

PGCBA NewsJournal

Newsletter of the Prince George's County Bar Association, Inc.

January 2013

PRESIDENT'S MESSAGE



A NEW YEAR'S RESOLUTION

A Happy New Year to everyone. I hope that you have recovered from the holidays. Before I go any further I would like to thank all of those that made the Prince George's County Bar Association Holiday Party a major success. From the great attendance to the generous bids on the silent and live auctions, thank you from the entire Prince George's County Bar Association Board and Executive Committee. It is easy to reflect back on 2012 and see all of the great accomplishments by the Bar Association. Great free programs such as the Brown Bag Lunch and the Award winning Law Practice 101.

Successful bar meetings and informative CLE's. But instead of looking backwards, I want to look forward to 2013 and to what else we as a Bar Association can accomplish.

So what should the Bar Association's New Year's resolutions be? Naturally we want to come up with resolutions that will last throughout 2013. I've always found that the gym is three times as busy during the month of January, but I know that by February, the wait for the treadmill will be nonexistent again. Let's make resolutions that will last a little longer. As a guide, I look to my personal life and the resolutions that I am making. 2012 was an amazing year for me. I turned 40 and made it look good. (Well, at least half decent), I married a wonderful woman and as any solo practitioner hopes for, my business has survived another year. So my personal resolutions? The typical ones. Make age 41 look as good as age 40. Be a great husband to a great woman, and increase my business. But the Bar Association's resolutions should be better than just typical.

So I look to our news makers in 2012 to see what lessons we can learn from them to get ideas for long lasting resolutions. Should we learn from David Patraeus and be a little bit more careful with our use of e-mails? Maybe we should learn from Lindsey Lohan and be mindful of the law. (Although if too many people do that, then we as lawyers would be out of business). Or, do we resolve to try everything in our power to remove the songs "Gangnam Style" and "Call Me Maybe" from our heads? I'm not sure any of our news makers inspire great resolution ideas, but they certainly are a good guide as to what not to do in 2013. Looking back at what worked and what did not in the past year is a good way to help improve in the future. This is the lesson that I will apply to resolutions for the Bar Association in 2013 so that they last past February. So what are those lessons? In December, I was honored to be asked by the Maryland Court of Appeals to speak to one of the groups of lawyers being admitted to the practice of law having just passed their bar exams. (For the record, my speech was pretty good until Judge Glenn T. Harrell, Jr. gave the response and blew my speech out of the water!) It was then that it struck me. There are 1,200 new individuals that are joining the Maryland legal community for 2013. Many have jobs with firms or with the government, but some are starting practice on their own. All of these new lawyers need guidance as they learn to become lawyers in the real world and not just the black letter law taught to them in law school. All of them need an outlet in which to be able to give back to the community at large that has helped them get to where they are today.



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PGCBA NewsJournal

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In 2013 the Bar Association will begin a mentoring program for young lawyers who find themselves lost in a sea of juggling practice and business. The number of complaints to bar counsel is at an all-time high and as a legal community it is our responsibility to reduce the number of incidents as much as we can, not only for our brothers and sisters in the bar but for society as well. Also, the Bar Association will try to give back to the Prince George's County Community in a greater way than in 2012. We will start a program where volunteers go out into the community and advise those in Prince George's County how to expunge their records so that individuals can have an easier time obtaining jobs in this economy. Of course, the Bar Association will continue to provide great free programs for its members with the aforementioned Brown Bag Lunch and Law Practice 101. In addition, look for another Young Lawyer's Happy Hour this spring. These are programs which we hope will further our resolutions to the Bar Association in 2013; continue to help and lift up young lawyers, provide programs of interest to

seasoned attorneys and give back to the Prince George's County Community.

These are all ambitious projects and they cannot be achieved without your help. And remember, the Bar Association is not limited to these few resolutions. As always, I invite you to email me, contact the Bar Association through Facebook, call me or stop me in the halls of the Courthouse and share your ideas and

resolutions for 2013, either personal or for the Bar Association. 2012 was great, but what I find exciting is how much better 2013 is going to be!

Thanks,
 Bryon S. Bereano
 President
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MOCK TRIAL - VOLUNTEERS NEEDED!

Dear Friends: This year's Seventh Circuit High School Mock Trial competition is underway. The students and teachers already have this year's competition case file and are trying to prepare for the competition-but many still do not have attorney-coaches to guide their preparation.

Please adopt a high school team for this year! Attorneys can volunteer in pairs, so that at least one of them would be available for each practice session.

Once all teams have attorney-coaches, we will also need attorneys available for one afternoon/evening to judge a preliminary match in late January and throughout February.

For additional information, please contact Ms. Edna Dillard, in person or by telephone (301) 952-5285 or email [EMDillard@co.pg.md.us] for more information.

Thank you!
Judge Sherrie L. Krauser

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*Issues Every Estate Planning Practitioner
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of the Prince George's County Bar Association

Saturday, January 26, 2013
9:00am - 1:00pm

TOPICS:

- | | |
|-----------------|--|
| 9:00 - 9:20am | Maryland Statutory Power of Attorney Update
Sally Presler McCash |
| 9:20 - 10:20am | Elder Law Pitfalls for the Estate Planning Attorney
Jessica L. Estes |
| 10:20 - 11:20am | VA Aid & Attendance - Hidden Money
Cheryl Chapman Henderson |
| 11:20 - 11:30am | Break |
| 11:30 - 12:00pm | Probate Update - Big Changes for Small Estate Administrations
Benjamin J. Woolery |
| 12:00 - 1:00pm | Maximizing Your Social Security Retirement Income
Brian W. Ritter, Jr. |

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Surviving the Holidays and Winter Season

With the combination of cold weather, holiday parties and activities, and the decrease in sunlight, it's easy to fall into a slump and do all the wrong things during the winter months to will leave you lethargic, fatter, and more prone to winter viruses. So it's important to consider what you're eating, especially during the month of December, and to incorporate habits that will boost your mental and physical health. Following are some tips that will help you survive the holidays and the winter months:

Don't over-schedule yourself. When you put more on your plate than you can handle, you either skip doing other important tasks which require your attention OR you end up depriving yourself of sleep in order to fit everything in. It may seem difficult to say no, but you have to listen to your body and know when you have to gracefully opt out of participating in certain functions. That may mean cutting down just a bit on volunteer activities or missing a holiday function or two. But if you overwork your body, you will pay the price and your future tasks will be derailed as a result. So don't be afraid to decline an invitation or to opt out of a certain extra-curricular task. Preserving your health is more important.

During the holiday seasons, it's inevitable that our exercise activity level will decrease and we may feel a little run down from an increase in non-physical activities. Some studies have supported the fact, and I will personally attest to the immune boosting powers of vitamin C. I have found that of all the products out there that claim to boost your immune system or shorten the duration of a cold, the one best product that will deliver results is EmergenC. In fact, during the busy winter months, I believe that consuming a pack on EmergenC mixed into your water bottle once daily will strengthen your immune system and give

you an added kick of energy from the B vitamins. And if you start to feel that your body is becoming really run down or you have a hectic schedule, I would suggest taking a pack both in the morning and at night. For me, this has prevented catching cold or flu for several seasons. I'm a true believer in the power of large quantities of Vitamin C (i.e. a gram per dose) and if you do come down with a cold, a gram (which is the amount in EmergenC) taken several times a day at spaced out intervals seems to dramatically shorten the duration. I'm no doctor, but I've tried practically every supplement out there and I've read tons of medical journals as relates to supplements. I give EmergenC my stamp of approval and suggest that you incorporate it into your daily diet during the winter holiday months as a tip to help survive the season.

In addition to all of the cakes, pies, and other deserts you will certainly consume during the holidays, be mindful to consume green vegetables daily. Veggies, particularly green ones, have so many nutrients that boost immunity and that aid in proper functioning of your body, that you need to remember not to skip them. So have you're your pie and cake if you must, but be sure to grab a plate of broccoli and cauliflower from the veggie tray at parties before you start in on the deserts. In fact, I take a sandwich bag of mixed veggies to work each day and munch on them early in the day before eating anything else just to be sure I've gotten the healthy stuff in for the day.

Don't forget to move. Even if you can't make it to the gym, get moving at home with either traditional exercises or housework that requires you to stay active. Once at home, everyone has 20 minutes to get in a little extra movement. You can do two separate ten-minute sessions of sit-ups, push-ups (girl pushups work just fine), lunges, squats against a wall, and front kick toe touches. That'll get you about twenty total minutes of exercise. Or, if you abhor the idea of actual exercise, walk up and down the stairs at least five times, do laundry carrying a basket up and down stairs, vacuum or

scrub the floors. These household chores will get you moving so that you've gotten in some activity. The key during the holidays, when you're pressed for time, is to do *something*...it doesn't have to be your regular workout if you're short on time but get some type of movement in. I walk on the treadmill during Sunday, Monday, and Thursday night football. No treadmill? Walk in place or do front and side lunges during the length of all commercials.

If you will be hosting a holiday party or get together, consider doing a dessert and beverage open house and swap out all the typical decadent desserts with healthier treats. This way what you're serving doesn't do as much damage to your waistline, and your leftovers aren't such a scary prospect in your home during the days that follow. I like having desert and beverage parties that offer low fat or skim cheeses, fresh fruits, a veggie tray, teas, cider, calorie free flavored sparkling water, and feature Island Way Sorbets. These sorbets come in 4 different flavors and range from about 50-130 calories per serving! Each desert serving comes pre-packaged in natural "serving bowls" which are fruit skins such as lemon and orange rinds, coconut shells, and pineapple shells. They are delicious and no one will ever think they are low calorie. I've found them at Costco but they may also be available at BJ's. This type of party provides light ,healthy fare and allows guests to focus on interacting with one another which is what the holidays are about, after all.

Lastly, it's important to remember that the winter months can cause mood disorders and feelings similar to jet lag. It has been documented that beginning in the fall, when days become shorter, people can suffer from mood disorders such as Season Affective Disorder (SAD). While there aren't a great number of individuals diagnosed with this condition, about 20% of the population are estimated to suffer from a milder form of the disorder often referred to as the "winter blues". Yes...this is a real physical disorder that affects a fairly substantial number of

people. Typically, this disorder begins in the fall months and peaks around mid-winter when days are the shortest. It can cause lethargy, irritability, sleep disorders, cravings for carbohydrates and sweets, and an inability to concentrate. Exercise does help with this disorder, so again – try to get some movement in as many days during the week as possible. Additionally, try to expose yourself to sunlight as often as possible. That might mean doing your own yard work during the weekends when the sun is out, getting up early to go for a walk or jog, and getting outside during your lunch break instead of staying indoors at the office the entire work day. Taking vitamins D and K daily may also help.

Good luck surviving the Holidays and winter months. Hopefully following these tips will make a difference in keeping you happier and healthier.

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Welcomes Stacy McCormack to the Firm



Stacy McCormack

The **Jaklitsch Law Group** is pleased to announce that **Stacy McCormack** has joined the firm. Stacy has tried District and Circuit Court cases as a Public Defender in Anne Arundel County and previously served as the Supervising Attorney of the Appellate Division of the Maryland Office of the Public Defender.

Stacy graduated cum laude from the University of Baltimore School of Law and holds an undergraduate degree from the University of Maryland. She will be handling a variety of personal injury cases including auto and truck crashes, throughout Maryland.

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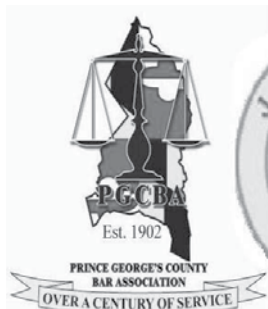
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BROWN BAG LUNCH IN NOVEMBER: GUARDIANSHIP PRACTICE IN PRINCE GEORGE'S COUNTY | *by Judge Sherrie L. Krauser*

I. Overview

Guardianships transfer governance of an individual's welfare from that individual, the ward, to another individual, the guardian. Such fundamental deprivation of personal liberties cannot be taken lightly; thus, courts require strict adherence to statutory requirements. And, guardianship must be the last resort—when no “less restrictive alternative” will suffice to meet the individual's needs. Less restrictive alternatives include advance healthcare directives, durable powers of attorney, appointment of surrogate decision makers (for health care), representative payees (for income) or trusts (for property).

Guardians may be appointed for minors or for disabled adults. The law presumes that minors need guardians—and courts will appoint legal guardians when a child's natural guardians, parents, cannot act reasonably to protect the child. On the other hand, the law presumes adults capable of handling their own affairs, and will not appoint a guardian unless the adult lacks sufficient competence to provide his or her own food, clothing, shelter, medical care and the like, or cannot manage his or her financial affairs.

II. Guardianship of Minors

Guardianships of minors can be sought in the Orphans' Court or the Circuit Court. Further, the Circuit Court can consider guardianships of minors in a custody/guardianship (CAD) action, in a proceeding for a child in need of assistance (CINA), and, for property, through a guardianship (CAE) petition. The Orphans' Court summarily handles guardianship appointments conforming to a testator's will, but also handles guardianship actions through petition and hearing.

A. Guardian of the Person of a Minor

If not established by will, or in the Orphans' Court, guardianship of the person of a minor is handled in the Family Division of the Circuit Court, through a CINA or CAD proceeding. If a child is adjudicated CINA, the court may remove the child from the custody of one or both parents, and appoint another relative or other adult as the child's legal guardian. Until another adult, or a parent, becomes

available as the child's guardian, the court will appoint the Department of Social Services either as limited or full guardian of the child. Whether through a CINA or CAD proceeding, the court must determine the child's best interests before granting any petition for guardianship, or determining the individual best suited to serve as the child's guardian.

B. Guardian of the Property of a Minor

A minor may acquire income or assets without needing a guardian. Establishment of a trust to preserve a child's assets until majority, or pay regular providers of services to the child during minority, will avoid guardianship. Moreover, appointment of a representative payee to receive a child's income (*e.g.*, from an annuity, Social Security or other source) will avoid guardianship.

A child needs a guardian of property only if the minor owns or is entitled to property requiring management or protection, or needs funds for care, support, welfare, education and protection. Guardianship of the property of a minor follows the same legal requirements as guardianship of the property of an adult disabled person, and may be established in either the Orphans' Court or the Circuit Court.

III. Guardianship of Adults

Guardianship of adults may only be sought in the Circuit Court, through an equity action reviewed in the court's Trust Office. Although our long-time Trust Attorney, Cathy Bouchard, recently retired, we are fortunate that our new Trust Attorney, Sharon Christmas-DeBerry, ably serves in that post. While not offering legal advice, the Trust Attorney provides general information to the bar and public, reviews all pleadings, and reviews all accountings and reports filed with the Circuit Court. The Trust Attorney issues memoranda noting deficiencies in pleadings, reports and accounting statements, and pursues actions against any guardians failing to fulfill their legal obligations.

Because adults, unlike children, are presumed capable of making reasonable decisions for their own health and welfare,

the law requires that a petitioner establish that the alleged disabled person (ADP) lacks competency, and that no less restrictive alternate will protect the ADP's welfare. Whether guardianship is sought over the person or property of an ADP, a petitioner must present two medical certificates establishing the ADP's lack of competency to make decisions regarding his or her welfare, or property management. One certificate must evidence an evaluation not earlier than 21 days before filing a petition, or after the petition. One certificate must be from a licensed physician; the second may be from another licensed physician, or a licensed psychologist or clinical social worker.

In either instance, the court will appoint the most suitable guardian, based on statutory priorities. Further, the court requires annual reports from a personal guardian, and annual accounting reports from a property guardian; both reports are reviewed by the Trust Attorney to alert the court of any problems. Late or missing reports, failure to account for use of the ward's funds for the ward's benefit, failure to request approval to change the ward's type of residence, or other anomalies may result in court action.

However, because a guardian of the person will make all decisions for the ADP's healthcare, food, clothing, and residence (with some restrictions), the law requires a stricter standard than for appointment of a guardian of property. Differences between guardianship of person and property are highlighted in the sections below.

A. Guardianship of the Person of an Adult

To obtain guardianship of the person of an adult, a petitioner must show by **clear and convincing evidence** that the alleged disabled person (ADP) cannot make or communicate responsible decisions for his or her own health care, food, clothing or shelter because of a mental disability, disease, habitual drunkenness or drug addiction and no less restrictive intervention will protect the ADP's welfare and safety. Further, the court must conduct a **jury trial**, unless the ADP waives that right, and elects a court trial.



Once appointed, the guardian of the person has only those powers enumerated by statute. The guardian must report annually to the court, and must seek court permission to authorize life-threatening medical treatment, change in the ward's type of living arrangement, or withhold life-sustaining treatment.

B. Guardianship of the Property of an Adult

On the other hand, to establish guardianship of property, a petitioner must show by a **preponderance of the evidence** that the ADP cannot effectively manage his or her property and affairs because of physical or mental disability, disease, habitual drunkenness, drug addiction, **imprisonment, compulsory hospitalization, confinement, detention by a foreign power or disappearance and has or may be entitled to property or benefits requiring management.** Further, the court may grant a petition for appointment of a

guardian of property **without a hearing,** unless the ADP or an interested person opposes the petition.

Generally, the court will require the guardian of property to post a bond equal to the total value of the ward's assets. Further, the guardian of property must inventory the ward's assets upon appointment, and file an annual accounting showing all assets, including acquisition and distribution, income and expenses for the ward during the reporting period. Discrepancies may result in legal action brought by the Trust Attorney against the guardian. The guardian of property may be entitled to a fee for services, as established by statute.

C. Emergency Proceedings

The Circuit Court does not deprive adults of their rights improvidently, and does not welcome emergency proceedings. Emergency petitions for guardianship are not heard by the judge generally assigned

to emergency matters; rather, those petitions must be initially reviewed by the Trust Attorney and forwarded to the judge assigned to handle guardianship matters.

IV. Additional Reading

Practical Approaches to Adult Guardianships, MICPEL 2010

The Maryland Guardianship Benchbook, MICPEL

Guardianship and its Alternatives—A Handbook on Maryland Law, www.aging.maryland.gov/documents/GuardianshipHandbookRevised2011.pdf

Maryland Code, Estates and Trusts Article, Chapter 13

Guardianship Petition Checklist

- _____ Review Maryland Rules 10-103, 10-201, 10-301
- _____ Review Md. Code, Estates & Trusts Article §§13-707, 13-801
- _____ Petitioner is an Interested Person
- _____ Prince George's County is proper venue
- _____ Maryland is proper jurisdiction
- _____ Petition is captioned properly, *i.e.*, "In the Matter of *[alleged disabled person]*"
- _____ Petition is verified, *i.e.* signed, under oath, by Petitioner (not just attorney)
- _____ Petition identifies & seeks appointment of proposed guardian of person/property/both
- _____ Petitioner's name, address, age, telephone number, and relationship to respondent
- _____ Identify respondent (name, age, sex, address) as minor or alleged disabled person
- _____ Adult: Describe nature and extent of alleged disability; assert medical certificates of (lack of) competency
- _____ Describe adult respondent's ability to make and communicate responsible

continued on next page

continued from previous page

decisions and provide for own health care, food, clothing, shelter

_____ Identify any less restrictive alternatives; explain ineffectiveness; attach documents

_____ Identify any previously appointed agent, guardian or conservator; attach documents

_____ Identify (name, address) anyone with whom respondent resides; if petitioner,

identify a third party for service on respondent

_____ Identify (name, address, telephone number, relationship/interest) of all interested persons including any attorney representing respondent

_____ Adults: Attach two certificates of competency, at least one **evaluation** not more than 21 days before filing petition:

_____ one physician

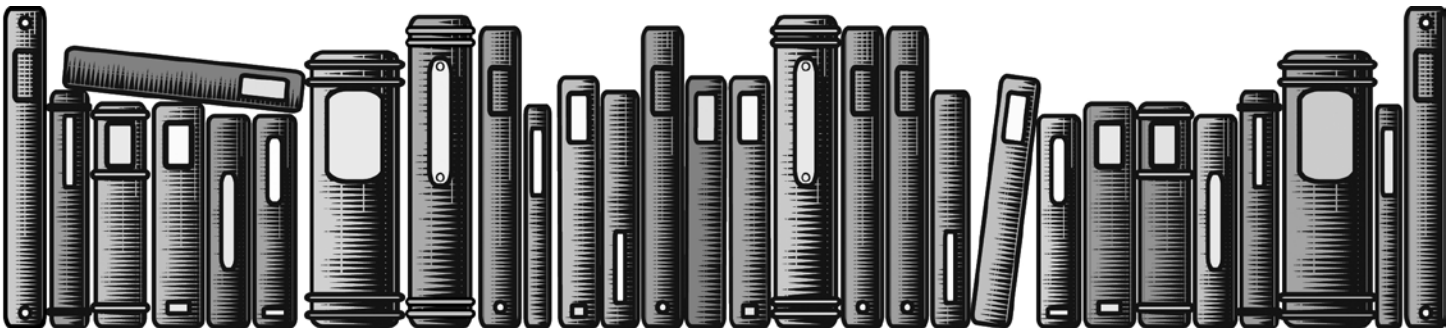
_____ one physician, licensed

psychologist or licensed clinical social worker

_____ Identify (location, value, nature of interest) assets, if guardian of property sought

_____ Identify (name, address, nature of interest) any co-owner of respondent's assets

Information from the Prince George's County Circuit Court Law Library



BOOKS

Examining the Work of State Courts: An Analysis of 2010
State Court Caseloads
KF 8700 .A73 2012

Guide to Maryland Zoning Decision, 5th ed.
KFM 1658 .A53 A27 2012 RESERVE

Maryland Law of Confessions, 2012-2013 ed.
KFM 1780 .J49 2012 RESERVE

Maryland Vehicle Law Annotated, 2012 ed.
KFM 1497 .A29 M374 2012 RESERVE

Military Divorce Handbook, 2nd ed.
KF 535 .S85 2011

New Appleman Insurance Law Practice Guide, 2013 ed.
KF 1164 .N49 2012

MICPEL/MSBA

Criminal Law Update, 2012
KFM 1761 .C75 2012

CD-ROMS

101 Law Forms for Personal Use, 7th ed.
Kept at Reserve Desk

Maryland Estate Planning, Will Drafting, and Estate
Administration, 2012 update
Kept at Reserve Desk

Military Divorce Handbook, 2nd ed.
Kept at Reserve Desk

Modern Real Estate Practice Forms and Commentary,
November 2012 update
Kept at Reserve Desk

GOVERNMENT DOCUMENTS

District Court Traffic Citation Manual, 2012
KFM 1714 .M37 2012 RESERVE



LEG 392 - Anatomy of a Complex Deposition *(In Partnership with Anne Arundel Bar Association)* Gain effective deposition skills which are at the heart of any litigator's practice. Learn how to prepare or defend the deponent, take control of the dynamics of a deposition, and effectively question the witness or raise objections. Acquire practical tips to improve your own style from leaders in the profession. *\$55.00 (add'l \$5.00 if out of county resident)*

Speakers: Robert Cawood, Esq., Rignal Baldwin, Esq.
Kathleen Meredith, Esq.

When: Jan. 30, 2013 6 - 8:30 p.m.

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

LEG 382 - Interdisciplinary Collaborative Law Training: Basic Training - TWO DAYS

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Speakers: Timothy Mummert, Esq. Anne Balcerzek, Esq.

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LOCATION: United States District Court for
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The Hon. Charles B. Day, U.S. Magistrate Judge for the
District Court of Maryland
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Representing the military service member (active duty or reserve) in a divorce or domestic law setting presents a number of issues that are unique to this population, and this article is intended to highlight those areas that are different from a civilian divorce. In addition to addressing domestic cases, the section of this article that refers to the Service Member's Civil Relief Act (hereinafter "SCRA") also applies to civil actions, both domestic and otherwise.

A. CHILD SUPPORT AND MILITARY PAY

If you have not had much experience, or any for that matter, in representing military service members or their spouses, this is the first area that can cause the practitioner problems. It may sound easy to determine the pay of a military service member as they are paid by the Government. It should be a simple matter of reviewing the W-2. While the W-2 is a nice place to start, do not accept that document as a complete analysis of the service member's pay for child support and alimony purposes.

Like federal employees, military service members receive base pay and locality pay. However, unlike federal employees, the locality pay is not reflected on the W-2. The locality pay in the military world is known as the Basic Allowance for Housing ("BAH"). This is a non-taxable entitlement that all service members receive during their active duty service. In our geographic location particularly, this can be significant as the pay is based on the cost of housing locally, as well as the rate or rank of the service member, number of years of service, and whether the service member has any dependents. For example, at present, the BAH for an O-6 with 20 years of service is \$3,264 with dependents and \$2,748 without dependents, which is a significant amount of annual tax-free income that does not appear on the W-2 as it is an entitlement.

In addition to this entitlement that does not appear on the W-2, the service member also receives tax free, a monthly Basic Allowance for Sustenance ("BAS"). This is \$239.96 per month for officers and \$348.44 per month for enlisted. Rate, rank, and time in service do not change this amount. Again, this does not appear on the W-2.

Many service members also receive "special skills pay" for such things as being on a submarine, flight pay, and medical pay. In contrast, these do appear on the service

member's LES, and they do appear on the W-2. You need to know about these pays because service members with special pay will sometimes receive incentive bonuses to retain them in their specialized area. These bonuses do appear on the W-2, and are includable as income for purposes of child support and alimony.

Therefore, be very wary of an opposing counsel who represents the service member that offers only a W-2 as support for their client's income. There are many entitlements that do not appear on the W-2, and there are also special pay that you will need to know about. To have the complete picture of the service member's income, you need to see his or her Leave and Earnings Statement. Do not agree to an income figure without seeing this first.

If you have trouble getting this document, you can get a pretty fair estimate of the service member's income just by having their rate or rank and number of years in service. With this information you can access the military pay charts by going to <http://www.dfas.mil/> and select the military pay table charts. They are arranged by year and are set up as a grid, with the rate/rank and number of years in service. If you know that the service member is also in a special field like medicine or aviation, you can also find the pay scales for these special pays. Finally, when serving overseas, service members receive additional pay and sometimes separation pay if they are stationed to a region where family cannot join them.

In order to calculate the BAH when faced with a recalcitrant service member, you can access <http://www.defensetravel.dod.mil/site/bah>. In this website, you will need the service member's rank and zip code for where they are stationed, as it is based on the locality where they work. Armed with this information, you can establish that the service member is actually receiving significantly more income than what is reflected on a W-2. For purposes of calculating child support and alimony, this can be very significant. (See below for more information in the context of child support.)

B. PARENTING ISSUES

Custody issues in military cases frequently involve relocation due to military orders, sometimes during the pendency of the litigation. A standard custody case can, in the middle of the normal litigation morass,

suddenly become a relocation case. In that case, you need to be ready and conversant in the Uniform Child Custody and Jurisdiction Enforcement Act ("Act"). Obviously, this article cannot address all the intricacies of the UCCJEA, is mentioned here only to bring it to your attention.

1. Six month rule for "home state" jurisdiction
2. Exclusive, continuing jurisdiction
3. Foreign Country is the same as a state in treatment under the Act.

1980 Hague Convention of the Civil Aspects of International Child Abduction

Website to find if country is signatory:
<http://travel.state.gov/abduction/attorneysjudges/attorneysjudges-4306.html#2>

Check individual country's requirements for service under Hague Convention. Will often require documents to be translated into country's language and will have service requirements that must be complied with for service to be effective. **DO NOT ASSUME SERVICE IN COMPLIANCE WITH MD LAW IS SUFFICIENT.**

- a. The military will not involve itself with custody of dependents
- b. Command can order "early return of dependents" if problems with children/custody arise while overseas. This can cause the instant separation of a family.
- c. MD FL 9-108 Custody or Visitation Order Based on Deployment of a Parent (enacted 2009).

1. Any petition to modify custody or visitation based on the end of a deployment, must reference the date of the end of the deployment and, if filed within 30 days of the end of the deployment, the court **shall** set it for an expedited hearing. This statute is to accommodate the returning SM whose spouse or former spouse/child's parent has decided to not permit visitation upon the SM's return, and to alert the Court if a petition to modify is based primarily or solely on the absence of the SM due to deployment and that the SM's absence is being set forth as the substantial change in circumstances.
2. Any custody or visitation order entered based on a SM's

deployment shall have provisions to accommodate the SM's leave schedule, facilitate phone and email contact and requires the SM to provide timely information to the other parent regarding their leave schedule.

B. MILITARY PENSION, RETIREMENT AND BENEFITS

This is perhaps the area of greatest misunderstanding and misinformation in the area of military divorce. Much of the confusion is caused by the service members themselves who often do not understand the nature of this unique retirement plan.

One of the big surprises to service members is that their military pension can be divided under MD law. They never are happy when you explain to them that their pension can be divided.

1. Military Pensions are divisible by state courts in divorce proceedings since 1982 and the passage of the Uniformed Services Former Spouses Protection Act. 10 USC §1408.
2. 10 year rule: Parties must be married for 10 years over 10 years of military service for former spouse to be eligible to receive share of retirement directly from DFAS. Under MD law, the court can divide the military pension if less than 10 years of marriage over 10 years of military service, but in this case the SM will be responsible for paying the former spouse directly. This is always a nasty revelation to a service member because they truly believe that their pension is safe if they have not been married for 10 years during their military service.
3. Jurisdiction to Divide Pension: Military pension division requires jurisdiction beyond that which is required for a court to grant a divorce. In order for the Court to have the ability to divide the military pension, the Court must find that it has jurisdiction to divide disposable retired pay pursuant to 10 USC 1408 (c)(4).

That MD is the service member's residence, ***other than due to military assignment***

That the service member is domiciled in the territorial jurisdiction of the court, or

That the service member consented to the jurisdiction of the court.

Please see Wamsley v. Wamsley, 333 Md. 454 (1994) for a discussion of residence other than for military assignment and its treatment in Maryland.

4. Disability Pay: Please be cautious about the treatment of disability pay and the contemplated division of it at the time of divorce. Oftentimes, the former spouses attorney will request that the service member agree that, in addition to dividing the pension, that the service member waive his or her right to offset a portion of their retirement as disability pay. Historically, if a service member has, for example, a 30% disability rating, the military would offset 30% of the retirement and call it "disability" pay, the advantage to the service member being that disability is not taxed.

However, from the former spouses view, this would reduce his or her share of the retirement as now the former spouse will only receive the marital share of the remaining 70% of the retirement.

Caveat: If representing the SM, do not agree to this without carefully explaining it to your client. If representing the former spouse, make sure to ask for this.

Please see Mansell v. Mansell, 490 U.S. 581 (1989) for a discussion of the treatment of disability pay.

5. Maximum Award: The maximum amount that a former spouse can receive under USFSPA is 50% of the military pension.

You can also agree to a fixed dollar amount rather than a percentage, but it cannot exceed 50%, or DFAS will not accept the order.

DD214: Report of Separation from Military Service: Make sure that you get this before attempting to draft a Constituted Pension Order, if the service member is retired at the time of drafting the Constituted Pension Order. This document tells the retiring service member exactly the number of months of service creditable towards his retirement. If representing former spouse, be certain to request this document in discovery.

6. Medical, Commissary, Exchange/Post Privileges: Once the parties have been married for 20 or more years over 20 or more years of military service, upon divorce the former spouse has their own benefits awarded to them, i.e. medical, commissary and exchange/post privileges. The SM cannot refuse to allow the former spouse to have these privileges as these benefits are awarded to the former spouse in his or her own right.

Caveat: The former spouse will lose the medical benefit upon remarriage.

She or he can revive those rights if the subsequent marriage ends in death, divorce or annulment.

C. SBP: SURVIVOR BENEFIT PLAN

The second issue of interest in this case is on the question of the Survivor Benefit Plan. ("SBP"). The SBP is the insurance on the pension. In the event that the service member predeceases the former spouse, the retirement would no longer be paid, but if the SBP had been selected, the former spouse would receive that rather than the retirement.

The problem with SBP from a practical standpoint is that while it is free to the service member while on active duty it is quite expensive once they retire. It is 0.65% of the service member's base at retirement. That payment for the SBP premium is made monthly from the retirement **before** the pension is divided pursuant to a CPO. Therefore, the service member and former spouse share this cost.

From the practitioner's perspective, please be aware that:

- b. You must separately identify the SBP. Do not assume that it will follow with the pension. Separately plead for the SBP and separately list it on the 9-207.
- c. You may be called upon to place a value on it. This can mean hiring a pension expert who can put a value on it and identifying that expert in your discovery
- d. This has been a very brief overview of some areas of military divorce that are different from a civilian divorce. In short, when doing a military divorce, you need to be aware of the unique pay, pension and custody issues that can arise, and be in a position to explain them to your client, be it the service member or their spouse.

Maureen Glackin is a partner at the firm of Reinstein, Glackin, Patterson & Herriott, LLC., located in Bowie, MD. Her practice is concentrated in the area of domestic law, and she has developed a thriving practice in military divorce. She also consults with other attorneys in the area of military divorce, particularly involving the division of military retirement. Ms. Glackin is a graduate of Villanova University and Temple University School of Law. She is licensed to practice law in California, the District of Columbia, Maryland, and Washington State.

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