FEDERAL BAR ASSOCIATION - MARYLAND CHAPTER

NEWSLETTER

JUNE 2011

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FBA - PRESIDENT'S MESSAGE

LINDA HITT THATCHER
THATCHER LAW FIRM, LLC

As I prepare to hand over the president's position to my successor, Sharon Snyder, I want to thank every member of our Board of Governors for their advice and support over the past year. Each member of our FBA board has sacrificed time from their own busy and impressive practices to either write articles, edit and publish the FBA newsletter, assist our federal judges, chair continuing educational programs; support and sponsor our 1st Annual Golf Tournament, and assist me whenever asked.

L to R: Chad Curlett, Linda Hitt Thatcher, Celeste Bruce, Stephanie Gallagher, and Paula Xinis.

This past year began with our 1st Annual FBA Charity Golf Tournament. On October 11, 2010, over 96 participants gathered at the Lake Presidential Golf Club in Upper Marlboro, Maryland. The tournament raised funds for Hopewell Cancer Support, a local organization that provides support, counseling and educational programs to people and families dealing with cancer.

Golfers included Judge Roger Titus, and Chief U.S. Magistrate Judge Paul Grimm. Judge Grimm, who participated in the golf clinic, received the award for "Golfer with the Most Potential," and Judge Titus' foursome, including Tim Maloney, Sheila Maloney, and Thomas Heeney, won the award for "Most Honest" (recognizing that although they may not have won the tournament, their honesty in reporting a score that placed them in last deserved praise). This tournament exceeded our best expectations. All of the players thoroughly enjoyed themselves and we were very happy to be able to raise money for a good cause. We look forward to making this an annual tradition. Our 2nd annual tournament will again be held at Lake Presidential Golf Club this October 10, 2011 (Columbus Day). I extend my deep gratitude to the FBA members of the Golf Committee, without whom this event could not have been possible: Chad Curlett, Celeste Bruce, Sharon Snyder, Geoff Genth, Paula Xinis, Judge Stephanie Gallagher, and Scott Greig of Greig Graphic Designs.

A very special thanks is in order for the following board members for taking the lead in our fall and spring programs: Gerry Gaeng (Maryland and the Supreme Court); Judge Gauvey and Mark Saudek (Open Doors moot-court program for local high school students); Jim Johnson (Settlement Conferences in Federal Court); Stephanie Lane-Weber, Paula Xinis, and Judge Gallagher (Persuasive Appellate Advocacy: What Works and What Doesn't). Congratulations to Judge Gauvey, Mark Saudek, and all our volunteers for the Open Doors to The Federal Courts program. Our Maryland Chapter was selected as a recipient of the 2010 Presidential Citation from the National FBA.

I want to recognize and thank Mike Schatzow (DiRito Award Chair), Sharon Snyder (Nominating Committee Chair) and Celeste Bruce (FBA Membership Chair) for volunteering their time in assisting our FBA Board in their important roles as chair of these committees. I must also give a very special thanks to Peter Nothstein for his outstanding work as our Chair of the Young Lawyers Division and for agreeing to "stay on the job" during my presidency.

Finally, thank you Chad Curlett for all your assistance throughout my presidency. Without Chad's talent and diligence, this newsletter would not have been possible. Thank you also for your incredible technical support with our Golf Tournament in designing our web site for golfer registrations, keeping track of sponsorships, and always having an incredibly positive attitude.

I extend our deepest appreciation to the Court for its continuous support of the Chapter's activities. We look forward to working with Chief Judge Deborah Chasanow during the coming months as we prepare for 2011/2012 term.

Please contact me at lht@thatcherlaw.com or Sharon Snyder at sasnyder@ober.com with your questions, suggestions, or ideas for new programs. Finally, we're always delighted to hear from younger lawyers who would like to get involved and become active members of the Maryland Federal District Court Bar.

Profile of Judge James K. Bredar

by Anne E. Di Salvo, *Saul Ewing LLP*

After serving for over twelve years as a Magistrate Judge, Judge James K. Bredar was commissioned as a district court judge in the United States District Court for the District of Maryland on December 17, 2010. Judge Bredar recently reflected on his early career and years of experience as a Magistrate Judge, the challenges he faces in his new position, and his advice to law students and young lawyers entering the legal profession.

As a law student, Judge Bredar aspired to become an advocate and have the opportunity to try cases. Although Judge Bredar did, in fact, practice as a trial attorney early on in his career, his experience clerking for Judge Richard P. Matsch immediately upon graduation from law school "heavily influenced" his decision to become a judge. As a law clerk, Judge Bredar saw the importance of a judge's role, noting that it is a "great luxury to wake up every morning and your only responsibility is to do the right thing." Judge Bredar credits Judge Matsch for giving him the best advice he has ever received about being a judge: "listen." Although at first blush this advice may sound simple, Judge Bredar believes that judges, many of whom began their careers as trial lawyers, naturally have an instinct to talk but will usually learn more when they listen to what the parties have to say.

Before becoming a judge, Judge Bredar served as both a federal prosecutor and a federal public defender. Judge Bredar values his work as an Assistant United States Attorney for giving him a thorough training in the operations of the criminal justice system. This experience taught Judge Bredar how to investigate, whom to investigate, whom to charge, how to deal with problems with cooperators and other similar issues, which he now relies upon on the bench.

The first former federal public defender to serve as a federal judge in Maryland, Judge Bredar particularly values the prospective he gained as a public defender now that he is a judge. Most lawyers, explained Judge Bredar, do not come from impoverished backgrounds themselves or have significant experience with poverty and disenfranchisement. Judge Bredar's experience as a public defender gave him a close view of what it is like to be the underdog in life. He values this experience immensely because, he explains, it is good for a judge to have a special sensitivity to people who have that experience. Judge Bredar commented, "I'm sure I already have a sensitivity to people who are enfranchised because that has largely been my story and probably [is the case with] most judges. To have some understanding of what life is like for the poor—that's healthy. You hear their issues a little bit differently when you have spent many years in your career representing people who are disadvantaged."

Appointed as a Magistrate Judge in 1998, Judge Bredar said he likes "everything" about being a judge. Being a judge, said Judge Bredar, is "the opportunity to advance justice by finding the legally and factually correct answer to a question in front of you." Judge Bredar appreciates that the cases that come before him are not just academic exercises and that their outcomes are of vital importance to the parties in front of him. Because of this, he finds overseeing the judicial process to be extremely satisfying because it unearths and exposes truth.

Of all of his work over the course of his twelve years as a Magistrate Judge, Judge Bredar considers his participation in over 700 mediation and settlement conferences to be his greatest contribution to the law. In light of the current expense of litigation, achieving settlement early on in the litigation process is hugely important. When you can reach an agreement early and save expense, explained Judge Bredar, you have really contributed value to people's businesses and lives.

Judge Bredar described the transition from magistrate to federal district court judge so far as "fabulous." Although he says his approach to his work and his relationships with his colleagues has not changed in his new role, the focus of his work day is much different. Judge Bredar now spends a considerable amount of his time resolving dispositive motions rather than the routine preliminary criminal proceedings on which he spent a significant amount of his time as a Magistrate Judge. Acknowledging that his promotion brings new challenges, Judge Bredar hopes to decide the cases assigned to him correctly. In doing so, he hopes to be efficient, patient and fair.

Striking the right balance between professional and personal activities has been important to Judge Bredar throughout his judicial career. At work, Judge Bredar works hard to stay current with his caseload. At home, Judge Bredar works hard to be a good husband and father. An avid sailor for the past twenty-five years, Judge Bredar said that time on his sailboat helps with both of these activities. Judge Bredar believes that getting outdoors, sailing and cycling are great for the mind and stress reduction. Additionally, Judge Bredar is active in two Baltimore law clubs, the Lawyer's Round Table and the Serjeant's Inn. To Judge Bredar, it is important to maintain relationships with lawyers and other members of the community. This task can be difficult, however, because a judge needs to be able to preserve his or her independence. Indeed, it is important for a judge to be able to avoid any conflicts that can arise.

After reflecting on his own career, Judge Bredar considered the advice he would offer to law students and young lawyers just starting out. Even in the current economy, Judge Bredar emphasized that it is still important for law students and young lawyers to pursue the legal careers that they want and that are interesting to them. "If you want to be a public defender," says Judge Bredar, "don't take a job in real estate."

To lawyers practicing in his court, Judge Bredar recommends following the philosophy that less is more. "If you think you have something to say that requires ten pages, find a way to say it in five," he explained. "If you have a jury argument that takes an hour in practice, make it your goal to reduce it to a half hour." From this advice, Judge Bredar explained that two good things

will come. First, a lawyer's exercise of this kind of discipline will make his or her argument better, tighter and more persuasive. Second, in reading documents, said Judge Bredar, readers assimilate more from reading short documents than lengthy ones. The same is true for jurors. Judge Bredar explained that jurors invariably listen much more intently during the first thirty minutes of anything presented to them, so a lawyer's goal should be to capitalize on this time.

Considering the importance of a lawyer's written work product, Judge Bredar said that it is vital for the summary or early part of a lawyer's written work to be good. Judge Bredar explained that first impressions are extremely important. The best legal writing, to Judge Bredar, is concise. "Lawyers' writing should come through like they understand judges have 200 pending cases."

A Fresh Start for the Baltimore City State's Attorney's Office

by Anne E. Di Salvo, *Saul Ewing LLP*

On January 3, 2011, Gregg L. Bernstein became the State's Attorney for Baltimore City. Mr. Bernstein ran for public office under the slogan "Fight Crime First" because he had become increasingly frustrated with the previous administration's inability to effectively prosecute and correct repeat violent offenders. A life-long Baltimore resident, Mr. Bernstein spent most of his career as a private defense attorney and also served as a federal prosecutor. In his new role, Mr. Bernstein enjoys the ability to give something back to his community. In a recent interview, Mr. Bernstein discussed his vision for the future of the Baltimore State's Attorney's Office, including the challenges his office currently faces, the advantages of being an Assistant State's Attorney and his ability to lead local prosecutors.

THE AGENDA FOR CHANGE

While the State's Attorney's Office plans to implement a broad agenda for reform, Mr. Bernstein cited his commitment to establishing a positive culture within the office as the most important change his administration has made to date. Mr. Bernstein noted that involving Assistant State's Attorneys in decisions about what cases to try and how to proceed has helped to achieve this goal. Meeting regularly with each division in the office and attempting to speak with attorneys individually as much as possible also helps. This, said Mr. Bernstein, is "having a hugely important impact on morale, which was lacking before." He added, "It's important to see the boss sit down with you." Mr. Bernstein additionally emphasized the importance of recognizing individual attorneys for their successes. "It's nice to get a pat on the back and know that the front office is monitoring [your achievements,]" he said.

Another important change in the works for the State's Attorney's Office is the improvement of training procedures for both junior and senior prosecutors. The State's Attorney's Office currently does not have a training program for attorneys and has not had one for some time. Consequently, Mr. Bernstein is in the process of hiring a full-time training director who will oversee comprehensive training for younger Assistant State's Attorneys. In the new program, younger prosecutors will receive basic training in trial techniques and trial preparation. Mr. Bernstein also hopes to provide seminars and programs for more experienced Assistant State's Attorneys both within the office and externally. The State's Attorney's Office is currently working with the Executive Director of the Maryland State's Attorney's Association on this project. The office is also developing new training programs to assist members of the Baltimore Police Department in how to prepare reports for use in court and how to testify most effectively.

Despite these improvements, the State's Attorney's Office currently faces other major challenges. One is purely financial. With the current state of the economy and city and state budgetary offices, it is difficult to be able to provide the Assistant State's Attorneys with the salaries they deserve. Mr. Bernstein lamented that some of the younger Assistant State's Attorneys have not had a raise in three to four years. Coupled with the salary issue, the physical space that the State's Attorney's Office currently occupies is, in Mr. Bernstein's words, "terrible." Prosecutors are spread out on every floor in both courthouses, which makes collaboration a tremendous challenge.

Despite these challenges facing the office, to young lawyers and law students who want to gain experience in trial work, Mr. Bernstein recommends spending at least a part of their early careers in the State's Attorney's Office. With the current expense of civil trials, "trial lawyers are becoming a dying breed." Consequently, young lawyers can gain the most courtroom experience early on by trying criminal cases. Being a federal prosecutor is great, Mr. Bernstein said, but the jobs are competitive and young attorneys do not get much courtroom experience for several years. In a local prosecutors office, however, young attorneys get the opportunity to see real drama unfold in the courtroom. That said, Mr. Bernstein warned that young prosecutors at the State's Attorney's Office need to be careful when learning to handle a great number of cases at once. There is a tendency to "shoot from the hip and get into bad habits," Mr. Bernstein explained. Young lawyers need to be in a place where they will get serious training, which is what the State's Attorney's Office intends to achieve. Being an Assistant State's Attorney comes with great responsibility, Mr. Bernstein said. "We've already started to attract young people to that."

LEADERSHIP

Emphasizing the importance of listening, Mr. Bernstein described his leadership style as one of "consensus building and inclusion." Mr. Bernstein meets regularly with his three Executive Assistant State's Attorneys to talk through various issues confronting the office. Mr. Bernstein credited Steve

Sachs, former United States Attorney for the District of Maryland and former Maryland Attorney General, for advising him throughout the campaign and in this transitional period about how best to lead the office.

With regard to the public, Mr. Bernstein noted the importance of ensuring that the public understands that his office bases its decisions on a thorough analysis of facts and law and never on politics. It is not the role of a prosecutor to comment publicly on a pending case, Mr. Bernstein said, because it is simply not fair to the defendant. The tension between the public's expectation of commentary by their elected official and the rights of the defendant is properly resolved at the end of the case. The time for a prosecutor to speak publically about a case is at the end of the trial.

Mr. Bernstein credits his experience both as a federal prosecutor and as a private defense attorney as assisting him in his new role. The experience of being a federal prosecutor, Mr. Bernstein explained, trained him to investigate criminal violations and gave him the investigative tools he is now trying to implement in the State's Attorney's Office. Being a federal prosecutor also taught Mr. Bernstein the value of having strong relationships between prosecutors and law enforcement. The greatest difference between being a state prosecutor and being a federal prosecutor, however, is the sheer volume of cases that the State's Attorney's Office must prosecute. The State's Attorney's Office "does not have the luxury of picking and choosing its cases," Mr. Bernstein explained. Although Mr. Bernstein acknowledged this is a challenge his office faces, he stated that he welcomes this challenge.

As a private defense attorney, Mr. Bernstein had the opportunity to try a lot of cases, which allowed him to learn his way around the courtroom. Equally important, Mr. Bernstein learned how to persuasively present a case before a jury in representing private defendants. Both of these skills, said Mr. Bernstein, are critical for being an effective State's Attorney. Additionally, in the practice of criminal law, one needs to have perspective. Mr. Bernstein noted that the experience of being a private defense lawyer taught him the impact that prosecution and conviction can have both on an individual and on a family. "It gives you awareness of the power you have," he said. A prosecutor must use this power in a fair and judicious manner.

Mr. Bernstein immensely enjoys trying cases because, as he puts it, "it's the only thing I've ever done where I'm completely focused on what I'm doing when I'm doing it." He also enjoys trial work because there is a clear winner and loser. "I like the finality of it," he explained. Mr. Bernstein emphasized that it is important for the State's Attorney to lead by example and actively participate in trying cases. This is "not about cherry picking high profile cases," he said, but rather it is about creating a positive work culture and building morale. Mr. Bernstein believes that seeing the boss out there doing the same work is important.

Applying *Iqbal* to Affirmative Defenses, or What's Sauce for the Goose . . . .

by Robert W. Hesselbacher, Jr., *Wright, Constable & Skeen, LLP*

In *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544 (2007), the Supreme Court held that, to withstand a motion to dismiss, a complaint alleging an antitrust conspiracy needed to "state a claim to relief that is plausible on its face." While not requiring "detailed factual allegations", the Court held that a complaint must contain "more than labels and conclusions" or a "formulaic recitation of the elements of a cause of action."

Two years later, in *Ashcroft v. Iqbal,* 129 S. Ct. 1937 (2009), the Court dispelled any notion that *Twombly* might be limited to antitrust conspiracy or similar categories of cases. The Court made clear that any civil complaint, to be sufficient, must make factual allegations that "plausibly suggest an entitlement to relief", stating that a "claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."

Twombly and *Iqbal* thus prescribe a pleading requirement substantially more demanding than the longstanding and often quoted standard set forth in *Conley v. Gibson,* 355 U.S. 41 (1957) (a complaint should not be dismissed for failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief"). Defense counsel quickly embraced the *Iqbal* pleading requirements. Although not all reflecting motions to dismiss, the citations to *Iqbal* since its publication less than two years ago are approaching 50,000 in number.

While the *Iqbal* pleading standards provide a significant tool for defense counsel, their burden is not necessarily limited to plaintiffs' attorneys, and their utility is not limited to defendants challenging complaints. A growing number of decisions have considered plaintiffs' arguments that *Iqbal's* plausibility standard and requirement of some factual detail also apply to affirmative defenses stated in a defendant's answer. Although the question has not yet been addressed by a circuit court of appeals, and the district court decisions around the country are not uniform, the current answer in the District of Maryland appears to be that *Iqbal* does apply. Judge Bennett, Judge Legg and Judge Messitte have issued rulings on the issue.

In *Bradshaw v. Hilco Receivables,* LLC, 725 F. Supp. 2d 532 (D. Md. 2010), the plaintiff in an unlawful debt collection practices action filed a motion for partial judgment on the pleadings or, alternatively, to strike a number of the defendants' affirmative defenses. The challenged defenses included assertions that the defendant's alleged errors had been unintentional, that it had acted in good faith, that the plaintiff lacked standing, and that Maryland statutes upon which the plaintiff relied are unconstitutional. Procedurally, Judge Bennett decided that the motion should be treated as a motion to

strike. Observing that the majority of district court decisions elsewhere have applied Iqbal to affirmative defenses, Judge Bennett pointed out the similarity in Rule 8(a) pleading requirements for claims and Rule 8(b) requirements for defenses. The court found no reason to approve a lesser pleading standard for answers than complaints. Accordingly, the court joined the majority and ruled that the Iqbal pleading requirements do apply to affirmative defenses. Although it could be argued that this places a difficult burden on a defendant at the outset of a case, Judge Bennett observed that Rule 15 permits a defendant to seek leave to amend an answer to assert defenses that become apparent during discovery and that leave should be liberally granted absent prejudice to the plaintiff. Turning to the answer that was filed in the case before it, the court found that the challenged affirmative defenses "merely recite bare legal conclusions and do not contain sufficient factual language needed to impart fair notice" to the plaintiff of the grounds for the defenses. Therefore, the affirmative defenses were stricken with leave granted to amend.

Judge Legg reached a similar conclusion in *Topline Solutions, Inc. v. Sandler Systems, Inc.,* 2010 WL 2998836 (D. Md. July 27, 2010). Judge Legg first decided that Iqbal does apply to affirmative defenses, stating, "At a minimum, the facts asserted in an affirmative defense, and the reasonable inferences that may be drawn from those facts, must plausibly suggest a cognizable defense." The defendant's answer listed seven typical affirmative defenses – failure to state a claim upon which relief can be granted, waiver, estoppel, laches, statute of limitations, failure to mitigate, and the plaintiff's failure to perform. Judge Legg ruled that all of the defenses must be stricken because they "contain no facts and are too conclusory to provide fair notice of the grounds on which the defenses stand." Leave to amend was granted, however.

In the third decision from the District of Maryland reported to date, Judge Messitte considered the issue in *Piontek v. Service Centers Corp.*, 2010 WL 4449419 (D. Md. Nov. 5, 2010). The court assumed, without deciding, that Iqbal applies to pleading affirmative defenses. In one of its affirmative defenses, the defendant made the factual allegation that the plaintiff, who was challenging an ATM fee, proceeded with the transaction despite the fact that a notice that the fee would be charged appeared on the ATM screen. Judge Messitte ruled that this allegation was sufficient to provide a factual basis for the other affirmative defenses that the plaintiff challenged – estoppel, consent, ratification, voluntary payment, lack of reliance and failure to mitigate – all of which included an allegation that the plaintiff had not relied on the defendant's conduct. Therefore, the court denied the plaintiff's motion to strike those defenses.

Unless the Fourth Circuit takes a contrary view, these decisions make clear that defendants' counsel, like plaintiffs' counsel, must devote greater time and care in drafting pleadings to meet *Iqbal's* test. An affirmative defense must be supported by some sort of factual allegation, however brief, plausibly suggesting that it applies to the plaintiff's claim. No longer will it be permissible to recite a mere litany of affirmative defenses and take the position that anything further is for the plaintiff to learn through discovery. Defendants who are unable to satisfy *Iqbal* to plead a particular affirmative defense in their initial answer will need to pursue prompt discovery of facts that would enable them to file a timely motion for leave to amend. While imposing additional burdens on counsel, however, the decisions are consistent with the goal, recognized in *Twombly, Iqbal* and a number of the Federal Rules, of clarifying and narrowing the issues at the outset of litigation and not solely through discovery.

Social Media: Too Powerful To Ignore

By Heather R. Pruger, Esq., *Saul Ewing LLP*

Social media is a powerful tool for individuals and businesses, as well as for attorneys. It has become too popular and too powerful for attorneys to ignore. At the same time, social media also poses too many risks—both to attorneys and their clients—for attorneys to remain uneducated about it and how it works.

Only a few years ago, Internet-based social media was considered to be little more than a pastime for high school and college students. But, particularly over the past two years, a much broader demographic has begun to grasp the broad usefulness of social media. Facebook epitomizes this boom. In January 2009, Facebook had over 42 million registered users in the United States, 40% of who were between the ages of 18-24. Remarkably, by January 2010, registered users of Facebook in the United States had increased by 145% to over 103 million, almost 30% of whom were between the ages of 35-54. The increase in use of social media is at least as drastic among attorneys. According to a 2010 ABA Legal Technology Survey, 15% of attorneys had a social media presence in 2008, compared to 43% in 2009, and 56% in 2010.

The reason for the increase in social media use is obvious—social media is a two-way street that gives all Internet users the ability to generate their own media—news personal to themselves and their interests—while also allowing them to interact with that media and the media created by others. It is the epitome of marketing and networking, combined. The website is now familiar to attorneys—a static, user-created form of social media. But social media goes far beyond that. The movement now is to tap into the robust, interactive functionalities of social media by creating profiles on social media sites, providing webinars, and posting public informational documents. Social media links information available on websites to social media networking sites and moderated discussion groups, where interested people can interact with and discuss this content, providing an interactive forum for direct and personal

interaction with prospective and existing clients and other members of the legal community. Social media also allows us to interact actively with the news, by tailoring news feeds towards specific interests and encouraging and facilitating observation and monitoring of the tendencies and even the news feeds of our own target audiences. By interacting with and observing others' interactions with news and other user-created content, social media provides a tool so that we can tailor the content we release to be more timely, accessible, and useful to a particular audience. And it is highly effective—the 2010 Corporate Counsel New Media Engagement Survey reported that nearly a third of in house counsel reported putting "a lot of weight" on blogs written by attorneys they considered hiring.

It goes without saying that social media is a rapidly emerging area of the law. Take, for example, employment law: By simply being listed on a social media site, an employee who electronically connects with co-workers or work contacts can instantly violate restrictive covenants with a prior employer by simply updating his or her employer. An employee can use social media at home or can bring a cell phone to work and use social media during breaks, and may use social media as a way to "vent" about co-workers or other work-related issues, to name a few.

In response to the pervasiveness and dangers of social media, many employers are rightfully rushing to adopt social media and computer use policies. But these policies are often overbroad and prohibit not just defamatory comments aimed at a company, but also other employee comments, such as negative comments about supervisors. As the National Labor Relations Board recently indicated, such rushed, overbroad policies may be found ineffective or, worse, violative of employees' rights, even if the policies are not enforced. And, a recent study of large companies showed that a shockingly high, and quickly growing, percentage of employees were being terminated or disciplined as a result of their behavior on social media sites such as Facebook and LinkedIn. States are also taking action, some more rapidly than others, creating a minefield for employers. For example, in some states, employers may monitor information that an employee posts publicly via social media to determine, for example, whether a sick employee is really unable to work. Other states specifically forbid employers from gathering or recording information about an employee's associations, political activities, or other non-employment activities unless the employee specifically authorizes the employer to do so in writing. And, while an employee may have an expectation of privacy in her password-protected Internet-based email account, even when accessed on a work computer, her expectation of privacy may be lost if she saves her login information on that employer-owned computer.

Social media also creates serious business and ethical problems that are unique to attorneys. For one, advertising social media presents serious advertising concerns. According to a panel of lawyers who presented at LegalTech New York 2011, the practice of artificially inflating the number of followers you have or fellow users who you follow on Twitter to exaggerate your status could be construed as deceptive conduct by the Attorney Grievance Commission or even the Federal Trade Commission. The FTC revised guidelines for commercial bloggers in 2009 to strictly prohibit bloggers from mixing "commercial puffery" with their posts. Closely related is the concern raised by social media—a concern that stems from one of social media's greatest strengths—that, once information is posted online, that information is instantly and broadly accessible and can be republished, manipulated, and connected to other content by a myriad of other Internet users. While a published advertisement is carefully edited and controlled by the attorney who is ethically responsible for its content, state ethical guidelines are increasingly requiring attorneys to take at least some measure of responsibility for content published online about them—even when that content is "published" by other users.

Many other ethical concerns are presented by attorney use of social media, including unauthorized practice of law, improper disclosure of information, improper contact with represented parties, witnesses, or jurors, and assisting a judge in violating the rules of judicial conduct. While a lawyer can report on noteworthy legal developments via social media with relative safety, participation on discussion boards or discussion of legal topics on a blog could constitute unauthorized practice of law. Email listserves can pose similar risks, although to a lesser extent because recipients of an email listserve can be more easily screened. An attorney can also easily run afoul of ethical rules by casually and even inadvertently disclosing client or case strategy information via a Facebook status update. And, while social media creates a wealth of information on opposing parties, witnesses, and jurors, lawyers must take great precautions research of such individuals via social media to avoid impermissible communications. Lawyers and judges alike must similarly be aware of the effect of including one another in their social media networks, and must be particularly observant as local bars increasingly adopt rules addressing "friendships" between judges and lawyers via social media.

Despite all of the legal and ethical concerns associated with use of social media, these concerns do not justify avoidance. In today's society, social media has become too powerful and pervasive a tool for attorneys to ignore. Rather, like any powerful tool, social media should be used by educated, informed users who remain alert for inevitable changes as legal and ethical frameworks adjust to account for this new method of social and professional interaction.

CALENDAR OF EVENTS

Friday, June 17

The Investiture of Stephanie Agli Gallagher as United States Magistrate Judge for the District of Maryland

4:00 p.m.

Monday, October 10

2nd Annual FBA Maryland Chapter Golf Tournament

RECENT EVENTS

First Annual FBA-Maryland Chapter Golf Tournament

On October 11, 2010, over 96 participants gathered at the Lake Presidential Golf Club in Upper Marlboro, Maryland for the first annual Maryland Chapter Federal Bar Association Golf Tournament. The tournament raised funds for Hopewell Cancer Support, a grassroots organization that provides support, counseling and educational programs to people and families dealing with cancer.

FEDERAL BAR ASSOCIATION
MARYLAND CHAPTER

2ND ANNUAL GOLF TOURNAMENT

SAVE THE DATE

Columbus Day – October 10, 2011

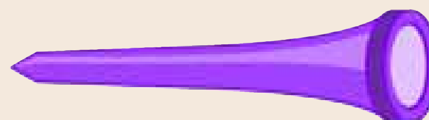
Lake Presidential Golf Club

3151 Presidential Golf Drive, Upper Marlboro, MD 20774

1:00 Shotgun
6:30 Dinner & Awards

After-golf cocktails
Golf Clinic for beginners
Law firm sponsorships available

Join your fellow members of the FBA-Maryland Chapter for our second annual golf tournament. Enjoy a day on the links with the Bench and Bar to benefit a great local cause!



For more information contact our Golf Committee:

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Portion of proceeds will benefit the Maryland Chapter of the National MS Society, which is dedicated to addressing the challenges of the 6,500 people in Maryland living with MS. We address the challenges of everyone affected by multiple sclerosis, an autoimmune disease that affects the brain and spinal cord

First Annual FBA-Maryland Chapter Golf Tournament

2010 FBA Sponsors

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Zuckerman Spaeder LLP
Gordon, Feinbaltt, Rothman, Hoffberger & Hollander, LLC

Tom Heeney and Judge Roger Titus finish their warm up at the range.

Chad Curlett follows through on his fine golf swing.

2010 FBA Golf Tournament Honors

Top 3 Teams

Team 13 with 57:
DeLozier, Gillis, Hickey and Jones

Team 14 with 57:
Bradstock, Jones, Strachan and Zaccardi

Team 9 with 61:
Proctor, Purpura, Purpura and Ruter

Golfer with the most potential:
Judge Paul Grimm

Longest Drive - male:
Ron Kifer (Corvel Corp)

Longest Drive - female:
Linda Hitt Thatcher

Closest to the pin - female:
Sheila Maloney

Closest to the pin - male:
Luke Thatcher

Judge James Bredar talks with fellow golfers.

Judges Bill Connelly, Paul Grimm, and James Bredar enjoy the golf dinner and awards.

Judge Paul Grimm accepts the award for "Golfer with the Most Potential".

Judge Roger Titus: Ready to Play Golf.

Shawn Michael, Law Clerk to Judge Charles Day.

Chad Curlett, Herb Better and Linda Hitt Thatcher.

George Ritchie and smiling golfers after a great warm up.

Leonard Levine and Donna Shearer enjoying lunch.

Cornel Lunkin warms up at the driving range.

Jamie Kormann and Linda Hitt Thatcher.

Matt Kaiser always smiling.

Ezra Gollogly, Geoff Genth, and Chad Curlett.

"Most Honest Team" with a score of 81: Judge Roger Titus, Tom Heeney, Sheila Maloney, Tim Maloney

Linda Hitt Thatcher and Celeste Bruce: Two Thumbs up for our Golf Sponsors.

Teams	Hole	Score
TEAM Better, TEAM Curlett, TEAM Kormann, TEAM Thatcher	1	67
TEAM Flamer, TEAM Klinefelter, TEAM Roberts, TEAM Thompson	2	66
TEAM miles, TEAM O'Meara, TEAM Spence, TEAM Weiss	3	62
TEAM Baror, TEAM Luzarraga, TEAM Michael, TEAM Schaffer	4	72
TEAM Davis, TEAM Kiefer, TEAM Thatcher, TEAM Wiseman	10	65
TEAM Cohen, TEAM Giles, TEAM Shepard, TEAM Zawitoski	6	67
TEAM Arrington, TEAM Levine, TEAM Lunkin, TEAM Shearer	7	69
TEAM Bruce, TEAM Greig, TEAM Hatcher, TEAM Nagy	8	66
TEAM Proctor, TEAM Purpura, TEAM Purpura, TEAM Ruter	9	61
TEAM Bond, TEAM Conte, TEAM Norman, TEAM Orenberg	5	70
TEAM Berman, TEAM Gollogly, TEAM Kaiser, TEAM Kursh	11	77
TEAM Heeney, TEAM Maloney, TEAM Maloney, TEAM Titus	12	81
TEAM DeLozier, TEAM Gillis, TEAM Hickey, TEAM Jones	13	57
TEAM Bradstock, TEAM Jones, TEAM Stachan, TEAM Ziccardi	14	57
TEAM Day, TEAM Gold, TEAM Haynes, TEAM Perkins	15	71
TEAM Ahalt, TEAM Elden, TEAM Greenan, TEAM Lynch	16	63
TEAM Ritchie, TEAM Spatz, TEAM Guest, TEAM Klaiber	17	70
TEAM Bussard, TEAM Martin, TEAM Pascale, TEAM Wrobel	18	74

2nd Place Winners: Score of 57.

1st Place Winners: Score of 57 (best on back nine).

Linda with the Golf Pro: Nathan Presnal – future lawyer.

Sheila Maloney receives "Closest to the Pin" trophy from Linda Thatcher.

Luke Thatcher receives "Closest to the Pin" trophy from MOM.

Scott Greig, Celeste Bruce, Mike Nagy, and Chris Hatcher.

Donna Shearer, Cornel Lunkin, and our fabulous photographer: Belinda Arrington.

Donna Shearer poses with her favorite golfers.

Donna in fine shape for Golf.

Cornel Lunkin and fellow golfer, Ezra Gollogly.

Linda Thatcher and Suzanne Brace, Exec Dir: HopeWell Cancer Support.