



NEWSLETTER

October 2018

2018 Statutory Changes in Estate Administration

By: Sean P. O'Keefe, Esquire

There are two bills from this past year's session of the Maryland General Assembly set to take effect on October 1, 2018 that estate administration attorneys should note—Senate Bill 292 and House Bill 556. Senate Bill 292, which passed both chambers unanimously, adds Section 5-608 to the Estates and Trusts Article. Section 5-608 tells us that if (1) the only property a decedent owned is not more than two vehicles, or a boat or vessel with an appraised value not exceeding \$5,000, and (2) the decedent's surviving spouse is the decedent's sole heir or legatee, then administration of the decedent's estate is not required. The Motor Vehicle Administration may transfer the decedent's vehicle's title to the surviving spouse if the surviving spouse certifies that all debts and taxes owed by the decedent have been paid.

House Bill 556, which also passed both chambers unanimously, adds Section 2-206(a) to the Estates and Trusts Article. Section 2-206(a) tells us that a Register of Wills may waive any fees under this Section for estate administration if (1) the real property of the decedent subject to administration in Maryland is to be transferred to the decedent's heir who resides on the property, or if the property is encumbered by a lien against the property and subject to sale under Title 14, Subtitle 8 of the Tax – Property Article, and (2) the estate is unable to pay the fees by reason of poverty. "Poverty" has been defined here as (1) at the time of the decedent's death, the decedent's family household income was less than 50% of the median family income for Maryland as reported in the Federal Register, or (2) the personal representative is represented by an attorney retained through the Maryland Legal Services Corporation.

[BAFC Website](#)

The McCammon Group

is pleased to announce our newest Neutral

Hon. John H. Tisdale (Ret.)

Retired Judge, Circuit Court for Frederick County

The Honorable John Tisdale has served his community admirably for over forty years as an advocate, jurist, board member, and volunteer. Prior to his appointment to the bench, he enjoyed a successful career in private law practice, providing counsel in a variety of civil and family law disputes. A proven leader, Judge Tisdale has served as President of the Frederick County Bar Association, Director of Frederick Memorial Hospital, Chair of the Board of Directors for Frederick Community College, and as a Commander in the United States Naval Reserve. He was recognized by the Maryland State Bar Association with the presentation of the Anselm Sodaro Civility Award and served as Chair of the Maryland Judicial Ethics Committee for five years. Judge Tisdale now brings his distinguished record of accomplishment and service to The McCammon Group to serve the mediation and arbitration needs of lawyers and litigants throughout Maryland and beyond.



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A Breath of Fresh Air: Maryland Court Blows Away Denial of Wind Farm Variance

By: Anne-Herbert Rollins at Miles & Stockbridge

A breath of fresh air and a second wind was breathed into dreams and potential plans for a large wind farm in Allegany County, Maryland. The Court of Special Appeals of Maryland in *Dan's Mountain Wind Force, LLC, et. al. v. Allegany County Board of Zoning Appeals*, __ Md. App. __, __ A.3d __ (2018)(Case No. 804, September Term 2016; filed April 3, 2018), recently held that the Allegany County Board of Zoning Appeals (the "BZA") did not properly apply the "uniqueness" test or the "practical difficulty" test necessary for an applicant to prove its eligibility to obtain a zoning variance.

The applicant, Dan's Mountain Wind Force, LLC ("DMWF") sought a variance to construct 17 wind turbines on property that it leased, which in this case involved several combined properties. The Allegany County Code allows for wind turbines by a special exception in the zoning district. Construction of the turbines; however, requires (1) a minimum separation of 2,000 feet from a residential structure, and (2) a minimum setback of not less than 3 times the height of the turbine. Since the proposed sites for the turbines did not meet either the setback or separation distances, or both, DMWF sought variances from the BZA, and also applied for a special exception.

DMWF presented testimony before the BZA regarding various factors which limited the use of the turbines at the proposed locations. The BZA denied the variance requests; however, because it found DMWF failed to establish that the properties were sufficiently "unique" and failed to demonstrate that the variances were in harmony with the zoning regulations. Since the special exception was dependent upon the variances, the special exception was also denied. DMWF consolidated the appeals, which were affirmed by the Circuit Court for Allegany County.

On appeal to the Court of Special Appeals, the Court discussed the two requirements under the law of variances. First, the property must meet the "uniqueness" requirement, which looks at the unique factors and conditions of the property itself. Second, if the applicant successfully proves the property is unique, the applicant must then prove "practical difficulty" or "unnecessary hardship" which affect the applicant's ability to meet the requirements of the zoning regulations.

This case is important because, as the Court pointed out, there is very little recent case law in Maryland on variances, or which discuss the "uniqueness" requirement, the most

recent in the 1990s. The uniqueness analysis requires an examination of the unusual characteristics and features of a specific property in relation to other properties in the area. There must also; however, be a nexus between the property's unique characteristics and the manner in which the zoning law negatively impacts the property owner. In this case, the Court found that the BZA did not properly identify the properties' unique characteristics or compare them correctly to surrounding properties. The BZA also failed to apply the required nexus component.

The Court then provided guidance on the "practical difficulty" and "unnecessary hardship" requirements. The Court clarified that the "practical difficulty" test is a more lenient standard, but relates only to an "area" variance. By comparison, the more strict "unnecessary hardship" test applies to "use" variances. The variances requested by DMWF for the wind farm were "area" variances, not "use" variances and, therefore, the BZA should have reviewed the application under the more lenient "practical difficulty" standard.

The Court concluded that the BZA erred, both in its decision on the "uniqueness" of the properties, and because it applied the incorrect "unnecessary hardship" test instead of the appropriate "practical difficulty" test. The case was remanded back to the Circuit Court to enter an order vacating the BZA decision. The Court instructed the Circuit Court to remand the case back to the BZA to review the requests for variances and special exception under the "correct legal framework". And, thus, potential plans for the wind farm on the properties have now been provided with a second wind and breath of fresh air.

Earn pro bono hours



SIGN UP BY 10/31/18 for the District Court of Maryland's Day of Trial Volunteer Alternative Dispute Resolution (ADR) program.

Apply online:
mdcourts.gov/district/adr/become2

School Supply Donations THANK YOU!

This year the BAFC raised \$7038.19 for the kids of Frederick County through the Religious Coalition's School Supply Drive!

Please read the thank you below forwarded from Sara Ryan at the Religious Coalition regarding how last year's gift was used to understand how far your money goes in helping the kids:

"We are most grateful for the continued generous gifts from the Bar Association. Their generous gift last year provided funding to purchase 2500 backpacks. These backpacks were distributed throughout the county in various school supply drives along with several hundred "extras" that we purchased for schools to have available when school started.

There was also funding available from that gift to purchase what I call the "big" ticket items. These are supplies that we do not get in large supply and are really needed by the students such as ear buds, headphones, and dry erase markers. The number of high school students is increasing and they have needs for items such as graph paper and sketch

books.

We were also able to purchase several hundred binders which are needed across the grade levels.

We served 1541 students this year which is up from 2017 (1407). In addition to those 1541 students, we gave 20 backpacks with supplies to the Religious Coalition for those families who forgot about the distribution or who were unable to get there

Please share with the Bar Association just how far their gift went and we are grateful for what we have received from this year's fundraiser."

-Rev. Barbara Kershner Daniel, ERUCC (partner with the Religious Coalition along with other partners in the community)

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Member Announcements

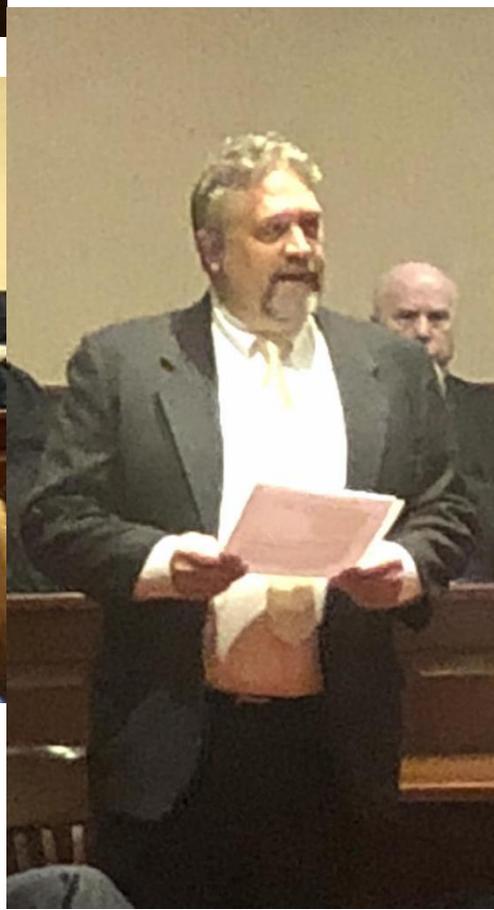
Tom Meachum, partner with **Carney, Kelehan, Bresler, Bennett & Scherr LLP**, was selected by his peers for inclusion in **2019 Edition of The Best Lawyers in America**, the oldest peer-review publication in the legal profession. Tom was listed in the business organizations practice area. He focuses on zoning and development law, general real estate, business law, employment law, estate administration and litigation and alcohol beverage licensing.

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

Recent Bar Association Events

Opening Term of Court

On Monday, September 10th many BAFC members gathered in Circuit Courtroom 1 to celebrate the Opening Term of Court. The portrait of recently retired Judge O. John Cejka was presented and is now hung in the hallway of the courthouse alongside many retired Frederick County Judges. Memorial Resolutions for the following BAFC members were shared: Tobey Brehm, Marc Zeve, W. Jerome Offutt, and Judge Cleopatra Campbell. Newly barred lawyers were introduced and signed the Lawyer's Book, a Frederick County tradition that dates back to 1946. BAFC Interim President Joanie Raymond also gave an update as to what the BAFC has accomplished in the 6 months since the last opening term of court.



Clockwise from top left:
Photo 1: People gather in Circuit Courtroom 1
Photo 2 (top right):Magistrate Raymond welcomes all
Photo 3 (bottom right):David Straile presents the Memorial
Resolution for Marc Zeve

Photo 4 (above). Judge Flores unveils Judge Cejka's portrait that is now hung in the courthouse
Photo 5 (middle left): Detric Kemp introduces Lawrence Regan to sign the Lawyer's book

Section Updates

Business Law Section

The **Business Law Section** will meet on **November 8th at 12 p.m.** at the office of Rebekah Lusk. Recent cases, statutes and regulations that affect the Frederick business community will be discussed. If you would like to be included on the Business Law Section email list or would like more information about the Business Law Section, please contact Frank Goldstein at frankr@frgoldlaw.com.

Young Lawyer Section

The **Young Lawyers Section** will meet on **October 15th at 12 p.m.** for a lunch meeting at Pistarros. There will also be a meeting on **November 15th at 5 p.m.** at the Blue Side Tavern. Nominations for executive committee members will be taken. If you are interested in a position, but are unable to make it to the meeting, please contact the YLS at bafcyls@gmail.com. For more information about the Young Lawyers Section, please contact Kyle Kane at KKane@Statesattorney.us.

Family Law Section

The **Family Law Section** will meet on **November 1st at 5 p.m.** at Nido's Restaurant. The speaker will be Catharine Fairley who will be talking about Tax and Family Law Issues. There will also be a meeting on **November 14 at 5 p.m.** Nido's Restaurant. Judges from the Circuit Court will be in attendance for discussion and questions. For more information about the Family Law Section, please contact Gwen McLeod at GMcLeod@wefight4u.com.

Elder & Disability Law Section

The **Elder & Disability Law Section** will meet on **November 20th at 12 p.m.** at Nido's Restaurant. For more information about the Elder & Disability Law Section, contact Tim Price at tcp@eqkmrh.com.



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Job Postings

Frederick County Circuit Court is seeking applicants for the position of "Standing Examiner":

Applicants must be members in good standing of the Maryland State Bar and have a minimum of five (5) years' experience in Family Law. The fee for an Examiner is a minimum of One Hundred Twenty Five Dollars (\$125.00) for the Examiner and Fifty Dollars (\$50.00) for the Clerk of the Examiner, for a total fee of One Hundred Seventy Five Dollars. Interested applicants should submit their resume' with cover letter to Judy Lohman, Circuit Court Administrator, 100 West Patrick Street, Frederick, Maryland 21701

no later than October 15, 2018.

Assistant Bar Counsel Attorney Grievance Commission of Maryland

The Office of Bar Counsel is seeking applicants for Assistant Bar Counsel. This attorney investigates allegations of professional misconduct or incapacity; presents complaints to Peer Review Panels, represents the Commission at trial in circuit courts throughout the State and before the Court of Appeals; and performs other duties as directed by Bar Counsel. The position carries a heavy case load and state-wide travel is required.

The ideal candidate will have a minimum of seven years' legal experience, including substantial trial experience, as well as strong writing and oral advocacy skills. Maryland Bar required.

Medical and retirement benefits. Email cover letter, resume, and writing sample to nancy.larocque@agc.maryland.gov by close of business 10/26/18. E.O.E.



**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

PUBLIC NOTICE FOR THE APPOINTMENT OF MAGISTRATE JUDGE

The United States District Court for the District of Maryland is now accepting applications for the position of full-time United States Magistrate Judge in the northern division. This vacancy/appointment is contingent upon the confirmation of the current incumbent, the Honorable Stephanie A. Gallagher, as a United States District Judge.

The duties of the position are:

- (1) Conducting most preliminary proceedings in criminal cases;
- (2) Trying and disposing of misdemeanor cases;
- (3) Conducting various pretrial matters and evidentiary proceedings on delegation from the judges of the district; and
- (4) Trying and disposing of civil cases upon consent of the litigants.

The basic jurisdiction of the United States Magistrate Judge is specified in 28 U.S.C. § 636 *et seq.*

To be qualified for appointment an applicant must:

- (1) Be, and have been for at least five years, a member in good standing of the bar at the highest court of a state, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands of the United States, and have been engaged in the active practice of law for a period of at least 5 years (with some substitutes authorized)
- (2) Be competent to perform all the duties of the office; be of good moral character; be emotionally stable and mature; be committed to equal justice under the law; be in good health; be patient and courteous; and be capable of deliberation and decisiveness;
- (3) Be less than seventy years old; and
- (4) Not be related to a judge of the United States District Court for the District of Maryland.

A Merit Selection Panel composed of attorneys and other members of the community will review all qualified applications and recommend in confidence to the District Judges the five persons it considers best qualified. The Court will make the appointment following an FBI full-field investigation and an IRS tax check of the appointee. An affirmative effort will be made to give due consideration to all qualified candidates, including women and members of minority groups. The current salary of the position is \$191,360.00. The term of office is eight (8) years.

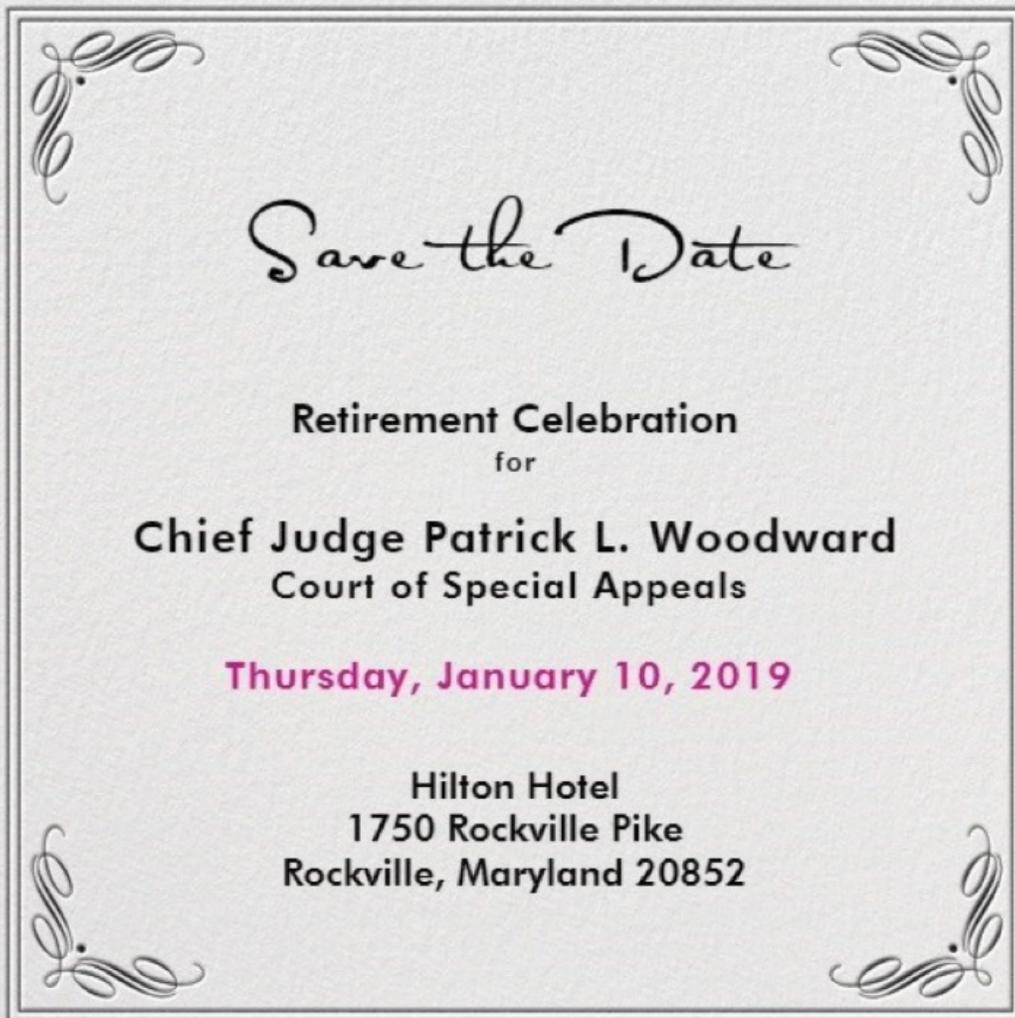
Application forms can be obtained from the Clerk of the District Court or on-line by accessing the "Magistrate Judge Announcement" icon on the Court's home page at www.mdd.uscourts.gov. Please note that the applicant must personally apply, no nominations will be accepted.

On or before October 5, 2018, submit your application, attachments and three writing samples in PDF format to: Magis_Judge_vacancy@mdd.uscourts.gov. Even though we are requiring that applications be submitted via email, applicants should also provide an original and nine (9) copies of the completed application, attachments, and the three writing samples in a package marked MERIT SELECTION PANEL-CONFIDENTIAL, which should be sent to:

Chair, Magistrate Judge Selection Panel
c/o Tina Stavrou, Human Resources Administrator
United States District Court for the District of Maryland
4415 U.S. Courthouse
101 West Lombard Street, Fourth Floor
Baltimore, MD 21201

All applications will be kept confidential unless the applicant consents to disclosure, and all applications will be examined only by members of the Merit Selection Panel and the Judges of the United States District Court for the District of Maryland. The deliberations of the Panel and the Judges will remain confidential.

Events of Interest



Upcoming Training Opportunities

Pro Bono Resource Center Trainings

Friday, October 5 Assisting Domestic Violence Survivors.

10:00 am - 1:00 pm, *Prince George's County Circuit Court, 14735 Main Street, Room M0421, Upper Marlboro, MD 20772*

This training, co-sponsored with Community Legal Services of Prince George's County, covers protective orders and peace orders; shielding and sealing; trauma-informed practices; domestic violence and human trafficking; and a panel of resource providers. [Find out more »](#)

Friday, October 12 Youth Homelessness: What Lawyers Need to Know

1:00 pm - 4:00 pm, *University of Baltimore School of Law, 1401 N. Charles Street, Baltimore, MD 21201*

This training will provide an understanding of youth homelessness (local statistics, causes, experiences of youth), cultural competency for working with youth experiencing homelessness, and an overview of HPRP's Homeless Youth Legal Network pro bono initiative. Attorneys taking the training will need experience in one or more of these areas: child custody, identity theft, consumer debt, name and gender changes, connecting with foster care, or private landlord-tenant law. [Find out more »](#)

Friday, October 26 PBRC Litigation Lunch & Learn: Tips for getting social media evidence admitted at trial. 12:00 pm - 2:00 pm, *Goodell DeVries, 1 South Street, 20th Floor, Baltimore, MD 21202*

Each meeting includes a one-hour skills training, followed by a one-hour mentoring roundtable, where attendees can bring up litigation questions they're currently facing (whether related to the presentation topic or not), and get input from the group. Experienced litigators will be present during the second hour, and a light lunch will be provided. Participation is open to attorneys who have already accepted a pro bono commitment through PBRC within the past 12 months. [Find out more »](#)

CALM Upcoming Trainings

The National Center and its program CALM, The Community Solving Program of Frederick County, will be offering upcoming mediation trainings as listed below. The National Center has been offering trainings around the state and country since 1984.

The **Parenting Plan Mediation Training** will be held October 19, 20 and 21, 2018 and **Financial and Property Training** will be held October 26, 27 and 28, 2018.

Registration is required and there is a fee. If interested email frederickcalm@aol.com

Calendar

Save the Date

October Events

- **Tuesday, October 2, 12:00-1:00pm, Monthly Meeting and Luncheon**, The Delaplaine Arts Center. Tim Maloney will be giving a legislative update. Pre-purchase lunch [HERE](#).
- **Thursday, October 18, 5:00pm, 16th Annual Dinner with the Judges**, Musket Ridge Golf Course.

- **Tuesday, November 13, 12:00-1:00pm, Monthly Meeting and Luncheon**, The Delaplaine Arts Center, Pre-purchase lunch [HERE](#).
- **Tuesday, December 4, 12:00-1:00pm, Monthly Meeting and Luncheon**, The Delaplaine Arts Center, Pre-purchase lunch [HERE](#).
- **Thursday, December 13th, 5:00pm, BAFC Holiday Party**, The Delaplaine Arts Center.

[Full Calendar of Events - Updated Regularly](#)

Classified Ads

Office Space For Lease

Downtown Office Suite with 2,500 square feet directly across from the Frederick County Courthouse - 115 West Patrick Street. Up to 5 parking spaces available. Perfect for 2-3 attorneys. Office furniture and equipment available if interested. Please contact Maribeth Visco [301-401-2899](tel:301-401-2899) (cell) or [301-694-8444 x 204](tel:301-694-8444) (work) mb@klinescottvisco.com.

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