Insurance & WC Committee**

March 9, 2017, 5 p.m., *Workers’ Comp 101 & Vocational Rehabilitation*

May 16, 2017, 5 p.m., *Medical Malpractice Cases/Opening Arguments*

**PROFESSIONALISM COMMITTEE**

This committee will meet on the following dates:

March 21, 2017, 5 p.m., location TBD
April 18, 2017, Noon, conference call
May 16, 2017, 5 p.m., location TBD

February 8, 2017, 4 p.m., *New Admittees’ Swearing In Ceremony*, County Courts Building, Courtroom TBD. Reception immediately following on Mezzanine Bridge & BCBA Executive Offices

April 25, 2017, 5 p.m., * Civility & Advocacy: Not Mutually Exclusive*, Circuit Court for Baltimore County. Reception immediately following.

**PUBLIC AWARENESS & SPEAKERS COMMITTEE**

Civics & Law Academies, 8:30 a.m. - 2 p.m.
March 31, 2017, CCBC Owings Mills

If interested in teaching opportunities next year (2017-18), please email Doris Barnes (doris@bcba.org) and ask to be advised when dates are selected. Prepared presentations are provided for each class.

**YOUNG LAWYERS COMMITTEE**

*Running Club.* We are aiming to have monthly runs the second Wednesday of each month, for anyone who is interested. For the upcoming cold months, meet in the lobby of 401 Washington Avenue (rather than at the courthouse fountain in Patriot Plaza). We recommend that runners bring reflective gear, headlamps, etc.

February 8, 2017, 4 p.m., *New Admittees’ Swearing In Ceremony*, County Courts Building, Courtroom TBD. Reception immediately following on Mezzanine Bridge & BCBA Executive Offices


February 8, 2017, 5:30-7:30 p.m., *Magistrate Panel Discussion: Understanding Expectations of Family Law Practice*, Circuit Court for Baltimore County, County Courts Building, Towson.

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Committee News

March 3, 2017, 12:30 p.m., Chamber Chat w/Judges Cahill & Norman, 4th Floor Judicial Conference Room

March 8, 2017, 5:30 p.m., Running Club, 401 Washington Avenue Lobby. Drinks to follow at Towson Nacho Mama’s.

March 10, 2017, Noon, Chamber Chat w/Judges Cox & Jakubowski, 4th Floor Judicial Conference Room

April 2, 2017, 2-6 p.m., Annual Bull & Oyster Roast, Towson American Legion

April 12, 2017, 5:30 p.m., Running Club, Patriot Plaza. Drinks to follow at Towson Nacho Mama’s.

April 25, 2017, 5 p.m., Civility & Advocacy: Not Mutually Exclusive, Circuit Court for Baltimore County. Reception immediately following.

May 10, 2017, 5:30 p.m., Running Club, Patriot Plaza. Drinks to follow at Towson Nacho Mama’s.

June 21, 2017, 5:30 p.m., Running Club, Patriot Plaza. Drinks to follow at Towson Nacho Mama’s. Note change of week due to MSBA Annual Conference in Ocean City.

Summer Dates for Running Club will continue on the second Wednesday of each month.

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Committee Reports

All Committee Reports, Chair and Vice-Chair contact information, upcoming programs and handouts from those programs already held this year can be found on the website at www.bcba.org.
Mark your calendars.
The BCBA Stated Meetings will be held at 4:30 p.m. in Ceremonial Courtroom No. 5 on Thursday, February 16, 2017; and Thursday, June 22, 2017. The Annual Reception will be held immediately following the June meeting.

What are your photos worth?
What if you woke up tomorrow and they were ALL gone? Take a few minutes to check out this service.

Here is a link to an introduction video (90 sec): https://www.youtube.com/watch?v=izLiqnX5h2o.
And one (3.5 min) to explain the permanent storage concept: https://www.youtube.com/watch?v=K7k-pqLZ92w.

Protect your personal and organization’s photographs forever. Guarantee they will be in a retrievable format 10, 20, 50+ years from today. The “free” services are a gamble not worth taking, since they own your photographs, and can remove them at any time. What would you do if you logged on, only to find them all gone?!
Email forever100plus@gmail.com for more information on how to protect your legacy.
2016 heralded another successful year for the Young Lawyers’ Annual Holiday Party and Luncheon at a new location and with a new recipient of the toy and money donations. On December 8th the Holiday Party was held on the ground floor of the County Courts Building, which offered more space for guests to mix, mingle and enjoy lunch. Court Appointed Special Advocates (CASA) of Baltimore County benefitted from the donations this year. CASA provides court-appointed volunteers who advocate for the well-being of Baltimore County’s abused and neglected children. We were able to raise $690 plus a literal truckload of toys. We were fortunate to have staff members of CASA, including its Executive Director Jennifer Stine, attend the Holiday Party. Everyone was in the holiday spirit, and a few onlookers who were at the courthouse for their scheduled cases made a donation.

Local restaurants were generous with food donations to provide lunch for the Holiday Party guests. This year we received food donations from the Charles Village Pub, Bread and Circuses, Jake’s Deli, Nando’s Peri Peri, Zia’s Café, La Cakerie, Subway, the Rec Room, Kupcakes & Co., PF Changs, 7 West and Café Troia.

The Young Lawyers Committee thanks everyone who attended the Holiday Party – members of the Bench, members of the Bar and courthouse staff – those who were unable to attend but still made a donation, the restaurants that donated lunch and all those who volunteered their time to make this event a success. We look forward to next year’s celebration, and hope to continue the new connection between the Baltimore County Bar Association and CASA.

Anyone interested in learning more about becoming a volunteer Court Appointed Special Advocate to work one-on-one with a child in foster care can email Gwen Farrugia at gfarrugia@casabaltco.org or visit the CASA of Baltimore County website at www.casabalco.org.
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If you are an attorney working on a case that requires the use of independent experts to testify, consult or prepare detailed economic and financial analysis, our Forensic and Valuation Specialists are here to assist.

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“Conduct prejudicial to the administration of justice” is one of the categories of professional misconduct proscribed under Rule 8.4 of the Rules of Professional Conduct (RPC), now found at Maryland Rule 19-308.4. (As of July 1, 2016, the former Maryland Lawyers’ Rules of Professional Conduct have been moved to the newly adopted Title 19, Chapter 300 of the Maryland Rules and renamed as the “Maryland Attorneys’ Rules of Professional Conduct.”) In its disciplinary jurisprudence over the years, the Court of Appeals has interpreted RPC 8.4 (d) to cover a broad spectrum of conduct deemed unacceptable for attorneys in this State.

Although couched as a prohibition against conduct prejudicial to the administration of justice, Rule 8.4 (d) can also be viewed as an affirmation of the responsibility attorneys accept upon taking the oath of admission to conduct themselves with professionalism. The basic requisites of compliance with the rule are derived from the following passage in the Preamble (Rule 19-300.1) to the Rules of Professional Conduct:

As attorney’s conduct should conform to the requirements of the law, both in professional service to clients and in the attorney’s business and personal affairs. An attorney should use the law’s procedures only for legitimate purposes and not to harass or intimidate others. An attorney should demonstrate respect for the legal system and for those who serve it, including judges, other attorneys and public officials. While it is an attorney’s duty, when necessary, to challenge the rectitude of official action, it is also an attorney’s duty to uphold legal process.

The Court of Appeals has regularly recognized that conduct having a negative impact on “the image or the perception of the courts or the legal profession . . . and [conduct] that engenders disrespect for the courts and for the legal profession may be prejudicial to the administration of justice.” Attorney Grievance Commission v. Richardson, 350 Md. 354, 368 (1998). One of the more prominent 8.4 (d) cases discussing the scope of the rule was Attorney Grievance Commission v. Link, 380 Md. 405 (2004). In that opinion, the Court clarified when an attorney’s private conduct should be subject to disciplinary scrutiny within the purview of RPC 8.4 (d). The respondent in Link was charged with violating Rule 8.4 (d) as a result of a contentious verbal exchange with a clerical employee at the Motor Vehicle Administration, during which Link addressed the employee as “Sparky.” The disciplinary hearing judge described Link’s behavior during the interaction as “rude, boorish, insensitive, oppressive and certainly insulting.” While not suggesting in any way that Link’s conduct should be condoned, the Court of Appeals declined to extend Rule 8.4 (d) to cover conduct occurring under circumstances it viewed as outside the practice of law, i.e., “purely private conduct,” unless the “private conduct is criminal or so egregious as to make the harm, or potential harm, flowing from it patent.”

As attorneys, we engage in personal interactions with different people on a daily basis. Many interactions, be they with clients, other attorneys, judges, court personnel or one’s own staff, are directly related to the practice of law and potentially subject to the constraints of Rule 8.4 (d). Each of us, of course, also has a personal life. While purely private interactions may not be subject to review by the Office of Bar Counsel, attorneys should strive to avoid engaging in behavior that may be perceived as “rude” or “boorish.” The ever-broadening use of social media presents other outlets by which attorneys are publicizing their private lives. In the

Continued on page 16
use of social media, attorneys should be mindful of professionalism and refrain from posting inappropriate personal information or commentary that may reflect negatively on the legal profession.

Not surprisingly, most conduct prejudicial to the administration of justice subject to disciplinary review arises within the practice of law and involves an attorney’s action, or inaction, adversely affecting the fair and timely administration of justice in a litigation context. Perhaps no other disciplinary decision illustrates an attorney’s utter disregard for standards of legal professionalism more than Attorney Grievance Commission v. Mixter, 441 Md. 416 (2015). Judge Timothy Doory of the Circuit Court for Baltimore City, assigned as the hearing judge in the disciplinary action against Mixter, found an extensive pattern of abusive and obstructive litigation conduct over many years and many cases that included conducting “discovery and pretrial depositions by bludgeoning his opponents and witnesses with unreasonable demands, frivolous motions and unnecessary acrimony.” The Mixter case has been written about previously in The Advocate, but Judge Doory’s rejection of Mixter’s “zealous representation” defense bears repeating: “Although zealousness is a standard of proper representation, zealousness without the counterbalance of reasonableness amounts to obstreperousness and unfairness.”

The Baltimore County Bar Association is fortunate to have a vast pool of talented and seasoned judges and practitioners who embody the highest standards of dignity, integrity and civility. Hopefully, many of you will be able to attend an upcoming program on April 25, 2017 at which a panel featuring four such individuals (Judges Vicki Ballou-Watts and Keith R. Truffer and attorneys Mary Roby Sanders and Drake C. Zaharris) will be discussing why civility and zealous advocacy are not mutually exclusive. This program, sponsored by the Professionalism and Young Lawyers committees, promises to provide guidance on best professional practices representing the opposite of conduct prejudicial to the administration of justice.

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**Be a Mentor - Make a Difference**

The BCBA Professionalism & Young Lawyers Committees invite experienced BCBA members to serve as mentors to newly admitted attorneys practicing in Baltimore County. Do you have time to talk about your work, discuss day-to-day, lawyering, and other professionalism-related matters? Help give back and help the next generation of attorneys. If you are interested, please email Jill Green at dgreen@ubalt.edu.

Are you a “new-ish” attorney? Get paired with a seasoned attorney for mentorship, advice and networking. This is a great opportunity to make a career long connection with a respected member of the Baltimore County Legal Community. Apply online at [http://www.bcba.org/mentee-application/](http://www.bcba.org/mentee-application/)
THREE GENERATIONS OF HAILES CELEBRATE THE BCBA’S 100TH ANNIVERSARY

This is a discussion between Elmer Haile, the sixth President of the Baltimore County Bar Association, his son, Walter, who was a lawyer, Baltimore County Circuit Court Judge and his grandson, David Haile, a Baltimore County attorney, as witnessed by BCBA member Jeff Scholnick.

ELMER HAILE- I AM SO EXCITED TO BE HERE WITH MY SON AND GRANDSON to talk about the upcoming special anniversary in 2020 of the Baltimore County Bar Association. I am so proud to have a son that would be a judge and grandson who would be successful lawyer.

DAVID- Well, as your grandson, I am proud to say that my grandfather was the sixth President of the BCBA.

ELMER- Thank you. Being elected president of the BCBA was one of the best days of my life. It was almost as great as the day that my son was sworn in as a Circuit Court Judge in Baltimore County. But, let’s not forget that Walter was also President of the BCBA, from 1953-1954.

WALTER- Just like my Dad. Dad, you were quite a Renaissance Man. You were more than just a lawyer. You created the Jeffersonian Newspaper. You published a wonderful little book about Baltimore County in which you described yourself as a ‘lawyer, poet, motorist, writer and journalist.’

ELMER- Scott Offutt, who would later be a Baltimore County Judge, and I had such a good time writing that little book called ‘Baltimore County, Its History, Progress, and Opportunities,’ which we published in 1916. We had a wonderful illustrator and we wrote a short bio of each leader in Baltimore County and then the artist did a caricature of each person that captured their essence while injecting humor into each drawing.

DAVID- I have read that book and it is fabulous! And you can now find it on the internet at https://archive.org/stream/baltimorecountyi00offu#page/n0/mode/1up.

ELMER- The internet. What’s that?

DAVID- Something created by Al Gore.

WALTER- Whose is Al Gore?

DAVID- Never mind. Dad, you were a Judge in the Baltimore County Circuit Court from 1966 until 1983, is that correct?

WALTER- Yes, I was known for starting Court precisely at 9:30 am and for having the thermostat in my courtroom set at
66 degrees so that no one would be able to get too comfortable and fall asleep in my courtroom.

DAVID- Dad, you also had a different approach when it came to writing your decisions, didn’t you?

WALTER- That is correct. As I told the Sunpapers in its’ February 17, 1980 article “Revised Timesheet will try to Track Judges’ Hours In the Courtroom,” I felt that a Judge should not sit back in his chambers away from the public. I wanted to be available, if lawyers needed to talk with me and I wanted to avoid the perception that there was “wheeling and dealing” behind closed doors. So, you could often find me, sitting in my Courtroom, at the bench surrounded by all of my law books, writing a decision.

ELMER- My son, I like how you protected free speech as a Judge when a Baltimore County firefighter criticized the County Executive.

DAVID- Was that the Huffines case?

WALTER- Yes. Lieutenant Huffines wrote an article to the Sunpapers accusing County Executive Ted Venetoulis of misusing the Fire Department resources when the County Exec ordered that a County Firetruck bring water to animals at the County Fair. When Lt. Huffines was reprimanded by his supervisors, he filed suit. I upheld the Lieutenant’s right to free speech and wrote that “These expressions of controversial views must be tolerated in a free society.” The Court of Special Appeals upheld my decision the following year, Baltimore Sun, Feb 18, 1980, “Court Upholds Fire Officer in County Free Speech Case.”

DAVID- Grandpa, you were pretty controversial also, for your revival of the Sweetair Lyceum, weren’t you?

ELMER- Wow, you know about that? The Sweetair Lyceum was a debating society. I was elected President. Our Club was visited by the great H.L. Mencken. The Lyceum was credited with helping to shape Mencken’s iconoclastic view of women, Mencken, The American Iconoclast, Marion Elizabeth Rodgers, Oxford University Press, 2005, p. 109. We created a real stir in December, 1906, by discussing whether “It is a Crime to Steal a Kiss?”, The Baltimore Sun, December 4, 1906. In March 1907, we caused more controversy by debating whether men or women were smarter. We concluded that women were intellectually superior to men,
“Women win 4 to 1”, *The Baltimore Sun*, March 12, 1907. Remember that this was 13 years before the 19th Amendment of the Constitution treated women as equals in voting.

DAVID & WALTER together- Now that was radical!

ELMER- In its’ time it was very controversial.

DAVID- So, we now can remember 1920 for many different reasons. Of must importance, it was the year that women won the right to vote. It was the year that Prohibition went into effect, making it the only year since 1791 that two Constitutional Amendments were ratified. It was the year that Warren Harding was elected President. It was the year that Babe Ruth broke the home run record by hitting 54 home runs.

DAVID, WALTER and ELMER- And it was the year that the Baltimore County Bar Association was formed!
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Bench/Bar Committee Report  
by Judge Stacy A. Mayer

The January meeting of the Bench/Bar Committee opened with a note of congratulations on the recent investiture of the Judge Dennis M. Robinson Jr. and a rousing round of applause for long-time Committee member Judge C. Carey Deeley Jr., who was in attendance.

Judge Kathleen Gallogly Cox gave the Circuit Court Bench report, beginning with the good news that the Court is now at full complement with 20 judges. The Court continues to adjust its docket structure, with the recent elimination of the Tuesday felony docket and the reduction of investigations dockets from 3 to 2. These improvements have reduced the need for trial date postponements. Judge Cox also expressed interest in a civil town hall meeting to seek feedback on ways to improve the setting of complex civil cases. The court is considering pretrial statements for such cases to focus settlement conference discussions and wants bar input implementing any changes.

Judge Dorothy J. Wilson gave the District Court Bench report. Judges Norman R. Stone III and Steven D. Wyman are now sitting in Towson, with Judge Keith D. Pion in Essex and Judge Phelps in Catonsville. These assignments will remain in place until July when the rotation schedule will be reviewed anew. The Court is interviewing for the open Administrative Commissioner position, with the recent retirement of Commissioner Mike Charnasky. Commissioner Don Merson is serving as the Acting Administrative Commissioner until a replacement is made. The Court is also in the process of establishing teams to implement a Case Management Plan with an implementation goal of June/July. This quick turnaround will allow staff to devote time to implementation of MDEC, for which courts are currently being wired. The MDEC advance team is expected in the early fall. Catonsville will be wired, though the new Catonsville courthouse is scheduled to open in late 2018 or early 2019. The new Catonsville courthouse will have 8 courtrooms, a self-help center and an ADR facility.

Judge William Somerville gave the Office of Administrative Hearings report. The Office of the Administrative Hearings is presently down 8-9 judges. Governor Hogan recently appointed Judge Marina Sabett to the Montgomery County District Court and Judge Judy Jacobson is retiring at the end of January. For the open positions, there were more than 160 applications. Five new judges have been appointed from the eligible applicants: Jim Murray, Mary “Willis” Gunther, Stephen Thibodeaux, Nicholas Orechwa, and Tracey Delp.

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- Land Use
- Advocacy

To volunteer, receive our newsletter, and learn more about CLA, visit our website at www.ChesapeakeLegal.org.

Magistrate Wendy Z. Schenker gave the Magistrate’s report. Magistrate Catherine F. Woods is now in Room A and Magistrate Phyllis W. Brown in Room C on the ground floor.

Judge William Somerville gave the Office of Administrative Hearings report. The Office of the Administrative Hearings is presently down 8-9 judges. Governor Hogan recently appointed Judge Marina Sabett to the Montgomery County District Court and Judge Judy Jacobson is retiring at the end of January. For the open positions, there were more than 160 applications. Five new judges have been appointed from the eligible applicants: Jim Murray, Mary “Willis” Gunther, Stephen Thibodeaux, Nicholas Orechwa, and Tracey Delp.

Continued on page 22
Circuit Court Clerk Julie L. Ensor reported that the office is currently down two civil clerks and two family law clerks. This shortage, along with normal staff shortages during the holidays, means that, as of January 12, pleadings were at January 9 and orders at January 11. Family law was 13 business days behind.

State’s Attorney Scott J. Shellenberger reported that Baltimore County Police Chief Jim Johnson is retiring at the end of January with former Chief Terry Sheridan set to return and resume the role at the beginning of February.

Angela Silverstein, Family Law Chair, reported on the success of recent programs, including the December 1, 2016 Tips, Tricks, Insights into Tax Returns and the December 15 Ghost Writing of Legal Services. Mary Sanders was scheduled to chair a program on January 12 on child support enforcement, to include information on new kiosks being set up at various locations, like 7-11 and Ace Hardware, to accept payments. These kiosks, which accept partial payments, have been proven successful in other jurisdictions and are particularly helpful in getting payments from individuals who deal in cash. The Family Law Committee has programs scheduled on February 23, March 14, April 6 and May 18, for which additional information will be forthcoming.

Young Lawyers Chair Alaina Storie reported that the holiday event was very successful in raising donations for CASA of Baltimore County. In addition to a substantial cash donation, the Committee collected so many donated toys that BCBA Executive Director Doris Barnes’ SUV was filled to the brim. The Committee will continue its running club on January 18 and its much-anticipated indoor skydiving event the following day, January 19. All BCBA members are encouraged to attend the newly-revived local swearing-in ceremony for new admittees in February.

BCBA President Robert J. Thompson gave the Executive Council report. There are 2 openings on the Executive Council, with Judge Vickie Ballou-Watts concluding her term and Judge Keith R. Truffer’s recent resignation due to his upcoming term as MSBA President. Mr. Thompson reported that it was an honor to attend, on behalf of the BCBA, the 50th anniversary celebration of the Court of Special Appeals and to move for the admission of new lawyers in the Court of Appeals. He also urged attendance at the newly-revised local swearing-in ceremony for new admittees and the always popular prom.

The next meeting is February 9, 2017. If anyone has an issue to bring to the Bench/Bar Committee, please speak with an at-large member. The list of at-large members can be found on the BCBA website.
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MARYLAND STATE BAR ASSOCIATION
2017 BOARD OF GOVERNORS

This is the annual announcement regarding the nomination and election process for vacancies on the Maryland State Board of Governors occurring in June 2017. The complete information packet, Nomination Petition, Biographical Sketch and Instructions can be found on the BCBA website: http://www.bcba.org/site/wp-content/uploads/2016/11/2017-BOG-Packet.pdf, and are also available at the Bar Office.
Greetings! The members of the Baltimore County Council are grateful for the opportunity to update the County Bar on the activities of our County’s legislative body. Your seven member County Council serves as the independent Legislative Branch of County government. The Council meets year-round, generally in bi-monthly Legislative Sessions (held at night) and bi-monthly Work Sessions (held during the day). All proceedings are open to the public, and the Legislative Session is broadcast on BCTV (Comcast & Verizon channel 25). The Council’s Website at www.baltimorecountyCouncil.org provides helpful information as well.

In 2015, the County Council passed Bill 12-15, which established a Baltimore County Charter Review Commission. In the November 8, 2016 General Election, voters of the County approved the measure for inclusion in the County Charter.

This Charter change requires that a decennial Charter Review Commission be established in the seventh year of each decade. As such, in 2017, a Charter Review Commission will be formed by Council Resolution on March 1, 2017, with the 11 member body consisting of one member appointed by each Councilmember and a Chairperson appointed by the Chair of the County Council, and two members appointed by the County Executive, with the County Attorney also serving as a member.

The County Charter has undergone several reviews since its adoption almost 60 years ago, with the most recent formal review occurring over 25 years ago. That Commission was appointed on July 24, 1989 and Chaired by former County Executive James T. Smith, Jr. Their Final Report was issued on April 30, 1990.

Upon formation, the Commission will be tasked to review the Charter and undertake a comprehensive study of its contents and make recommendations for any changes that will improve the efficiency and operations of County government. The Commission shall also hold at least one public hearing prior to adoption of its findings and recommendations. Finally, the Commission shall submit a written report to the County Council and County Executive by October 15, 2017.
Criminal Law Update
by Robert C. Lidston

The January Amicus Curiae features one Court of Appeals decision and two by the Court of Special Appeals which may be of interest to practitioners.

Colvin v. State, No. 8, September Term 2016, filed December 15, 2016, Opinion by Barbera, C.J.

In 1989, Colvin was convicted of crimes related to a murder. The jury foreperson announced the verdict on all counts and the defense attorney requested a poll of the jurors. The clerk polled each member of the jury except the foreperson. The clerk then hearked the jury to the verdict. All members of the jury, including the foreperson, assented. Defense counsel did not object and no direct appeal was filed.

In 2013, Colvin filed a motion to correct an illegal sentence under Maryland Rule 4-345(a). He contended that the verdicts supporting his convictions were not unanimous as required by Rule 4-327(a) because the foreperson was not polled. The circuit court disagreed, deciding that his claim was not cognizable under Rule 345(a). Colvin appealed and the Court of Special Appeals decided that the claim was cognizable because of a lack of unanimity which would make the verdicts unconstitutional.

His claim was, therefore, not cognizable under the rule.


In 1981 Calhoun-El was convicted of first degree murder. In 1985 he filed a motion for post-conviction relief arguing that the trial court’s "advisory" jury instructions during the guilt/innocence phase of the trial were improper. The trial court rejected this argument, deciding that the contention was waived when defense counsel failed to raise the issue at trial and on direct appeal. In 2012, Calhoun-El filed a Motion to Reopen the post-conviction case and the motion was denied.

He appealed to the Court of Special Appeals which affirmed the trial court’s ruling. In Unger v. State, 427 Md. 383 (2012), the Court of Appeals held that the failure to object to advisory jury instructions did not constitute a waiver of the right to raise the issue in post-conviction proceedings because earlier decisions set forth a new interpretation of Article 23 and established a new state constitutional standard. Calhoun-El’s conviction unlike Unger, took place before the decisions in the precedent cases cited in Unger to establish the new standard.

In Unger, the Court held that the decision in Stevenson v. State, 289 Md. 167 (1980) and Montgomery v. State, 292 Md. 84 (1981) established the relevant time period for the waiver analysis, holding that "failure to object to advisory only instructions in criminal trials prior to Stevenson will not constitute a waiver." Because Calhoun-El’s trial took place after Stevenson, but before Montgomery, general waiver principles applied. Because there is no dispute that his attorney did not object to the trial court’s jury instructions, his claim of error in this regard had been waived.

Continued on page 28
In re: J.J. and T.S., No. 2631, September Term 2015, filed December 21, 2016, Opinion by Graeff, J.

A police investigation of alleged child abuse of a 9-year-old girl led to a social worker interviewing the victim who stated that her father had sexual intercourse with her. The trial court held a hearing under Subsection 11-304 of the Criminal Procedure article to decide the admissibility of the victim’s statement. The court decided that the statement possessed reasonable particularized guarantees of trustworthiness and so was admissible as evidence.

The father appealed to the Court of Special Appeals arguing that the trial court erred in ruling that the out-of-court statement was admissible because it possessed reasonable particularized guarantees of trustworthiness. He argued that the interview did not demonstrate that the daughter possessed the capacity to be a reliable witness. He further argued that in the absence of evidence that the daughter could appreciate the difference between a lie and truth and had the ability to recall past events, the court could not conclude that she was competent to testify. Finally, he argued that the statements were not trustworthy because she had previously made unsubstantiated allegations of sexual abuse; did not like her father and therefore had a motive to fabricate and had knowledge of sex acts due to sexual abuse by a cousin.

The Court of Special Appeals affirmed the trial court’s decision. Maryland, among other states, has enacted statutes, sometimes known as the tender years hearsay exception, designed to protect the emotional and psychological health of young children alleged to have been victims of sexual abuse. Such statutes provide for the admissibility of out-of-court statements under particular circumstances. Maryland’s tender years statute, Criminal Procedure article, Subsection 11-304, specifies a number of conditions that must be satisfied before the admission into evidence of an out-of-court statement of a child under 13. It does not contain any requirement that the court first conduct a competency determination. There is no indication from the plain language of CP 11-304 that a competency determination is a component of the analysis required before admitting a child victim’s out-of-court statement. The trial court did what it was required to do under the statute by specifically addressing the 13 factors set forth in CP 11-304. Having done that, it properly found that the daughter’s statement possessed "particularized guarantees of trustworthiness."
Review of the *Amicus Curiarum* for January 2017 revealed the following civil cases of interest:

**THE COURT OF SPECIAL APPEALS:**


In October 2015, the court awarded primary physical custody of the parties' child to Father, with supervised visitation to Mother. In November 2015, Father filed an Emergency Petition for Contempt, alleging that Mother had been engaging in unsupervised text messaging with the child. The court found Mother in contempt, and as a purge provision, ordered Mother to abide by the order as modified. The trial court then entered a modified order pursuant to Maryland Code, section 9-105 of the Family Law Article, providing that Mother could not have any visitation with the child until further order of the court.

The Court of Special Appeals reversed, holding that a purge provision cannot be a sanction. The purge provision must permit the person to avoid a sanction. In this matter, there was no way for Mother to perform some act and avoid sanction. While the court could modify the order to ensure future compliance, Section 9-105 of the Family Law Article is directed at a party who interferes with another party's right of visitation, not a party violating his or her defined visitation rights per an order. Further, the trial court failed to make a finding as to whether the modification is in the best interests of the child, as required by the statute.


The parties married in 2006 and had one child. In 2011, the parties purchased a home and a significant portion of the down payment came from the paternal grandparents. When the parties sought a divorce, the grandparents were permitted to intervene for "judicial convenience" and the trial court held that the down payment had been a conditional gift conditioned on the parties continued marriage and use of the home for the sole benefit of the child. In addition, the trial court granted physical and legal custody of the child to the grandparents, ordered Husband and Wife to pay child support to the grandparents and ordered Wife to reimburse Husband for the mortgage payments he made to maintain the marital home after he no longer lived there. Wife appealed.

The Court of Special Appeals reversed in part, dismissed in part and affirmed in part. The Court affirmed the child custody, child support and mortgage payment reimbursement decisions. It also dismissed one of wife's challenges for failure to provide a transcript. The Court, after considering case law from other jurisdictions, held that the trial court abused its discretion when it allowed creditors to intervene in the divorcing parties' property distribution hearing. The Court noted that the purpose of divorce proceedings is to sever the marital relationship and determine the rights and responsibilities of the parties separate and apart from any claim of creditors.
The Law Library recently received updated versions of several “Nutshell” books. This series provides a broad look at different legal topics. They are a great resource for our newly-sworn attorneys. Among the titles updated are:

- **Animal Law In A Nutshell**
  Call No: KF 390.5 .A5 .F7

- **Conflicts In A Nutshell**
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The following titles can help new attorneys with the actual practice of law:

- **Represent Yourself In Court : How To Prepare & Try A Winning Case**
  Call No: LLP KF 8841 .B47

- **Attorney-Client Privilege In Civil Litigation : Protecting And Defending Confidentiality**
  Call No: KF 8959 .W34

- **Fader's Maryland Family Law, 6th ed.**
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- **Limited Liability Company Handbook : Law - Sample Documents – Forms, 2015-16 ed.**
  Call No: KF 1380 .S2

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- **Rights Of The Accused Under The Sixth Amendment : Trials, Presentation Of Evidence, And Confrontation, 2nd ed.**
  Call No: KF 4558 .R54

We look forward to you dropping by to use these books as well as some of the other free research tools available in the Baltimore County Circuit Court Law Library.

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Mark your calendars for the Baltimore County Bar Association **Swearing-In Ceremony** on **February 8, 2017 at 4:30 p.m.** Join the esteemed members of the District and Circuit Court benches, Young Lawyers and Professionalism Committees, as well as Executive Council, in welcoming our new and young lawyers as they take an oath to uphold the law and promote professionalism and civility.
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When: February 28, 2017, 6-8 pm

Where: Room 100, Center for Applied Learning and Technology (CALT) Bldg.

LEG 529 – Law and Technology: A Workshop on E-Discovery - Learn and explore the basic steps in the e-discovery reference model; identification, preservation, collection, processing, review, production and presentation of electronic information. Examine technology tools and applications, project management, budgeting, ethics, and International discovery. Prepares a student, in part, to take the Certified E-Discovery Specialist Exam. $325.00 (Add'l $10.00 if out of county)

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Speaker: Jonathan Rosenthal, Esq. and Alan Wiener, Esq.

When: February 18, 19, 25, 26, 27 2017, 8:30 – 6 pm

Where: Room 100, Center for Applied Learning Technologies (CALT) Building

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