

February Newsletter

Issue 2 | 2023 | The Bar Association of Frederick County, MD



President's Message

By: The Honorable Dino E. Flores, Jr.



"Members of the Frederick bar held a meeting in the Courthouse Monday afternoon. Chief Judge Hammond Urner and Judge Glenn H. Worthington attended the meeting. Milton G. Urner was made chairman of the meeting. About 30 members of the bar were present and much enthusiasm prevailed. It was the first association of its kind that has ever been organized in this county." Frederick News Post, January 23, 1923.

I hope many of you noticed this quote in the Frederick News Post under the "100 Years Ago Today" section. This is our Centennial year, and we at the BAFC are planning several events to commemorate our century of service to Frederick

This Month

February 6, 9a: Opening Term of Court

Circuit Courtroom 1.

February 7, 12p: BAFC Annual Meeting

Delaplaine Arts Center. Our speaker will be Shannon Aleshire, CEO of the Mental Health Association of Frederick County. Planet Depos is our sponsor

February 23, 12p: Family Law Section Meeting

Zoom. Lisa Gottlieb and Adam Schlager from the Mental Health Association will be the speakers.

(Continued from page 1) County. We are looking forward to all of you being involved during this historic year.

This is my final President's Message. I am very proud of the work this Association accomplishes and I am happy to have been able to help in my time as President. It has been a very hectic year for all of us, but I am fortunate that I have had the assistance of the members of the Executive Committee to assist me in conducting the BAFC's business. Cris Lovetro will be able to finally step down since I will be taking her place on the Executive Committee as Immediate Past President. Thanks, Cris, for letting us use your conference room rent-free for our monthly meetings. Tim Price will be taking over as President in February, and since nothing ever seems to phase him, I am sure he will have a stress-free year. Magistrate Julie Minner, Carla Clarke, Michael Moore, and Mimi Teahan will each move up a slot in the hierarchy. We anticipate welcoming Detric Kemp to the Executive Committee, assuming the membership approves his nomination. All your Executive Committee members give of their time and effort to make sure our events and projects run smoothly, and I appreciate all their help during the past year.

My biggest thank you goes to our amazing Executive Director, Maegan Cooper. This organization would truly not be able to function without her efforts, and Maegan is always there monitoring everything. Nothing slips by her, and she is always ready to keep us on track and moving forward. She has motivated me but always stayed positive. I am confident there are times when she wanted to wring my neck, but she graciously kept those thoughts to herself. Maegan has always been here for us even when she and her family were suffering. Every member needs to thank Maegan for the work she does that benefits all of us. I look forward to seeing everyone soon!

*Thank you for supporting the
Justice For All Fund last month:*

Theresa Adams
Ian Bartman
Gordon Cooley
Julie Solt

Section/Committee Updates

Family Law Section

The next meeting of the **Family Law Section** will be Thursday, **February 23rd at Noon via Zoom**. Lisa Gottlieb and Adam Schlager with the Mental Health Association of Frederick County will review their updates to the Supervised Visitation and Therapeutic Supervised Visitation Programs with the section. They will also discuss when it is most appropriate for SV vs. TSV.

Invoices for 2023 dues for the Family Law Section are past due. **Only about ½ of the section has paid their dues.** If you did not receive an invoice, please contact Carin.

For anyone interested in becoming **certified as Child Counsel** (best interest attorney, child advocate, and child privilege attorney), the MSBA is hosting a **virtual training in April**. For more information, please visit the [website](#).

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

Pro Bono Committee

The Frederick Center will be having a legal clinic providing free brief legal advice to the LGBTQ+ community on **February 23rd from 530-730p**. (See flyer on next page.) If you would like to volunteer, please contact Trevor Addie-Carter at taddiecarter@hormannichols.com.

2023 BAFC dues were due January 1, 2023.

If you haven't already, please renew your dues ASAP. You can renew online via your member login on our [website](#) or mail a check. Dues for active/associate members is \$160 and for Young Lawyers is \$75 (those passing the bar between 1-5 years ago). If you need assistance with paying your dues online contact Maegan at info@frederickbar.org.



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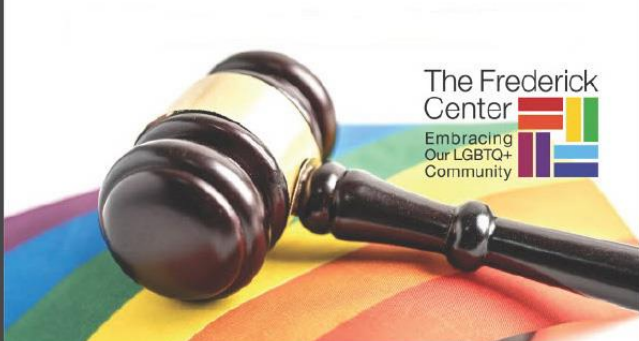
About this event

The Frederick Center advocates on behalf of the LGBTQ+ community and through its Legal Services Committee has put together a pro bono event to provide the LGBTQ+ community with a free legal advice clinic. Attendees will have the opportunity to meet for fifteen minutes, one-on-one with local volunteer attorneys who can answer their questions and provide legal information and advice about specific legal matters they may have.

Thur, Feb, 23, 2023 • 5:30 PM - 7:30PM

**The Frederick Center
322 West Patrick Street, Frederick, MD 21701**

Registration Will Be Available Soon



The Frederick
Center
Embracing
Our LGBTQ+
Community

Snow Date: Tues, Mar, 14, 2023 . 5:30PM - 7:30PM

SAVE THE DATE

May 3, 2023

Mediation Skills Update Seminar

8a-12p

Delaplaine Arts Center

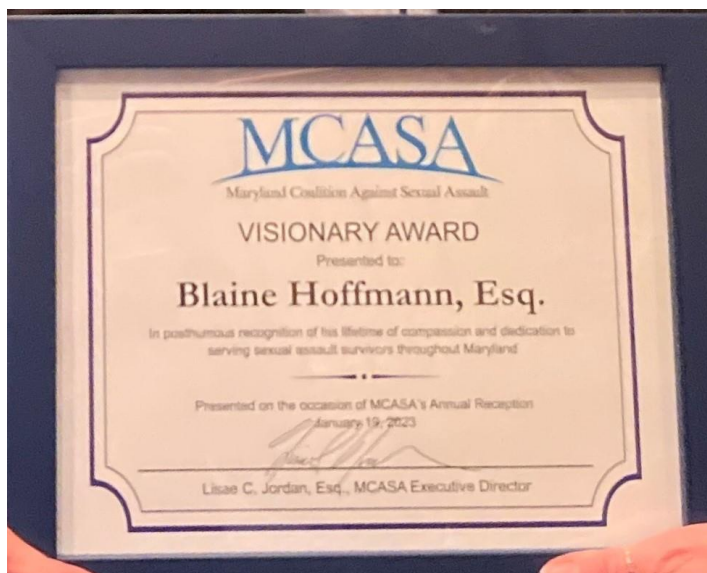
May 18, 2023

**Judges Dinner and 100th
Anniversary Celebration**

Dutch's Daughter

*Information on both events
coming soon!*

Member Spotlight



BAFC Member **Blaine Hoffmann**, was honored posthumously on January 19, 2023 by the Maryland Coalition Against Sexual Assault with their **2023 Visionary Award**. Every year Maryland Coalition Against Sexual Assault (MCASA) honors outstanding Marylanders who have shown exemplary leadership and compassion in their work to end sexual violence in Maryland. MCASA's mission is to help prevent sexual assault, advocate for accessible, compassionate care for survivors of sexual violence, and work to hold offenders accountable.

Blaine was recognized at a reception comprised of supporters of MCASA and legislators and public officials for his devotion assisting survivors of sexual assault, domestic violence and child abuse. Also present at the ceremony were his parents, Kenneth and Anne Hoffmann, as well as the legal services team that worked with Blaine at Heartly House prior to his untimely death.

Those present heard that Blaine previously served on MCASA's Board of Directors and helped support the establishment of MCASA's Sexual Assault Legal Institute (SALI), that he worked for House of Ruth for 10 years and then for another 16 years at Heartly House and provided assistance even outside Heartly House's doors. Blaine worked closely with the Child Advocacy Center, providing assistance to children

who were victims of sexual assault and domestic violence. He also worked closely with the State's Attorney's Office domestic violence unit. Blaine did all this work, hoping not for accolades or recognition, but to make a difference working quietly and diligently day in and day out. He was always available for anyone who needed help.

Blaine had previously been recognized for a life and career dedicated to providing, promoting or managing civil legal services to low-income Marylanders when he was presented with the Benjamin L. Cardin Distinguished Service Award in 2016. Blaine truly demonstrated exemplary leadership and compassion through his commitment to ending sexual violence in Maryland and supporting its victims.

JEZIC & MOYSE

A WINNING DEFENSE

CRIMINAL



Andrew Jezic

- Top 10 MD Lawyers, Superlawyers, 2022 and 2023
- Fellow, American College of Trial Lawyers
- Published West co-author, *Maryland Law of Confessions*
- Dozens of acquittals in felony jury trials

IMMIGRATION



David Moyse

- Washingtonian Best Lawyers, 2017-2022
- Superlawyers Best Lawyers, Maryland, 2014-2023
- 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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FEDERAL TRADE COMMISSION PROPOSES A NATIONWIDE BAN ON COVENANTS NOT TO COMPETE

By: Scott Williamson, Founding Member of Williamson Law Group LLC

A proposed federal rule, if enacted, would ban virtually all covenants not to compete in Maryland, as well as nationwide. In today's competitive marketplace, many employers are turning to non-compete agreements to discourage employees from changing jobs and competing against them as an employee with a new company or by starting a competing business of their own.

Maryland case law has generally supported covenants not to compete where the employee provides unique services, or the business has an interest in protecting trade secrets or other proprietary information, so long as the non-compete agreement includes reasonable restrictions in duration and geography. Recent statutory developments have restricted Maryland noncompete agreements further. Enacted in May 2019, and effective the following October, the Maryland Noncompete and Conflict of Interest Clauses Act, Md. Code, Lab. & Empl. § 3-716, prohibits businesses from entering into noncompete clauses with employees who earn \$15 per hour or less or \$31,200 annually. The law declares such covenants not to compete to be null and void as against public policy. The proposed FTC rule would go even farther, and ban virtually all employment related non-compete agreements in Maryland, and across the U.S.

The Proposed FTC Rule

On January 5, 2023, the Federal Trade Commission (FTC) published a [proposed rule](#) that would create a nationwide ban on new employment-related covenants not to compete, and that would also require all existing non-compete agreements to be rescinded. The rule declares non-compete agreements to be an unfair method of competition because they prevent workers from leaving jobs, decrease competition for workers, reduce wages, prevent new businesses from forming, and stifle entrepreneurship and innovation. The FTC estimates abolishing non-competes will increase U.S. employee earnings between \$250 billion and \$296 billion per year.

The rule would ban agreements that restrict workers from seeking or accepting future employment or operating a business in the same field. The ban applies to all employment related non-compete agreements, even if the clause includes geographic, time or other limits. The rule preempts State law, so it would ban all non-competes nation-wide. The rule also bans what the FTC terms "*de facto* non-compete clauses." A *de facto* non-compete clause is broadly defined as any clause that "has the effect of prohibiting the worker from seeking or accepting employment with a person or operating a business after the conclusion of the worker's employment with the employer." The FTC provides two examples of *de facto* non-compete clauses:

- A non-disclosure agreement that is written so broadly that it effectively prevents the worker from working in the same field after the conclusion of the worker's employment with the employer; or,
- A contractual term between an employer and a worker that requires the worker to pay the employer or a third-party entity for training costs if the worker's employment terminates within a specified time period, where the required payment is not reasonably related to the costs the employer incurred for training the worker.

The rule applies to employees, but also extends to other workers, either paid or unpaid, such as independent contractors, interns or volunteers.

The rule would prohibit employee non-competes both going forward and retroactively. Employers with preexisting covenants not to compete would be required to rescind those agreements within 6 months after the rule is final, and notify employees and ex-employees that those agreements are no longer in effect within 45 days of the rescission.

Exceptions

The FTC has proposed only one, narrow exception to the ban—it does not apply to covenants not to compete made in connection with the sale of a business or a business unit, provided that the person so restricted is a 25%-or-greater owner of the business or business unit being sold, and so long as they owned the business at the time the non-compete was formed.



(Continued from page 5) Other limitations will apply, but are not expressly included in the proposed rule. The rule will not apply to businesses exempt from coverage under the FTC Act, such as some banks and nonprofits. Finally, the rule only prohibits post-employment restrictions. Current employment restrictions, such as prohibiting moonlighting for a competitor, will still be allowed.

Enforcement

Section 5 of the FTC Act, 15 U.S.C. § 45, provides the FTC authority to prohibit and enforce unfair practices in commerce. The FTC can impose fines or other sanctions against private parties to enforce the proposed rule, once it is finalized and effective. The FTC must file a written complaint against the company and provide 30-day notice of a hearing. The FTC Act provides an administrative process for the hearing and a judicial review process with exclusive jurisdiction in the federal court of appeals. As of January 1, 2023, the FTC has the authority to impose fines of up to \$50,120 per day for a violation under Section 5 of the FTC Act. That limit is adjusted annually.

The FTC Act can only be enforced by the FTC, not by private persons. Therefore, the proposed federal rule could not be enforced through individual or class-action lawsuits brought under the FTC Act. However, MD. Commercial Law Code Ann. § 13-408 (2021), provides the ability for private parties to bring private lawsuits for unfair practices. This so-called “mini-FTC Act” enforcement could give some private parties the ability to enforce the rule indirectly. In any event, a noncompete agreement that is deemed to violate the FTC Act would likely be void and unenforceable in Maryland on grounds of public policy. The Maryland statute allows for actual damages, and recovery of attorney fees if damages are awarded.

Effective Date

The comment period is open until March 10, 2023. After comments close, the FTC will consider all public comments and draft any revisions before publishing the final rule. That could take several months. Once the final rule is in place, there is a 180-day period before it actually goes into effect.

That time is intended to allow companies to revise their policies, rescind any existing non-competes, and notify employees of the new procedures.

Current FTC Enforcement Cases

The FTC is serious about abolishing non-competes, and are starting enforcement actions against some agreements even before the proposed rule is finalized. The day before the proposed rule was published, the FTC announced they filed suit against three companies and two individuals for unfair noncompete agreements, forcing them to drop noncompete restrictions that they imposed on thousands of workers. These actions mark the first time that the FTC has sued to halt unlawful noncompete restrictions. More will surely be coming.



Jessica Markham
Attorney at Law



Leslie Miller
Attorney at Law

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Family Law Attorney Wanted

Paré & Associates, LLC is currently seeking an **Associate Attorney – Family Law**. The ideal candidate will have a **minimum of 7 years of family law experience** – including divorce, child custody, alimony, and protective orders. Main office located in Germantown. Hybrid remote work available. Pay commensurate with experience plus bonus and full benefits. Email resumes and cover letter to frontdesk@alicelaw.com. No phone calls please.

Attorney Wanted

BGS Law, LLC is looking for an attorney to handle family law and special education cases in Frederick and Montgomery County. If you are interested in joining our team, please send your resume, cover letter, and a writing sample to bethany@bgsllawllc.com. All responses will be held in strict confidence.

INFORMATION OF INTEREST

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.

