



NEWSLETTER

August 2022

President's Message

By: The Honorable Dino E. Flores, Jr., BAFC President

It feels like we are finally getting back to normal. Court has been open for months, there are no temperature checks at the front door, and the Courts are getting fewer requests for remote hearings due to positive COVID test results. The Bar Association of Frederick County is also starting to return to where we were before March 2020. Gone are virtual luncheons; we will be meeting at the Delaplaine like we always used to do. The Keys game was a great success, with a terrific turnout and excellent live music from Rays of Violet, featuring Washington County Assistant State's Attorney (and former law clerk to Judge Scott Rolle) Cyrus Jaghoory. The Young Lawyers' Section is always planning some event that often provides service to the community and is enjoyable as well. The Annual Picnic and Golf tournament is coming up on August 24, on Carroll Creek and at the Richland Golf Course in Middletown. We are now scheduling several big in-person events like our Holiday Party in December, and we hope to announce a return to the popular Judge's Dinner next Spring.



We will also have an Opening Term of Court for the first time since COVID hit. Judge Solt will preside over the ceremony, and the Bar Association will conduct our business before the Court. Significantly, we have quite a few Memorial Resolutions to present to the Circuit Court for members who have passed away since the last Opening Term ceremony. Seeing the list of the half dozen members who are no longer with us is sobering: Harry DeMoll, Judge Sam Barrick, Stephen LeRoux, Tom Meachum, Ed Lulie, and Frank Goldstein. Not to be too morbid, but to see all those names at once should remind us that our time here is limited. Work hard, enjoy your times with your colleagues at the Bar, love your families, and spread some joy and kindness in your community. I hope to see many of you at some or all our BAFC events.

**BAR ASSOCIATION
OF FREDERICK CO.**
2022 ANNUAL

**BBQ
Picnic**

Wednesday, August 24th**

5 P.M - 7:30P.M.**

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Members & Current Law Clerks only event.**

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SECTION/COMMITTEE UPDATES

Young Lawyers Section

Save the date of September 10th for Brewfest at the Farm 2022 at Still Point Farm and Milkhouse Brewery. This fundraising event will benefit Camp

Jamie. Look for volunteer signups this summer! Volunteers get free admission to the event.

For more information about the Young Lawyers Section, please email bafcyls@gmail.com.

Family Law Section

Regular meetings of the Family Law Section will resume this fall. Watch your email for details!

For more information about the Family Law Section, please contact Carin Golze at Carin@WinikLaw.com.

Business Law Section

Mark your calendars for an upcoming section presentation entitled “**Mind Your Business: Coordinating Business and Estate Plans to Preserve Value**”. This virtual presentation will be held **September 15, 2022 at 12pm, via Zoom**.

For more information about the Business Law Section, please contact Rebekah Lusk at rlusk@lusk-law.com.

Pro Bono Committee

The Pro Bono Committee is planning a **Pro Bono Day** for **November 16th from 5-8 pm** and will be looking for volunteers. Please mark the date on your calendar and watch your email for more information!

BAFC Website

RECENT EVENTS

Salvation Army Fishing Trip at Culler Lake

A **BIG** thank you to the volunteers and those who gave supplies for another successful Salvation Army Fishing Trip (**our 18th Annual!!!!**) Thank you:

Amanda Sentelle, April Dixon, Detric Kemp, John Robinson, Elizabeth Stup, Jamie Lloyd, Richard Bricken, Judge Eric Schaffer, Carin Golze, Lynda Janet, Jason Howes, Jeff McEvoy, Dave Kindermann, Janice Rockwell, Ruhe Yilma, Tyler Cejka, Amber Garns, Andy Smothers and Smoketown Bait & Tackle

Lastly, thanks to **Mike Moore**, co-chair of the event this year, who had to assume full duties as Judge Sandy was bedridden with COVID.



BAFC Friends and Family Night at the Frederick Keys

After a two year hiatus members of the BAFC along with family and friends gathered to enjoy American's Favorite Pastime. We gathered a little later this year, meeting outside the Frederick Keys Stadium on July 8th. McNees Wallace & Nurick LLC catered the pre-game picnic and the fried chicken was a definite crowd pleaser. Paul Rose arranged for some pre-game live music from Rays of Violet, featuring former BAFC member Cyrus Jaghoory. Once inside we gathered at the 3rd baseline and cheered the local team onto victory defeating Trenton Thunder 6-5. The night was capped off with a electrifying fireworks show. All in attendance agreed that it was good to be back in the ballpark and heading into the second half of 2022 with a lot more normalcy.





New Website and Membership Software Launch

The Executive Committee is excited to announce that after extensive research, data conversion and training that we launched our **new website and membership software** on June 27th. We are excited about the more professional look of our website and all the new features that will be available to members via the software. Some perks of this new system include: the ability to pay for all BAFC events and dues through the software and see a record of all your payments. You can also update your information at any time and it will automatically update in the public and membership directories.

The first time you log in you will put in your email and then select "Forgot Password". You will then be emailed a password and can later change it to something you can remember.

We hope you can take a few minutes to review the new system as we all get accustomed to the new technology. If you need any assistance with the system reach out to Maegan at info@frederickbar.org.

A WINNING DEFENSE

CRIMINAL

IMMIGRATION



Andrew Jezic

- Top 10 MD Lawyers, *Superlawyers*, 2022
- Fellow, American College of Trial Lawyers
- Published West co-author, *Maryland Law of Confessions*
- Dozens of acquittals in felony jury trials



David Moyse

- *Washingtonian* Best Lawyers, 2017-2022
- *Superlawyers* Best Lawyers, Maryland, 2014-2022
- Chair, Montgomery County Criminal Law Section
- Handled 50+ jury trials



Tamara Jezic

- *Washingtonian* Best Lawyers, 2015-2022
- Harvard Law School
- Lectured around the U.S. on asylum law to immigration lawyers
- Several precedent-setting 4th Circuit wins



Himesdes Chicas

- *Washingtonian* Best Lawyers, 2017-2022
- Maryland Federal Public Defender's on-call expert consultant
- Several precedent-setting BIA and Fourth Circuit decisions

*Each case is different; prior results do not guarantee a similar outcome.

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ARTICLES OF INTEREST

Plaintiff's Tip – A Defendant's Statement to His or Her Insurer is Generally Discoverable

By: Steve Campen, Campen & Manganaro

When faced with a plaintiff's discovery request to obtain the defendant's initial statement to his or her insurer, defense counsel will typically object and refuse to produce it based on the claim it is protected as attorney work-product or by the attorney/client privilege. Such is generally NOT the case.

First, understand the party resisting discovery and asserting a privilege or attorney work product has **the burden to substantiate the basis for it**. *E. I. du Pont de Nemours & Co. v. Forma-Pack, Inc.*, 351 Md. 396, 406, 718 A.2d 1129, 1134 (1998); *Ashcraft & Gerel v. Shaw*, 126 Md. App. 325, 350, 728 A.2d 798, 811 (1999); *Gallagher, Evelius & Jones, LLP v. Joppa Drive-Thru, Inc.*, 195 Md.App. 583, 598, 7 A.3d 160, 168 (2010).

Second, simply because an insurer took a statement from his or her insured does not make those statements protected as attorney/client privileged. In *Cutchin v. State*, 143 Md. App. 81, 792 A.2d 359 (2002) the defense argued the claims adjuster had taken the statement of the potential defendant, Cutchin, and that if suit were filed against him, State Farm would assign counsel to represent Cutchin and forward the investigatory materials to counsel. Thus, it claimed the statement was privileged. The court held that this "failed to prove the existence of the attorney-client privilege." The communication was made at the request of the claims adjuster, a non-lawyer, "in accordance with State Farm's normal practices, for all potential uses and purposes." **At the time of the communication, no civil claim had been**

made and no attorney had been retained by State Farm. State Farm's employee was acting as an adjuster, not as an agent of Cutchin, Cutchin's attorney, or any other attorney. Consequently, the court concluded "that there was insufficient proof that the communication was for the dominant purpose of defense and that appellant had a *reasonable* basis for believing that the communication was confidential." *Id.* at 95, 792 A.2d at 367.

Third, as to the "attorney work product" doctrine, such doctrine protects from discovery the work of an attorney done ***in anticipation of litigation*** or in readiness for trial. *E. I. du Pont de Nemours & Co. v. Forma-Pack, Inc.*, 351 Md. 396, 407, 718 A.2d 1129, 1134 (1998). Although it is often referred to as a privilege, the work product doctrine is not a privilege at all but is "merely a requirement that very good cause be shown if the disclosure is made in the course of a lawyer's preparation of a case." *Id.* at 406, 718 A.2d at 1134 (citation omitted). The work product doctrine is "historically and traditionally a privilege **of the attorney** and not that of the client." *Id.* 351 Md. at 407, 718 A.2d at 1134. The work product doctrine is codified in Md. Rule 2-402(c). Determining whether a document was prepared in "anticipation of litigation or for trial" is a question of fact which, if in dispute, is to be determined by the trial judge following an evidentiary hearing. *Id.* at 409, 718 A.2d at 1135. "[F]or a document to have been prepared in anticipation of litigation, there must have been a particular, identifiable claim or impending litigation." *Id.* at 410, 718 A.2d at 1136. The mere fact that litigation does eventually occur does not bring documents within the scope of the work-product doctrine. The primary motivating factor behind creation of the document must be as an aid in future litigation. A document that would have been generated whether or not litigation was pending does not qualify as work-product. *Id.* at 411-12, 718 A.2d at 1136-37.

Indeed, even if the defendant is successful in its claim, then the party seeking discovery can gain access to the communications by demonstrating "substantial need" and "undue hardship." *Id.* at 409, 718 A.2d at 1135.

Thus, as plaintiff's counsel, do not walk away from an opportunity to force the defense to produce it's clients initial statement given to the insurer. Often, they are gold mines because the defendant actually told the truth before being sued.

Happy hunting justice for your clients!

We're on Facebook! Follow us at [The Bar Association of Frederick County, MD](#) for updates, reminders, photos, and announcements.

Events

- **August 2, 12p: BAFC MONTHLY MEETING** Delaplaine Arts Center. Our speaker will be Leeann Crews, Associate Director of Downtown Frederick Partnership. Thank you to our sponsors Amada and Oasis.
- **August 24: BAFC Annual Golf Tournament.** Tee times will start at 9:30a. Watch your email for details!
- **August 24, 5-8p: BAFC Annual Picnic.** Carroll Creek Amphitheater.

Delicious BBQ, drinks and laughter. Register in your member account by August 17th via the website.

Save the Date

o **September 10th: Brewfest at the Farm 2022.** Still Point Farm and Milkhouse Brewery.

o **September 12, 9a: Opening Term of Court.** Circuit Courtroom 1. It's back! We have lots in store recognizing several of our members.

o **September 15, 12pm: Business Law Section presentation, "Mind Your Business: Coordinating Business and Estate Plans to Preserve Value"** via Zoom.

[Full Calendar of Events](#)



Information of Interest

From the Courthouse

The Clerk of the Court and the Frederick News post have advised there will be an increase in the cost to advertise Orders Nisi effective August 1, 2022 to \$247.50 for a 3 day run, billed directly to the attorney.

New Executive Director for Legal Aid

Legal Aid has a new Executive Director named Vicki Schultz. Wilhelm Joseph served in this role for 26 years. To read more about Ms. Schultz visit the link below.

<https://mdlab.org/wp-content/uploads/Vicki-Schultz-joins-Maryland-Legal-Aid-as-New-Executive-Director.pdf>

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Are You Looking for a Paralegal?

If you are in need of a paralegal, Dr. Tracy Parker, Program Manager for Frederick Community College's Paralegal Program, may be able to help. You can reach Dr. Parker at : 301-624-2819, TParker@frederick.edu, To find out more about FCC's Paralegal program visit:

<https://www.frederick.edu/programs/business/paralegal.aspx>

Willing to Take a Pro Bono Case?

The Pro Bono Resource Center has a website called Statewide Opportunities (www.probonomd.org/statewide-opportunities) that shows users a database of pro bono service opportunities, trainings, public interest jobs, etc. around the state. The database can be filtered by county, as well as by specific types of opportunities. For example if you [click here](#), you will see only those opportunities that exist in Frederick County, OR that are statewide, remote, or online.

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