



NEWSLETTER

March 2021

President's Message

I am honored to begin my term as the President of the Bar Association of Frederick County. I have been a proud member of our Bar since 2003 and my participation in this organization has provided me with a solid foundation for building rewarding personal and professional relationships. Especially as a solo practitioner, being able to “touch base” with our Bar members on a regular basis – during Bar Luncheons, social events, volunteer activities, and pro bono opportunities -- has been crucial to keeping me connected to the Frederick Legal Community.



Of course, over this past year, “touching base” with anyone has introduced new challenges. Past President Janice Rockwell, Executive Director Maegan Cooper, and several members of our Bar have been both creative and diligent in maintaining our connections with one another. Although we will continue to meet virtually for a few more months, we are planning to have our first in-person Bar Luncheon at the Delaplaine Arts Center on August 3, 2021. We hope that our outdoor social events, with the observance of social distancing and safety mandates, can resume in early June. While our social future is definitely looking brighter, the safety and well-being of our members and their loved ones will always be our highest priority, so these target dates are subject to change.

There are other positive happenings within our Bar as well. Our Young Lawyers Section, consistently enthusiastic even in the darkest days of the pandemic, continues to inspire all of us with their energy and creative ideas. A recent report by President April Inskeep indicates that she, like Detric Kemp before her, envisions a dynamic and productive year for all of us. Our Pro Bono Committee, led by CoChairs Nina Shore and Magistrate Joanie Raymond, will be offering pro bono opportunities to our members at our monthly Bar Luncheons. Our Family Law Section, led by Carin Golze, continues to provide support to its members and introduces interesting and informative speakers each month for the benefit of those in the domestic law arena.

One of my goals this year is to update our BAFC website. Our website has served us well and we are fortunate to have Maegan Cooper's expertise in keeping the information fresh, but this year has certainly amplified the need to expand our online world. A new professional website, where our membership directory is more readily accessible and our Sections each have a forum, will

bring more cohesiveness to our Association. As a step toward this goal, we are now accepting Law Firm Sponsorships where firms can place their logos and information on our home page with a link to their own websites. By introducing this option for our members, we hope to increase online traffic and improve functionality as well as raise necessary funds for the new website.

Over the past couple of months, I have been trying to articulate a “theme” and a series of goals for my tenure as President. I have reorganized my practice, hired and trained additional staff members, and decreased my other public service activities so that I will be focused, available and, well, just an outstanding President of our Bar. I am so excited about serving as your President that I cannot come up with a simple “theme.” I think my overall goals are more aptly articulated as follows:

“As a public citizen, an attorney should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, an attorney should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, an attorney should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. An attorney should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all attorneys should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal advice or representation. An attorney should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.” (Maryland Attorney's Rules of Professional Conduct, Rule 19-300.1, Preamble, number 6)

Yeah, I think that should be this year's theme. Don't you all agree that's a fine place to start?



Judges Needed for Virtual Mock Trial Competitions in March 2021

MYLaw is seeking volunteer judges for the MYLaw High School Mock Trial competition. This year's competition is entirely virtual. We need hundreds of volunteers to pull this off. Please consider signing up for one or two slots. The problem this year is really awesome - it is centered around an art heist at the Walter's Art Museum and will deal with cell phone tracking technology.

Sign-up [HERE](#).

Member Updates

Congratulations to BAFC member, **Michael Moore**, Frederick County State's Attorney's Office who was appointed to the State Board of Law Examiners. Read announcement [here](#) and [FNP article](#).

Carla and Paul are happy to welcome **Michael Bouey**,

Section Updates

Young Lawyers Section

Stay tuned for upcoming Young Lawyers Section events! For more information about the Young Lawyers Section, please contact April Inskip or email bafcyis@gmail.com.

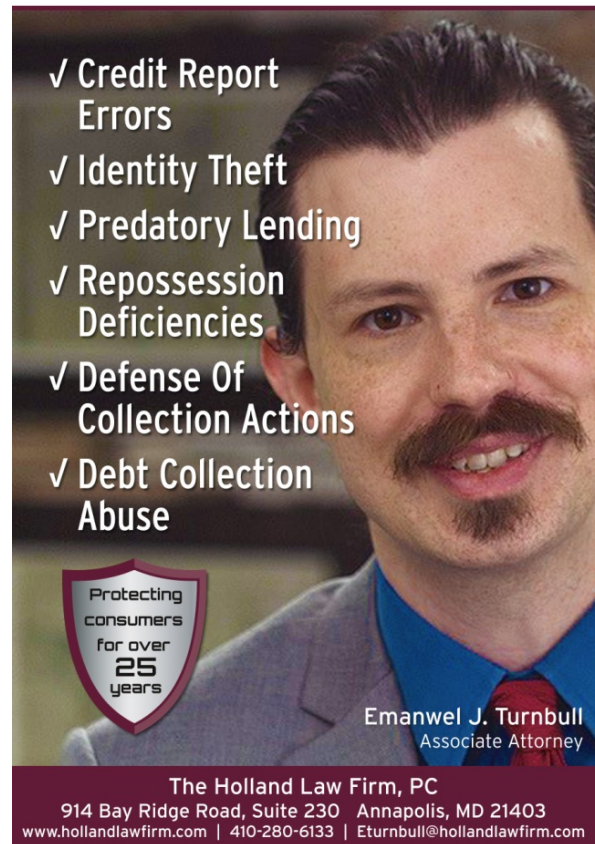
Family Law Section

The next **Family Law Section meeting** will have speaker Kristin L. Milne-Glasser from Allied Counseling presenting on techniques to better understand the process of assessing and engaging with "the high-functioning alcoholic/addict" parent/s. Please watch your email for the date/time.

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

Pro Bono Committee

The **HOLLAND LAW FIRM** *for Consumer Rights*



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URGENT HELP NEEDED!

If you can help with the following case please contact Joanna Shapiro ASAP at (301) 600-1445 or joanna.shapiro@mdcourts.gov.

The litigant is NOT a suitable candidate for self help resources and is NOT suitable for a notebook case. The litigant needs more intensive help than a self help center can provide.

It is urgent because it looks like the spouse may be selling off assets and leaving the litigant with significant debt. The litigant is also running a small business and the spouse may be taking the income and then not paying the debts on that as well. The litigant was referred to pro bono organizations but, likely because of assets, the requests have been denied. There is a case pending but the litigant likely needs some emergency help and/or injunctive relief to stop the possible financial damage. Efforts have been made through self help resources to help the litigant organize information and gather documents to be more prepared for an attorney meeting. There may be a chance for attorney's fees but there is not enough information to confirm this. There are also potential abuse issues. The parties are separated but the spouse is denying access to marital funds. A Complaint for Divorce has been

filed.

The Pro Bono Committee has held two meetings so far in 2021. The Committee has been hard at work improving collaboration and cooperation between the different pro bono providers that exist in Frederick County. A representative from the Family Law Section of our bar and from the Young Lawyers' Section have joined the committee, in hopes to increase our reach and efforts.

Our Committee hopes to spotlight a case or cases each month, both at the bar luncheon and in our newsletter that urgently need help. There will be opportunities for pro bono, low bono and limited scope. Please consider taking these cases. Your generosity and talents are greatly appreciated.

Last month, Frederick Community College, the Religious Coalition, the Family Self Help Clinic, Maryland Court Help, the Frederick Health Department, the Bar Association for Frederick County and other community partners conducted two pandemic assistance workshops (one in Spanish and one in English) for community members. The topics covered were evictions, utility assistance, health services (including vaccines), family resources (including school-related), rental assistance, legal services, mental health resources and emergency needs (including food and toiletries).

[BAFC Website](#)

Recent Events

BAFC ANNUAL MEETING

On February 2, 2021 we gathered virtually for the BAFC Annual Meeting. The meeting started with a tribute to Karen Robbins, winner of the 2020 W. Jerome Offutt Award. The 2021-22 Executive Committee was officially elected to office and we voted on a budget! The meeting ended with a panel of our Frederick County Circuit and District Court judges and magistrates providing updates on courthouse operations and answer member's questions. The meeting closed with remarks from incoming BAFC President Cristine Evans LoVetro.

2021-22 BAFC Executive Committee





2021 BAFC Executive Committee (Top to Bottom): Cristine Evans LoVetro (President), The Honorable Dino Flores (President Elect), Tim Price (Treasurer), Carla Clarke (Secretary), Mimi Teahan (Assistant Secretary), Magistrate Julie Minner (Assistant Treasurer), and Janice Rockwell (Past President)

ARTICLES OF INTEREST

And You Thought That HRC Had an Email Problem

By: Stephen Shechtel, Shechtel and Associates, P.A.

You are Counsel in a case where written discovery has been propounded. You receive an email from your client that reads something like: "I (or some other third party) was able to obtain Opposing Party's emails/photographs/documents ("the file"). You won't believe what I've found out. She/He is lying about everything. You gotta read the attached file. Signed, Happy Client."

What do you do? Do you open the attached file(s)? Do you delete the file without opening it? Do you instruct client to destroy the file? Do you turn the file over in discovery? Do you disclose to Opposing Counsel that you have a file containing possible documents adverse to his/her client's case? Do you retain the file as potential impeachment material?

I called my malpractice carrier. And after your read this Article, I'll bet you will too.

By now, everyone should know that the dangers from hacking are real. In 2023, it is projected that 33 *BILLION* (electronic) records will be stolen by cyber-criminals. In today's day and age of phishing, malware, and Wikileaks, an attorney should be cognizant that the possession of hacked documents could expose the attorney to potential civil, criminal, and ethical liability. Attorneys should have established protocols for screening the sources of electronic data/discovery.

Md Rule 16-1005 Case records -- Required denial of inspection -- In general; provides, inter alia, that:

(a) A custodian shall deny inspection of a case record or any part of a case record if inspection would be contrary to:

(1) The Constitution of the United States, a Federal statute, or a Federal regulation adopted under a Federal statute and having the force of law.

Before opening the file, the attorney must consider what the legal and ethical considerations are for (possessing) wrongfully obtained (potential) evidence. Would an inspection of the file, or any part of the file, be contrary to Rule 16-1005? What are the implications under the Md Rules of Professional Conduct?

A prudent Attorney would consider what their ethical duty is in light of: MD R Attorneys, Rules: 19-300.1 Preamble; 19-301.0 (f) Terminology; 19-301.2 Scope of Representation and Allocation of Authority Between Client and Attorney; 19-301.4. Communication; 19-301.6 Confidentiality of Information; 19-303.3. Candor Toward the Tribunal; 19-303.4. Fairness to Opposing Party and Attorney; and 19-304.1. Truthfulness in Statements to Others. If you are in a firm, MD R Attorneys, Rules: 19-305.1. Responsibilities of Partners, Managers, and Supervisory Attorneys; and 19-305.2 Responsibilities of a Subordinate Attorney are also applicable.

Federal Criminal statutes involving electronic communications are governed under U.S. Code Title 18, Sections 119 and 121 (The Electronic Communications Privacy Act of 1986 (ECPA), 18 U.S. Code §§ 2510-2523 which was modified by the Patriot Act). Also applicable are: 18 U.S. Code §1029 Fraud and related activity in connection with access devices; and 18 U.S. Code § 1030 - Fraud and related activity in connection with computers. Pursuant to 18 U.S. Code §2510 (12): an “electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part. Under 18 U.S. Code § 2511 - Interception and disclosure of wire, oral, or electronic communications prohibited, it is illegal to intentionally intercept, endeavors to intercept, or procure any other person to intercept or endeavor to intercept any wire, oral, or electronic communication. The statute imposes criminal liability upon any person who intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of the act. Title 18 deals primarily with “protected computers.” A protected computer is one owned by the US Government or a Financial Institution. A notable exception to the protected computer requirement is 18 U.S. Code §1029 Fraud and related activity in connection with access devices.

In Maryland, electronic communications are also governed by: Maryland's Wiretapping and Electronic Surveillance Act (Md. Code Ann., Courts & Judicial Proceedings, § 10-401 et seq.), Maryland Stored Wire and Electronic Communications Act (Md. Code Ann., Courts & Judicial Proceedings, §10-4a-01 et seq.), Electronic data is data that is communicated electronically. Md's wiretap statutes (CJP §10-401) deal with the interception of a (electronic) communication. Under Md Code Ann. CJP §10-402, it is illegal to: willfully intercept... or procure [or] any other person to intercept... any ...electronic communication and to disclose that intercepted communication. CJP §10-402 notwithstanding, any such intercepted communications are barred under Md Code Ann. CJP §10-405.

Interception occurs when an email during transmission is either copied or transmitted to a secondary location contemporaneously with the transmission of the electronic data by the sender. Interception does not include accessing the messages stored on a destination server. An interception can only occur

where an electronic communication is accessed at some point between the time when the communication is sent (transmitted) to the time it is received by the destination server. Both the Md Stored Wire and Electronic Communications Act CJP §10-4A-02 and The Electronic Communications Privacy Act of 1986 pertain to intercepted communications.

Before opening the file, the Attorney should perform an inquiry into the origins of how the file came into the client's possession. The Attorney must determine whether the electronic data constitutes electronic communications that are governed by any of the above statutes (by definition all emails are) or a possible tort claim. The immediate issues that the Attorney should consider are:

- A: Were the emails obtained/downloaded directly from Opposing's computer, tablet or cell phone?
- B: Did the party obtaining the emails have permission to use the electronic device or have permitted access to either the sender's or receiving party's email account?
- C: Who owned the electronic device? Was the device a shared device? Who was authorized to use the electronic device?
- D: Were the emails obtained from some auto-forwarding order/feature?
- E: Were the emails obtained via downloading from a hacked server or a backup service/server?
- F: Were the emails intercepted during transmission or via a mirroring (keystroke logging) type of software?

In *K.F. Jacobsen & Co., Inc. v. Gaylor*, 947 F. Supp. 2d 1120 (D. Or. 2013), the court found that a computer is not a facility through which electronic services are provided. The Stored Communications Act [SCA] provides protection to stored communications. The SCA provides that it is illegal to: (a)(1) intentionally accesses without authorization a facility through which an electronic communication service is provided... and thereby obtain, alter, or prevent authorized access to a wire or electronic communication while it is in electronic storage in such system. The SCA provides for civil damages, including attorneys' fees and costs.

In *Martin v. State*, 218 Md. App. 1 (2014), the Court noted that the trial court provided neither a rationale nor remedy for excluding as evidence information that was obtained from the victim's cell phone. The Court noted that Md's SCA forbids: "obtaining ... access to a wire or electronic communication while it is in electronic storage in an electronic communications system by: (1) intentionally accessing without authorization a facility through which an electronic communication service is provided; or (2) intentionally exceeding an authorization to access a facility through which an electronic communication service is provided."

Under *Martin*, a computer/tablet/cellular telephone is not a "facility through which an electronic communication service is provided." If the files were obtained off of opposing party's computer (or other electronic device), the electronic device was used to access what had already been previously communicated. A electronic device does not meet the definition of a "facility." But that does not end the inquiry.

Most interesting was that the *Martin* Court further ruled that even if there were a violation of the SCA, the exclusion of evidence obtained by any such

violation was not an appropriate remedy. Under Martin the emails may be admissible. But admissibility does not shield the attorney from liability under the Code of Professional Responsibility, or other potential liability.

To finish reading this article in its entirety please [go here](#).

**Thank you for supporting
the [Justice For All Fund](#) last month:**

Ian Bartman

Congratulations Karen Robbins



Karen Robbins was chosen as the 2020 recipient of the W. Jerome Offutt Award. At the February 2nd Virtual Annual Meeting, Karen was presented with her award which included a plaque, a gift certificate for Spin the Bottle, and a video tribute made in collaboration with several of her colleagues in the BAFC. Please be sure to congratulate Karen the next time you see her.

If you would like to watch the video tribute it can be found here: <https://www.tribute.co/karen-robbins/?>
(If you are prompted for a password it is BAFC.)

Events

- **March 2, 12p: Monthly Luncheon Meeting via Zoom.** The Honorable Mark Scurti, current MSBA President will be the speaker.

Save the Date

o **April 6, 12p: Monthly Luncheon Meeting via Zoom**

[Full Calendar of Events](#)

REMINDER: Deadline for 2021 dues was January 1st. You should have received an emailed invoice the first week in December. If you have not paid, please renew [**HERE**](#). If you have any questions about your 2021 status, please email

UPCOMING TRAININGS

Mediation Update Continuing Education Program

April 14, 2021, 8:00 am to 12:00 pm

Check In will begin at 7:30 am



The Bar Association of Frederick County (BAFC) and Thomson Reuters is sponsoring a VIRTUAL four-hour Mediation Skills Update Seminar for civil and family mediators.

The cost of the seminar is now \$25 for BAFC members and only \$75 for non-members this year.

To register, please pay [here](#) or print and mail [this form](#) with payment. Registration will be closed one week in advance of the seminar date; no requests for refunds will be honored after that date.

All mediators must complete four hours of continuing mediation-related education in each calendar year in one or more of the topics set forth in Rule 17-104. (Rule 17-205(a)(5)) Parent Coordinators are also required to complete continuing education each year.

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

INFORMATION OF INTEREST

FROM THE BENCH: As We Reopen

The Circuit Court will be largely reopening March 15, 2021 as we enter Phase IV under the Amended Administrative Order Expanding Statewide Judiciary Operations in Light of the COVID-19 Emergency and the Seventh Administrative Order Clarifying COVID-19 Health Measures in Courthouses and Judicial Branch Facilities.

Zoom will still be available if needed, although many of the Judges would prefer litigants come before the Court in person for contested hearings. If there is any doubt, please contact a Judge or Magistrate's chambers in advance of your hearing.

There will still be efforts to limit the number of persons in confined spaces in the courthouse. There may be some limits on the number of persons permitted in courtrooms while balancing the right of the public to observe public court proceedings.

Masks shall continue to be mandatory. *"In all courthouses and judicial facilities, masks shall be worn at all times, including during in-person court proceedings, except as noted in Sections (e), (f), and (g) of this Order, by all judges, Judiciary personnel, and any other person over the age of two (2) years, with masks to cover the nose, mouth, and chin completely, without vents."* Seventh Administrative Order.

Being on time and ready for court will be more important than ever; however, the Court will also be asking for your patience as we navigate this next phase of court proceedings.

You can always find detailed information on the current Phase of the Reopening Plan at <https://www.mdcourts.gov/coronavirusinformationforpublic>

IN THE COURT OF APPEALS OF MARYLAND AMENDED ADMINISTRATIVE ORDER EXPANDING STATEWIDE JUDICIARY OPERATIONS IN LIGHT OF THE COVID-19 EMERGENCY

Judiciary Updates

Chief Judge Barbera has issued five revised administrative orders on February 16, 2021, regarding the COVID-19 public health emergency and court operations across the state.

The new administrative orders confirm that **March 15, 2021**, marks the date for expanded operations to resume in the Judiciary. **The Judiciary will progress directly to Phase IV emergency operations**, given the previous expansion of operations authorized during Phase II beginning November 30, 2020. **Phase V full operations will resume on April 26, 2021**, including jury trials. Health protocols will continue to be required, including the wearing of masks and maintaining social distancing, regardless of vaccination status, until further notice.

The use of remote technology is still encouraged whenever possible. Limited matters will continue to be heard in person during Phase II, which ends on March 14, 2021. **Beginning March 15, the Clerks' Offices of the Circuit Courts and the offices of the administrative clerks in the District Court shall be open to the public** for all matters, though the number of people may be limited to achieve social distancing. Related orders have been updated and clarified.

Click below to view the five revised Orders from the Judiciary:

[COVID-19 Administrative Orders | Maryland Courts \(state.md.us\)](https://www.state.md.us/courts/covid19-administrative-orders)



**To support you during the COVID-19 pandemic, we are offering remote deposition services, including both teleconference and mobile videoconference.

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Award Nominations

Nominations are now open for 2021!

Each year, the Pro Bono Resource Center of Maryland, as the pro bono arm of the Maryland State Bar Association, recognizes members of the legal

community who have demonstrated an exemplary commitment to pro bono service for those in need.

Know of a local lawyer, firm or member of the judiciary who shows a strong commitment to pro bono service? Visit <https://www.tfaforms.com/4794927> to submit to nominate them for one of eleven award categories. **Nominations will remain open through April 9.**

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.

2021: 10th Anniversary Justice for All Fund Grants

Give online today at:

<https://www.frederickcountygives.org/Giving-Your-Way/Explore-Funds?fn=Bar+Association+of+Frederick+County+Justice+for+All+Fund>

Donations can also be made by writing a check to **The Community Foundation of Frederick County** with the notation "**Justice For All Fund**". Mail donation to **312 E. Church St., Frederick, MD 21701**.

Job Opportunity

Real Estate Settlement Attorney – Village Settlements, Inc., long recognized as a top attorney conducted settlement company, is seeking a real estate settlement attorney with two to five years of settlement experience for our Frederick office. We are looking for an attorney with experience reviewing titles, solving title issues, conducting settlements, drafting contracts and other real estate related documents. You will immediately work with the public and contribute to the day to day operations of the company. You will not be hidden in a back office. Maryland Bar required. E-mail resume and salary requirements in confidence to ctdelisi@villagesettlements.com No calls please.

For Rent

Small office available for rent. Perfect for a solo practitioner. Excellent location and very close to the Courthouse with all the necessary amenities, including a conference room. 50 Carroll Creek Way. Call [Rob Kamrad](#) if interested. (301) 620-0091.

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