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The Baltimore Barrister

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LRIS: Grow Your Business While Helping the Bar Association

The President's Report

The Honorable Anthony F. Vittoria, President, Bar Association of Baltimore City



How would you like to get referrals for paying clients with relatively little effort? Would you also like to help the Bar Association of Baltimore City at the same time? Sound too good to be true? Then I would invite you to check out Lawyer Referral and Information Services (LRIS), which is the next stop on our tour of the Bar Association.

LRIS was established in 1954, over 65 years ago! As many of you know, lawyers were generally prohibited from advertising their services at that time. So LRIS provided an invaluable service to the Baltimore community – it provided much-needed assistance to members of the public in obtaining qualified counsel for their legal issues. During this period, LRIS had one to two employees, called “Public Service Coordinators,” who would field calls from the public and try to match potential clients with available attorneys.

In 1977, the United States Supreme Court issued its decision in *Bates v. Bar Association of Arizona*, 433 U.S. 350 (1977). In *Bates*, the Supreme Court ruled that the ban on lawyer advertising was illegal. Over the ensuing years, the face of the legal market shifted dramatically, with lawyers being able to advertise directly to the public. From the yellow pages (remember those?) to park benches, and from newspaper ads to television commercials, creative lawyers tried it all.

Like the legal field, LRIS adapted to the times. Starting in the early 1980s, LRIS arranged for attorney volunteers to work its phone bank. This was a shrewd marketing move because it meant that potential clients could speak directly to licensed attorneys when they called. The phone bank was open from 9 a.m. to 4 p.m. and attorneys would sign up for two-hour shifts. The volunteer attorneys were instructed to speak with the client for no more than four minutes with the goal of determining the individual’s legal issue and whether he or she could afford a private attorney. Other than to disclose that he or she was a licensed attorney, the volunteer was to remain anonymous during the call. The benefit of serving on the phone bank was that the volunteer got first “dibs” on taking the caller’s case.

With the advent of the internet, lawyer advertising shifted yet again, and LRIS shifted right along with it. Starting in 2012, LRIS began taking online requests. Then, in 2019, LRIS licensed software from legal.io that enabled it to go completely virtual. Now, client intake can occur 24 hours a day, 7 days a week. In addition, LRIS has added a part time intake counselor to assist clients when they need to speak with a live person.

Think that LRIS is not worth your time because it only gets small cases? Think again! Long-time Bar Association member and supporter Jason Wasserman of Silverman, Thompson, Slutkin & White can tell you a different story. In 2015, Jason was working the phone bank and was referred what turned out to be two very large cases. One was a premises liability case that settled for \$400,000 and the other was a medical malpractice case that settled for \$900,000! These settlements resulted in large fees for Jason, and a huge benefit to LRIS and the Bar Association. Our research has indicated that Jason holds the record for the biggest case that has come through LRIS. Congratulations, Jason, and thank you for participating in LRIS and helping the Bar Association!

Likely due to the current pandemic, attorney participation in LRIS has waned recently, and the Bar Association is making a renewed push to recruit new attorneys for the panel. Because LRIS is accredited by the American Bar Association, attorneys interested in being referred through LRIS must demonstrate their competence, character and integrity by submitting a written application and participating in an interview with an LRIS Committee member. There is also a small administrative fee associated with the application process. However, once an application is approved, the referrals may start rolling in immediately! LRIS is especially looking for attorneys in the following practice areas: immigration, education, unemployment compensation, and lead paint (plaintiff-side). In addition to becoming a panel attorney, LRIS also encourages attorneys to sign up for the Access to Justice Program, which offers legal assistance at a reduced rate.

So please check out the new-and-improved LRIS at <https://www.baltimorebar.org/for-attorneys/resources/lawyer-referral/>, or e-mail Megan Nally at mnally@baltimorebar.org. Let the BABC help grow your client base. Special thanks and acknowledgment to Megan, our LRIS Specialist, for her excellent research and help with this month’s Bar Report.

Grow Your Practice with LRIS



HOW TO APPLY:



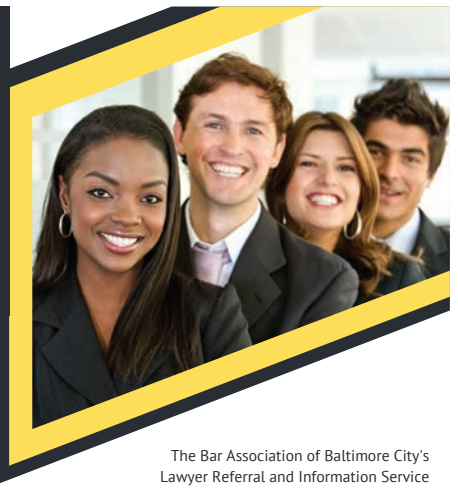
Fill out the LRIS application online and upload your Insurance Policy.



Once your application is processed, you will be interviewed by a member of the LRIS Committee.



Once approved, you will be referred to clients matching the panel(s) chosen by you.



The Bar Association of Baltimore City’s Lawyer Referral and Information Service is experiencing a record number of referrals and is in need of additional attorneys to meet the demand.

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The Many Faces of Mentorship

Young Lawyers' Division Update

Samuel Pulver, Esq., YLD Chair



Growing up in my household, the practice of law was the family business, so to speak. My father and older brother are both attorneys, and from the time I began studying for the LSATs, I had people I could turn to for guidance and advice for all things legal. When I finished law school and passed the bar exam, I immediately joined the same mid-sized personal injury firm that my father had been with for most of

his legal career. I was, and still am, fortunate enough to learn the practice of law from the same man who taught me how to tie my shoes and ride a bike. While I looked to my father to learn the practice of law, it was in following my brother's footsteps that I joined the Bar Association of Baltimore City and learned the value of community involvement. With these role models in my life, I never felt that formal mentorship was something I needed.

I recognize however that my journey to the legal profession, while not necessarily unique, is not shared by many of my colleagues. For many young lawyers without attorneys in their family, finding the right mentor can be lifechanging. This is especially true for attorneys who begin their careers working for law firms that have a "sink or swim" ethos and do not spend time and resources developing their young attorneys. For the newest generation of attorneys who joined the profession during the pandemic, I believe that formal mentorship may be essential given the inability to learn from senior colleagues in a more traditional setting. I remember speaking with a friend who

works for a large Baltimore firm about a year ago when her office was operating fully remotely. They had hired on new associates, recent law school graduates, and the only interaction those new hires had with the rest of the attorneys in the firm was through Zoom meetings and conference calls. I remember thinking how difficult it must be to begin a legal career without the benefit of being able to shadow a senior attorney, being able to pop into their office for guidance, or pick up bits of advice during lunch or after-work drinks.

A meaningful and valuable mentorship can take many different shapes and forms. While a mentor may assist a novice lawyer in drafting brilliant pleadings or demonstrate oral advocacy by letting a young attorney shadow them at a motion hearing or trial, that is simply one form of mentorship. A mentor can also simply be a friendly face in the legal profession, who the mentee doesn't need to worry about impressing or proving themselves to, but instead serves as a lifeline to help the mentee find balance in their career. A mentor can be a legal Rockstar, that you idolize and seek to emulate, or a coffee buddy that you turn to for advice, or some combination of the two.

Whether you need formal guidance in your practice, or just an experienced legal friend that you can come to for advice, mentorship may be something that can enhance your professional and personal life. The mentorship committee for the YLD is currently looking for attorneys with less than 7 years of practice to sign up as mentees and attorneys with more than 7 years in practice to volunteer as mentors. If you are interested in getting involved in the BABC mentorship program, please contact the bar office or email babc.yldmentoring@gmail.com.

Young Lawyers' Division



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An Interview with the Honorable Charles M. Blomquist, Newest Addition to the Circuit Court of Baltimore City

By Derek M. Van De Walle, Esq., YLD Membership Co-Chair

On October 26, 2021, Governor Larry Hogan announced that he was appointing Charles M. Blomquist as a judge on the Circuit Court of Baltimore City. Judge Blomquist has spent his entire legal career as a prosecutor and, prior to this appointment, was a deputy state prosecutor in the Office of State Prosecutor. After clerking for the Honorable John Carroll Byrnes at the Circuit Court for Baltimore City, Blomquist worked in the Office of the State's Attorney for Baltimore City from 2001 to 2020, ultimately becoming the division chief of the Gun Violence Enforcement Division. After completing a two-year assignment with the Peace Corps as a small business advisor, Blomquist began a military career, and ultimately achieved the rank of colonel. Judge Blomquist was generous enough to grant the Bar Association of Baltimore City an interview.

What led you to join the bench?

Ultimately, my interest in joining the bench stemmed from a desire to serve. I have been fortunate to have had a wide variety of experiences from being in the Peace Corps, serving in the military, and serving as a Prosecutor. I think these unique experiences will help inform me on the bench. The seed to apply to the bench was sowed when Judge John Glynn, who was a mentor and friend, contacted me while I was deployed to Iraq and suggested I apply for a vacant seat on the District Court of Maryland. I had my reservations because I have not been practicing that long and felt I did not have enough experience to warrant a position on the bench. Despite my doubts, I applied – and fourteen years later here I am. Clearly, I have a unique journey and hopefully can encourage those interested to stick with it.

You've had a distinguished career outside of the legal field, including volunteering in the Peace Corps and, up to very recently, a career in the military. How has your non-legal experience shaped your legal career?

Through my military service and time in the Peace Corps, I was able to meet people from all walks of life and in all types of settings. In Iraq and Afghanistan, I interacted with people during a time of conflict and war. I also worked as an auditor for Catholic Relief Services. That experience exposed me to both the reliance and humanity of our world, while also exposing me too just how cruel we can be to one another. Those early experiences certainly helped me as a prosecutor bringing a sense of humanity and dignity to those I prosecuted as well as the victims whom I interacted with. The practice of law is about people at their best and worst, and grounding yourself with that perspective is important. I would like to think that these experiences reaffirmed to me the strength of the human spirit, but also inspired me to do better.

After law school, you clerked for the Honorable John C. Byrnes, Circuit Court for Baltimore City. What did you learn from that clerkship to use throughout your career? Is there anything you learned that you plan to take with you on the bench?

Judge Byrnes has a love of the law, and he instilled the same in me. He also taught me that the law has a human component. That human component cannot be divorced from the remaining components. That's especially true as a trial judge where you're continuously interacting with the public.

I also realized the special relationship between a judge and his or her law clerks. When it comes to what I look for in a law clerk, I look for someone I can get along with, but also is impassioned by the law, writes well, and exhibits common sense and practicality.

You've spent nearly your entire legal career in the criminal law field. As a judge in the Circuit Court for Baltimore City, you'll be part of a rotation onto different dockets. Is there any particular area of law you're looking forward to?

I'm enthusiastic to be involved in all aspects of the law, and I'm looking forward to being of value to the judicial system in all aspects. Coming from criminal law background, I do look forward to learning and contributing to civil law. The law is always evolving, so I'm excited to be a part of that to develop an expertise in these areas.

What is one thing a person may be surprised to learn about you?

In 2004, I was appointed to serve as chair of the Young Lawyers' Division of the BABC, but no one would likely remember my term as chair. Expect perhaps for Michelle Blumenfeld who graciously took over for me and did a great job as Chair of the YLD. After just one day into my term, I was deployed to Afghanistan. So, I likely have the record for the shortest term as chair of the YLD.

What do you think you'll miss most about being in the State's Attorney's office?

I left the State's Attorney's Office about two years ago and joined the State Prosecutor's Office. Still, I do miss the SAO and look back on my experiences there with a great deal of fondness and pride. As with any organization, what makes it special, are its people. I will miss the collegiality and comradeship I had with my fellow prosecutors, but also the police we worked with, along with members of the defense bar.

What do you perceive as the greatest obstacles to justice?

Obviously COVID-19 and the pandemic have disrupted our justice system. It is imperative that we ensure that those involved in the justice system receive respectful and timely opportunities to have their day in court. We need to be creative, but guided by our rich history, to ensure that we provide transparent and open venues to resolving our conflicts and legal issues.

Are there any changes to the bench (or bar generally) that you would like to see?

At times it is apparent that the law has not kept pace with technology. While I still need to experience the tactile feel of paper and prefer to look someone in the eye without barrier of a screen, I think we need to explore how best to integrate technology within the justice system, while preserving the human and personal aspects that make our system the envy world-wide.

What case from your career had the biggest impact on shaping your career?

That's a tough question to answer. As a violent crime prosecutor, whether the death of a child or a police officer, the loss of life was never easy to rationalize. These cases also affected the defendant, and defendant's family in profound ways. Still, I even remember handling

Continued on page 24

Racial Disparities in Estate Planning and Administration

Tim Chance, Esq., Young Lawyers Division Member and Tangled Title Staff Attorney at Maryland Volunteer Lawyers Service



American society is controlled by systems which impact every aspect of life. The education system, the housing system, and the criminal justice system are just a few of these institutions which govern our daily lives. For centuries, these very systems, which are deeply embedded with racism, have created racial disparities between white households and households of color. The school-to-prison pipeline, redlining, blockbusting, and mass incarceration have undermined the accumulation of wealth in communities of color. Even estate planning, which can be a critical tool to preserving wealth and narrowing the racial wealth gap, is not blameless in preserving racial disparities. In fact, for decades, estate planning has led directly to the widening of the racial wealth gap – white families have used estate planning as a tool to amass greater intergenerational wealth while black families were wholly excluded from this tool. In 2021, only about a third of Black and Hispanic families have a will.¹

Homeownership is one of the most critical generators of wealth building in this country and estate planning allows us to protect that wealth and to pass that wealth down to future generations. Owning a home provides a family with a place to live, but also provides a stable mortgage payment so the family does not have to worry about rising rent costs. Also, there are significant tax deductions for homeowners that facilitate the accumulation of wealth.

Many Americans use planning vehicles, such as life estate deeds, that allow for the bypass of the probate process to cheaply and quickly pass their assets, but there are barriers which make these options nonviable for many Black Americans. In Maryland, the most glaring barrier is the clean lien sheet requirement, (a lien sheet states all the taxes and fees that are due on a property and in some counties, deeds cannot be recorded unless there is a current lien certificate with no outstanding taxes and fees) before the transfer of property.²

Life estate deeds are a great tool for passing real property outside of probate, but this tool is not always available for Black Americans because of the clean lien sheet requirement. The historical over-assessment³ of homes in communities of color coupled with households that have limited resources leads to over-taxation and an inability to satisfy all outstanding municipal bills, thereby leaving the household with liens on their home. Without life estate deeds as a viable tool, instead

of passing the home onto the next generation, deeds are often left in the name of a deceased family member, ultimately creating housing destabilization and the extraction of wealth in these communities. Heirs without title are unable to access loans or local grants to fix up the house, homeowners insurance and tax credits like the homestead and homeowners property tax credit that could save them hundreds or even thousands of dollars per year.

Because the home was unable to pass by life estate deed, there are many Black families dealing with tangled title issues and the need to probate the home so that it can stay with the family. Probate presents an additional slew of barriers which disproportionately impact communities of color. There has been a relatively recent legislative change that required the waiver of probate fees in certain situations.⁴ That change removed a major barrier, however, since the cost of publication, bonds, probate fee, lien certification, recordation fee and being current on their property tax and water bill is simply too much, there are still many racial disparities in estate administration. In order to serve as a Personal Representative of an estate with a gross value of \$10,000 or more, the Personal Representative must post a bond.⁵ In order to secure the bond, that person must be deemed creditworthy.⁶ Only 34% of Black families have credit scores over 620, compared to 51% of white families,⁷ and as a result Black families⁷ are much less likely to meet the credit requirements for obtaining bond to serve as Personal Representative.

Additionally, the family structures of many Black families are completely ignored in Maryland's current intestacy scheme. Black families, more often than their White counterparts, expand their familial structures to include fictive kin, who are individuals that are not related by birth, adoption, nor marriage, but have strong emotional relationships with the immediate family. The current intestacy scheme does not account for these relationships and as result, the wealth in these families may not go to the desired heir.

America's systems have been designed to extract wealth from communities of color and that is why it is imperative that we, as attorneys, actively lend our skills and access in order to wholly reform these systems. Maryland Volunteer Lawyers Service is committed to removing barriers in estate planning and administration in order to stabilize our communities. There have been centuries of malfeasance, so there is much more work that remains, but by taking a critical look at these systems, we can work towards a more equitable future.

1. <https://www.caring.com/caregivers/estate-planning/wills-survey/#the-prevalence-of-estate-planning>

2. Md. Code Ann., Real Prop. §3-104(b)(1)(i)

3. Andrew Van Dam, *Black families pay significantly higher property taxes than white families, new analysis shows*, WASH. POST (July 2, 2020), <https://www.washingtonpost.com/business/2020/07/02/black-property-tax/>.

4. <http://mgaleg.maryland.gov/2019RS/bills/hb/hb1305T.pdf>

5. Md. Code Ann., Est. & Trusts §§ 5-604 and 6-102

6. Portia Wood, "The Role of Estate Planning and the Legal Profession in Closing the Racial Wealth Gap"

7. Jung Hyun Choi et al., *Urban Institute, Explaining the Black-White Homeownership Gap: A Closer Look at Disparities Across Local Markets*, (October 2019; updated November 2019), available at www.urban.org/sites/default/files/publication/101160/explaining_the_black-white_homeownership_gap_2.pdf

Remote Depositions: A Fading Trend or a Shift in the Status Quo?

Samuel Pulver, Esq.



A few months ago, I was driving to St. Mary's County for depositions that had been scheduled in a contested liability automobile collision case. Since the beginning of the COVID-19 pandemic, I had only attended a handful of in-person depositions, and most of those had been held within the greater Baltimore metropolitan area where I practice. As I headed down I-97 towards Solomon's Island Road, I started to question why these depositions hadn't been scheduled remotely. There were five attorneys involved

in this case and four of them, including myself, had between a one and a half to two-hour commute to reach the deposition location. The witnesses and attorneys were all Zoom-capable and there wasn't any suggested rationale as to why we needed to gather in-person.

For over a year, the legal profession had to transition to remote depositions. Some of us came willingly and others were dragged kicking and screaming, but we learned that it could be done. For many of us, this realization opened the door to the idea that we can practice law in a smarter and more efficient manner by using the virtual platforms available to us. Yet, with courts reopening, mask mandates lifted, and the mutual assurances of our vaccination statuses, the parties in this particular case were comfortable simply defaulting to the pre-pandemic status quo of in-person depositions without consideration of what was most efficient, convenient, and logical. With nothing but the open road before me, and time on my hands, I pondered the pros and cons of remote versus in-person depositions and whether it may be time to change the status quo:

The Pros of Remote Depositions

Convenience

One of the most obvious and direct benefits of remote depositions is the convenience to parties, witnesses, and litigants in being able to attend depositions without otherwise uprooting their lives. It is an occupational hazard that as attorneys our trial and litigation calendars can often dictate our social and personal lives. Surely, I am not the only litigator who has had to explain to family members and friends why I have had to miss weddings, vacations, parties, and other social gatherings due to being in, or preparing for, trial or depositions. While the advent of the remote deposition does not eliminate the conflict between work and life, it does offer additional flexibility that allows us to live our lives more freely.

For example, let's say you want to take the deposition of an opposing expert who is only available the Wednesday before the close of discovery in your case. It so happens, you have planned a weeklong family vacation that week and will be out of town. Prior to the remote deposition, your options were to either reschedule your vacation or to reschedule the deposition and file a motion seeking an extension of the discovery deadline. Now, so long as you have a computer and access to the internet, you can take depositions from pretty much anywhere. This same benefit applies to witnesses as well, who may be limited in their availability due to work and family obligations. Finding convenient time to attend a deposition is much easier for a witness when they do not need to worry about leaving their home or office or finding accommodations for children or dependents. As more and more professionals, legal and otherwise, choose to take control over their lives and transition to remote work, the remote deposition is a critical tool in allowing lawyers to live and work where they choose without feeling bound to a particular geographic region.

Time

Inextricably tied to the convenience factor is the time saved in not having to travel to depositions but instead, being able to attend them from our homes or workspaces. Since the start of the pandemic, there has been an open dialogue in the United States about the benefits of working remotely and the value to workers in eliminating the daily commute. Depending on the number of depositions you take or attend in your practice, the time saved in eliminating the commute to and from depositions can be life altering. This is time that can instead be spent working on other cases, spending time with your children in the morning or evenings, or simply relaxing without dealing with the stress and anxiety of being in traffic, flying across the country, or otherwise living life in transit.

There is a less obvious benefit that remote depositions offer in terms of efficiency in that they allow attorneys to repurpose what I used to consider to be "dead time". In the pre-remote deposition era, we would often schedule multiple depositions in a single day and space them out based on rough estimates as to how long each individual deposition would take. What resulted was awkward gaps in timing between depositions where a witness would be running late, or a deposition ended early. While some attorneys would bring other files to work on during this dead time, the time would often be wasted or used in a manner less efficient than if the attorney was in the office. When depositions are taken remotely, we have the benefit of being able to attend from our workstations and can quickly and efficiently transition from a deposition to attend to other matters with the time between depositions. Additionally, dead time can be eliminated altogether when witnesses have the flexibility to jump into a deposition at a moment's notice. In the past, if one deposition ended early, and the next witness was not expected to arrive to the deposition location for another hour, it was cumbersome and ineffective to try to call the witness in earlier and often resulted in only able to begin the deposition ten minutes before the scheduled start time. Assuming that the witness is available an hour early, so long as the parties agree, the witness can simply join the deposition virtually and the wasted time between depositions can be eliminated entirely.

Money

We've all heard the adage that "time is money", and when it comes to taking depositions of experts, that is literally true. Most expert retainer agreements contain some language about reimbursement for time and travel, and you can be sure that if you are deposing an opposing expert witness they will want to be paid for their travel time. I have also heard experts justify minimum time allotments for depositions by factoring in the inability to attend to other matters in their practice because they are travelling to and from a deposition. These justifications seem much less reasonable when the expert doesn't have to leave their office and can be deposed with minimal interruption to their forensic or clinical practice.

In cases that once required interstate travel to depose parties and witnesses, the fees for travel and lodging could be significant. While these expenses may be necessary to adequately litigate a case these costs ultimately fall upon the attorney, or the client from any recovery obtained in the case. The ability to take these depositions remotely, and ultimately pass the savings on to the client, should cause each of us to seriously consider the benefits of taking remote depositions to reduce costs.

Opportunity for Creativity

Many attorneys fought against remote depositions because they wanted to be able to physically present a document or photograph to a witness and have them mark the document to be used as evidence. Having been just introduced to remote deposition platforms; many lawyers had a nascent understanding of how screen sharing, and certain software programs could be used to enhance our ability to concretize important testimony and make a witness commit to documentary evidence. It became apparent that the remote deposition was not a hindrance, but instead could be a tool to preserve and present important testimony.

Early in the pandemic, when we were in a state of full-lockdown, I was taking the remote deposition of a witness to an automobile collision whose testimony was unfavorable to my client. The witness had given contradicting statements about how the collision occurred, where she was positioned on the roadway, and other important details pertaining to her credibility. I wanted to make her commit to her testimony and leave as little room as possible for her to wiggle out of her testimony at trial. Normally, in addition to questioning her about the specific details of her recollection of the collision, I would produce photographs or orthographic imaging of the scene of the collision and surrounding roadway and ask her to mark those documents to illustrate her testimony. In-person depositions were not an option at this time, so I used this as an opportunity to get creative.

One tool that I have often used to visualize and understand an automobile collision is Google Maps. I had decided before this remote deposition of the witness in my case that I would note it as a videotaped deposition and have the witness explain her recollection of the collision by having her guide me through aerial and street-level photographs that I could manipulate in real time using Google Maps. The resulting testimony by the witness demonstrated that she was very confused about where she was located at the time of the collision, how long she had travelled leading up to the collision, and the sequence in which the vehicles struck one another. I was able to use the Google Maps software to measure distances on aerial photographs between the vehicles and important landmarks to contradict her recollection. Moreover, my accident reconstructionist was able to discredit her testimony in a much more thorough and complete manner by showing that her estimations of distances, times and locations were inconsistent with the physical evidence of the collision.

Instead of utilizing a single static photograph and asking the deponent to circle her location and draw lines and figures to demonstrate her recollection of the collision, I had a video showing that she struggled to remember basic details about the collision. The video wasn't perfect, and there was some awkwardness and fumbling on my part in navigating through Google Maps, but I believe it would have been a powerful and engaging form of impeachment to use at trial. The utilization of remote depositions grants us the ability to get creative in how we memorialize the testimony of witnesses and ultimately how we prepare our cases for trial. I fully expect that as lawyers continue to utilize remote depositions that additional software will be developed to further enhance our ability to memorialize testimony of witnesses and present deposition testimony to judges and juries.

The Cons of Remote Depositions

Diminished Social Interaction

For me, spending all my time in the office sitting at my desk is a total slog. Almost all the cases I handle involve injuries that occur in Maryland where the parties and witnesses are Maryland residents, I rarely have an opportunity to travel for work. As a result, I often looked forward to stepping out of the office for depositions, client meetings and trials and spending time with opposing attorneys, clients, and witnesses. While remote platforms provide the basic tools to see and speak with other people, something critical is lost in the social interactions that take place through those mediums. There are

many reasons why remote virtual interactions may seem to fall flat. When you interact with someone in person, you share the same physical space and surroundings, the same ambient noises, lighting and scents, the same background, and you share in a unique experience that belongs only to those in that space in that moment. There is a connection that is formed between the individuals sharing those experiences that is lost when you interact with someone through a camera and microphone. You can share words, thoughts, and ideas, but it is not a truly shared experience and does not satiate the human need for social interaction.

There are also certain social norms that we follow during in-person interactions that don't seem to translate to the virtual setting. For example, in an office meeting, it is rude to stare at your phone and check emails when a superior or colleague is speaking. When sharing a physical space, it is expected that you are going to be attentive to the whoever is speaking. In virtual settings, especially with large numbers of people, participants will routinely attend to their phones or engage in other tasks on their computers while someone is speaking. Somehow this behavior has become routine and expected to the point that attendees to remote meetings will check out and become occupied by other distractions in their environment. Others who wish to maintain some degree of mystery in their multitasking will simply "Stop Sharing Screen". This behavior is less common in the setting of a remote deposition, especially when there are few individuals present who need to attend to the task at hand. However, I have certainly been guilty of multitasking in situations where I am not lead counsel to the deposition or I am defending a deposition and opposing counsel is asking questions that are indicative of a desire to milk the deposition for as many billable hours as they can generate. While constantly being in depositions or trials may be just as unpleasant as being glued to a computer chair, true social in-person interactions were and still are an important and valuable part of being an attorney.

Inability to Monitor the Witness and Opposing Counsel

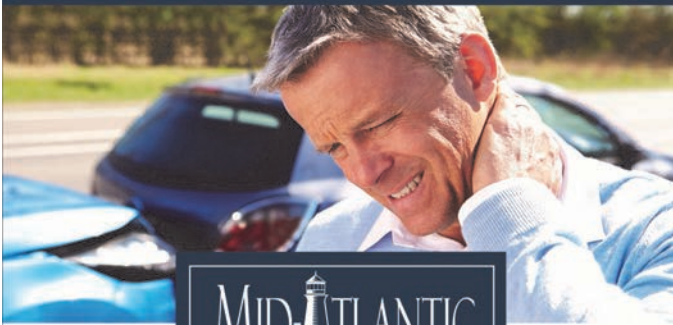
I have been fortunate enough to litigate cases with opposing counsel who I mostly trust and believe abide by an ethical code. However, I am not so naïve as to think that all the attorneys are so noble. There is understandable concern that when remotely deposing an opposing party, adverse witness, or expert, that dishonest witnesses and attorneys will take advantage of the limited ability to monitor them to inappropriately coach the witness or otherwise engage in unethical acts. If this is truly a consideration in your case, it may be worth insisting on an in-person deposition, but the mere possibility of such behavior alone does not justify such a demand.

The Verdict

I don't profess that the above comparisons between in-person and remote depositions represent all relevant considerations in balancing their respective virtues and shortcoming. These considerations do not take into account the subjective weight that an individual may assign to any one factor. The value of social interaction in the workplace may not be as important to one as the convenience and freedom offered by a remote deposition. However, in my view, there is a compelling argument that even as the return to in-person interactions become increasingly acceptable and desirable, the remote deposition should become the norm. There will always be those who resist change and seek to maintain the status quo. But, given the current trends in businesses accommodating remote work schedules and the penchant of young professionals who choose freedom and convenience over money, the legal profession must adapt to these societal changes. We should embrace remote depositions and the benefits they offer to attorneys and their clients.

This article originally appeared in the 2022 Special Issue of Trial Reporter.

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Estoppel Certificates and Lease Amendments: Comparing Apples and Oranges

Applying Maryland contract law, the 4th Circuit determines that an estoppel certificate does not modify a commercial lease.

Keith O. Hinder, Jr., Esq.



Background

Most commercial leases contain a provision requiring that upon reasonable request by the landlord the tenant will sign and deliver an estoppel certificate – a statement certifying that certain facts about the lease are correct (e.g. that a lease exists, that there are no defaults, and that rent is paid to a certain date, etc.). At its core, the substance of a typical estoppel certificate benefits neither the landlord nor tenant directly; rather, banks

and prospective purchasers of commercial property are the parties most interested in receiving estoppel certificates, as the lender and/or buyer want to make sure that their real estate investment is predicated on a reliable articulation of the landlord/tenant relationship.

An estoppel certificate facilitates a lender's and/or purchaser's "due diligence" by requiring the tenant certify to a third party (a lender or purchaser) as to a certain set of facts. Thus, as a foundational matter, the use of an estoppel certificate is designed to recite facts; but by doing so does it also memorialize an amendment or modification of a lease? A unanimous three judge panel of the 4th Circuit Court of Appeals in *Expo Props., LLC v. Experient, Inc.* 956 F.3d 217 (2020) addressed this question, clarifying the role of estoppel certificates and whether an estoppel certificate can modify a lease agreement.

The origins of this case date back to 1994 when the landlord, John Laughlin leased commercial office space in Frederick, Maryland to a closely held Maryland corporation. The commercial lease at issue had an original term of 5 years with a renewal option. Following the lease's execution, landlord and tenant renegotiated various clauses of the lease, which were memorialized via lease "amendments" that were signed by both parties. These amendments modified the lease and reflected name changes of the landlord and tenant, increased the square footage of the commercial space, and adjusted the rent.

An important provision in the lease dictated that the costs for repairs and maintenance to the premises were to be shared between the parties. In connection with the repairs and maintenance cost sharing arrangement, the lease also required that the tenant would return the premises at the end of the lease term in the same condition as when received, ordinary wear and tear excepted.

Over a decade after the original lease was executed, the landlord sold the building. To finance its acquisition of the property, the buyer at the time took out a mortgage. Perfunctorily, as a precondition to the bank's disbursement of the loan proceeds, the buyer's lender required an estoppel certificate from the tenant. In turn, the estoppel certificate was dutifully executed by tenant and supplied to the lender as the terms of the lease required the tenant to do.

Contravening the express provisions of the underlying lease, the estoppel certificate executed by tenant recited that the tenant was responsible for *all* repairs. As mentioned above, the lease established that the cost of repairs was to be *shared* between landlord and tenant; not borne by the tenant alone.

Five years later, the lease terminated, and the tenant vacated. After the tenant exited the space, the landlord asserted claims against the tenant for sundry repair expenses, which included structural roof work, replacement of the carpets, and replacement of the HVAC units. The tenant disputed that it was solely responsible for the landlord's high-ticket repair demands and the landlord filed the lawsuit that is the genesis of the 4th Circuit's appellate review.

Takeaways from the Decision

At the outset of its decision, the 4th Circuit recognized that Maryland contract law applied. Although this finding may appear obvious, the court's proper acknowledgment that Maryland contract law applied is no small point. Under Maryland law, to modify a contract "there must be mutual assent." The court acknowledged that there are many factors that may be relevant to determining mutual assent, but the most important factor is the language of the agreement. In addition to the mutual assent contract prerequisite, the court also reiterated that Maryland uses the law of the objective interpretation of contracts wherein the search to determine the meaning of a contract is focused on the four corners of the agreement.

Turning to its examination of the estoppel certificate, the court found significant that the estoppel was "signed by one party only." Juxtaposing the single signatory framework of the estoppel certificate with the lease, the court stressed that the lease and multiple amendments to the lease were signed by *both* parties. The court noted that the failure of the lease to be signed by both landlord and tenant demonstrated "no evidence of intent to be bound."

Furthermore, the 4th Circuit pointed out that the estoppel certificate did not label itself as an amendment to the lease nor did it describe how it modified any obligation under the lease. As a result of the estoppel certificate not providing for any description of how it would modify the parties' obligations under the lease, the court determined that it lacked the requisite definitiveness of terms to effectively amend the lease.

In sum, the 4th Circuit made clear the distinction between the purpose of an estoppel certificate versus the force and effect of a lease amendment. A lease amendment modifies the lease; a standard estoppel certificate does not. To support this distinction, the court cited to Black's Law Dictionary:

An estoppel certificate is:

A signed statement by a party (such a tenant or a mortgagee) certifying for another's benefit that certain facts are correct, such as that a lease exists, that there are no defaults, and that rent is paid to a certain date. A party's delivery of this statement estops that party from later claiming a different set of facts.

Estoppel Certificate, Black's Law Dictionary (10th ed. 2014).

This decision is important as it affirms that an estoppel certificate does not *ipso facto* modify the terms of an underlying lease. Instead, in order for a given estoppel certificate to amend a lease it must satisfy the requirements of Maryland contract law.

Lessons Learned

Here, the landlord's efforts to transform the estoppel certificate into a lease amendment would have significantly changed the parties' responsibilities and resulted in the tenant paying substantially more for the structural repairs to the premises than was bargained for under the lease. Tenants should be wary of any misguided efforts by landlords to opportunistically seek to modify the lease under the guise of an estoppel certificate – therefore, tenants should carefully read all documents entitled “estoppel certificates” to avoid such a result. A tenant has no duty to sign what is otherwise identified as an “estoppel certificate” if the document seeks to amend the provisions of the underlying lease.

To help deter inadvertent modification of a lease through the presentation of estoppel certificates, a lease should include an “integration clause”, which requires that any amendments be signed by both landlord and tenant. The 4th Circuit noted this as a relevant consideration in reaching its holding.

It should be noted that the opinion gives short shrift to the legitimate expectations of a party receiving an estoppel certificate – that is, to receive a reliable statement as to the lease terms signed by a party to be charged with complying with such terms. In this case the appellant landlord who received the estoppel certificate ultimately was denied the ability to rely on the estoppel certificate. Accordingly, in *Expo Props., LLC*, the delivery of the signed certificate by the appellee tenant *did not* estop that party from later claiming a different set of facts. This undermines the appropriate use of estoppel certificates and is a cautionary reminder that estoppel certificate recipients need to examine draft estoppel certificates carefully as well, to ensure that there are no discrepancies between the lease terms and the statements set out in the estoppel certificate.

Keith Hinder is an attorney in the Real Estate Department at Niles, Barton & Wilmer, LLP. He represents clients in commercial real estate transactions, including the purchase, sale, financing, development and leasing of all types of commercial properties.



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BABC Nominating Committee Report



The Nominating Committee of The Bar Association of Baltimore City, comprised of Darren Kadish, Chair, Aaron DeGraffenreidt, Letam Duson, Lauren Lake, James Robinson, Alicia L. Wilson and Michelle K. Wilson, has nominated and recommends the following members of the Association for election to the offices and positions set opposite their names for fiscal year 2022-2023:

President-Elect	James W. Motsay Motsay & Lay
Vice President	Teresa Epps Cummings Baltimore City Department of Law
Treasurer	Evelyn Cusson U.S. Attorney's Office for the District of Maryland
Secretary	La Zette Ringgold-Kirksey Office of the State's Attorney for Baltimore City
Elected Members	Robert D. Anbinder Baltimore City Department of Law
	Damien R. Banks Law Offices of Peter G. Angelos, P.C.
	Valda G. Ricks Office of the State's Attorney for Baltimore City
ABA Delegate	Hon. Michael Reed Court of Special Appeals of Maryland

Hon. Myshala E. Middleton, Circuit Court for Baltimore City, the current President-Elect of the BABC, will assume the office of President at the Association's Annual meeting to be held in the Spring.

The Committee also nominated and recommends the following members of the Association to serve on the Board of Governors of the Maryland State Bar Association for the First District (Baltimore City) for a two-year term beginning June 2022:

Hon. Anthony F. Vittoria
Circuit Court for Baltimore City

Gary C. Norman
Office of the Attorney Advisor

Samuel R. Pulver
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In addition to the nominations made by the Nominating Committee, 15 or more members of the Association may nominate candidates for any one or more of the above Bar Association of Baltimore City offices, provided such nominations be in writing and received by the Secretary of the Association, at Association headquarters, no later than 4:30 p.m. on Tuesday, March 15, 2022. Such written nominations must contain the name and written consent of each such candidate, must designate the office or offices for which such candidate is being nominated, and must be signed by the members of the Association making such nominations.

Nominations for a position on the Board of Governors of the Maryland State Bar Association, other than those nominated by the Nominating Committee, will be made in accordance with the procedures of the Maryland State Bar Association. The Young Lawyers' Division representatives on the BABC Executive Council are nominated and elected exclusively in the manner prescribed in the Bylaws of that Division.

Teresa Epps Cummings
Secretary



YLD Nominating Committee Report

The Nominating Committee of the Young Lawyers' Division, comprised of Lauren Lake, Chair, Sarah P. Belardi, Letam Duson, Kate McComiskey, Divya Potdar, Alison Schurick, and Kerri L. Smith, has considered applicants for 2022-2023 Division Officers, Elected Member, and Members-At-Large and has submitted its nominating slate. In accordance with the By-Laws of the Young Lawyers' Division, you are hereby given notice of the nominations of the Nominating Committee:

Chair-Elect	Sara El-Shall Law Office of Sara El-Shall
Treasurer	Rachel Samakow Chesapeake Employers' Insurance Company
Secretary	Jacob Dorfman The Law Office of David B. Shapiro
Elected Member	Derek M. Van De Walle Semmes, Bowen & Semmes
Members-at-Large	Samantha Boylan Turnbull, Nicholson and Sanders, P.A. Alana Glover Goldberg Segalla, LLP Kendrick McLeod Baltimore City Public Schools

Current Chair-Elect, James P. Robinson, Goodell, DeVries, Leech & Dann, LLP, will serve as Chair of the Young Lawyers' Division in 2022-2023.

The By-Laws of the Division provide that any Division member may seek a nomination to any one or more of the positions stated above, provided that the member submit to the Nominating Committee a petition of nomination which shall be signed by not less than 15 members of the Division. Petitions are due at Association headquarters no later than 4:30 p.m. on Tuesday, March 15, 2022. Nominating petitions are available at Association headquarters.

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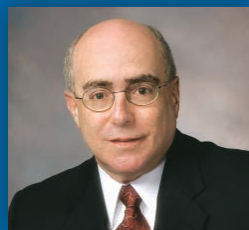
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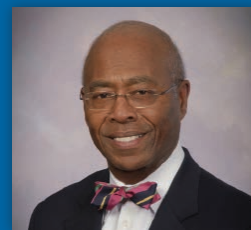
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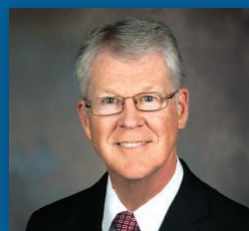
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BABC's 86th Annual Holiday Party

December 9, 2021

Thank you to all who came out to BABC's 86th Annual Holiday Party and to all the donors who donated items for our Virtual Auction to raise money for the YLD Holiday Party for Children Living in Shelters.

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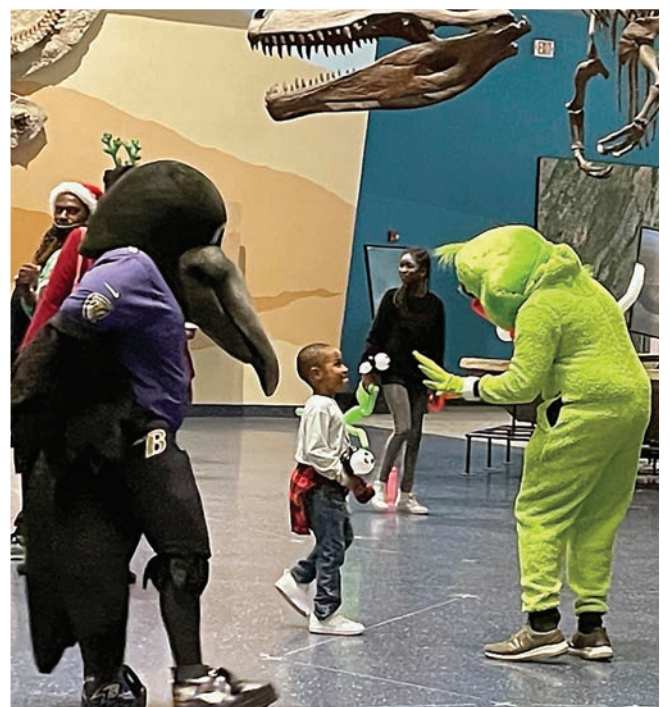
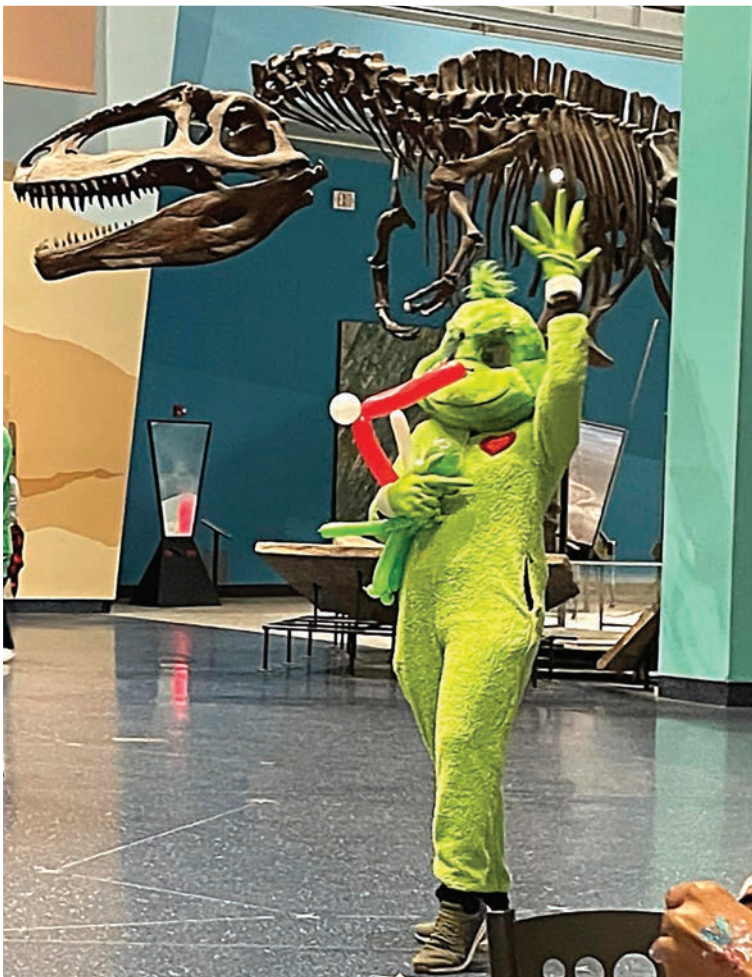




YLD's Annual Holiday Party for Children in Shelters

December 14, 2021

The Young Lawyers' Division held its Annual Holiday Party for Children Living in Shelters in-person at the Maryland Science Center. Both parents and children had a wonderful time! Special thank you to our vendors, donors and the YLD Public Service Committee for putting this together. You all made this event so special for so many children!





Interview with the Hon. Charles M. Blomquist

Continued from pag 6

cases in the District Court that helped shape me. They might not have been important to anybody but those directly involved, but it taught and reminded me that you needed to treat the officer who made the case with respect and when necessary to educate them on the law; and to the defendant, who no matter what they did, should be treated with respect and decorum in the court.

Who and/or what are the major influences in your life? Why?

The biggest influence—and its more her tolerance and patience with me, is my wife Joan. Joan and I met in college and joined the Peace Corps together. There is nobody who has had such a positive on my life.

Looking back on your time as a law student at the University of Baltimore, is there a class or professor that stood out to you?

There are a few professors I look back and realize they had impact on me and my legal career. Professor Charles Reese epitomized that classic 1L law school professor. He had the ability to terrify students in class, but also be the consummate mentor. Professor José Anderson is another professor that I look back upon with a great deal of appreciation. I remember taking his criminal procedure course and I still find myself citing some of his experiences or phares to this day. Finally, while I never took his courses in law school, I did get to know Byron Warnken after I graduated and I am inspired and amazed by this tireless commitment to the law and his students.

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