

cadit quaestio

Newsletter of the Wicomico County Bar Association
Issue 1 - February 2011

President's Message by Heather Konyar

Greetings! Allow me to introduce myself as the 2011 President of the Wicomico County Bar Association. I am a sixth year Associate with the law firm of Cockey, Brennan & Maloney, P.C., and am happy to now have the opportunity to serve as your Bar President. I, along with my fellow Officers, have great ambitions for the Bar in 2011, to include quarterly meetings, social events (maybe even a beer or wine tasting...) and opportunities for informal "CLE" lunches.

We have many more aspirations, which we will share at our next Bar meeting, scheduled for February 11, 2011 at 4:30 p.m. at La Tolteca in Salisbury. We invite you to come hear our plans, and to share your own ideas as well. We will be forming committees that day, so we ask that you



come willing to donate your time to the continued success of our Bar Association. We are confident that, with your help, we can see our "ambitions" through to fruition.

Finally, many thanks should be given to my newsletter committee, consisting of Master Leah Seaton and Susan Land, who had the vision (and motivation) to get this wonderful little newsletter off the ground and running. What better

way to facilitate communication among our Bar than to have a common "bulletin board." We welcome and encourage all of you to contribute your own submissions to the newsletter. Here's to a fabulous year!

Looking forward to a great year,
Heather Konyar

WCBA Calendar

Mark Your Calendars!

- ❖ February 11, 2011 @ 4:30pm, Happy Hour at La Tolteca
- ❖ May 20, 2011 @ Noon, Brown Bag Lunch; Location: TBA; Topic: How Bankruptcy Affects Your Legal Practice
- ❖ August 12, 2011 @ Noon, Brown Bag Lunch; Location: TBA; Topic: TBA
- ❖ November 4, 2011 @ 4:30 pm, Wine or Beer Tasting; Location: TBA
- ❖ December 3, 2011 - Holiday Party! Details Coming Soon.

Legal Aid Bureau Turns 100

by Robert McCaig

In 1911, the Federated Charities founded the Legal Aid Bureau in Baltimore. The office was staffed on a part-time basis and in its first year handled 234 cases. By 1966, the Office of Economic Opportunity was providing federal funding to 130 local legal services programs, including the Legal Aid Bureau which had thirty-four attorneys. In 1971 Legal Aid established offices in Anne Arundel, Carroll and Harford counties. In the mid to late 1970s, offices were opened in Cumberland, Salisbury and Centreville. Starting in the late 1970s, Legal Aid received funding to provide services to migrant farm workers.

In the 1970s, Legal Aid clients sued the state's steel industry to eliminate practices that prevented women and minorities from getting higher-paying jobs and won a landmark case in the state courts guaranteeing the mentally disabled the right to have attorneys represent them at commitment hearings. Legal Aid also persuaded a federal court to compel mental institutions to review regularly the cases of child patients to determine whether they had improved enough to gain release. It also persuaded the U.S. Supreme Court to overturn as unconstitutional a federal rule barring children born out of wedlock from getting their deceased fathers' social security benefits.

In the 1980s, federal funding was cut by one-third, and the General Assembly responded by establishing the Maryland Legal Services Corporation (MLSC), which set up an Interest of Lawyers' Trust Account (IOLTA) program. Some federal funding was restored in the late 1980s and early 1990s, but in the mid 1990s, funding was again cut by thirty percent and restrictions, such as a prohibition on class actions, were imposed.

Today, significant funding is tied to specific practice areas, such as representation of children in CINA proceedings. Funding for representation in

other types of cases is provided by a variety of sources, including the United Way, foundations, MLSC and the federal government.



The legal staff in the Salisbury office is made up of three full time attorneys serving Wicomico, Worcester, Dorchester and Somerset Counties, a part time attorney who assists senior citizens on both the upper and lower shore, and two legal assistants. (Two more legal assistants work with migrant farm workers under the supervision of an attorney in Baltimore.)

When it is too late to avoid a problem, advice and counsel are admittedly a poor substitute for representation. As is the case with other Legal Aid offices in the State, however, the Lower Shore office does in many circumstances provide advice and counsel so as to respond to as many people as possible. The Lower Shore office offers representation in a wide a variety of legal areas, including bankruptcy and consumer matters where there is a risk to income or assets, landlord-tenant, mortgage foreclosure, public benefits, including social security, disability and unemployment, custody disputes where the stability of a child is threatened, and problems facing seniors (such as threats to long term nursing home care).

Although the problems of low income people are enormous (and practical options are not always available), comprehension of available options can prevent some problems from becoming worse. Consequently, private attorneys, whether able or unable to provide direct representation through the Maryland Volunteer Lawyers Service, could help improve the legal literacy of the poor by sharing their knowledge of legal issues and problems that often face low income folks. ❖

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The newsletter is a bi-monthly publication of the Wicomico County Bar Association informing its members about current events related to law and the community. Articles do not necessarily reflect the official position of the Association, and publication does not demonstrate an endorsement of views expressed herein.

The contents of advertisements are the responsibility of the advertisers and do not represent any recommendation or endorsement by this newsletter or the Association.

Focus on the Circuit Court Drug Treatment Court

The Wicomico County Circuit Court Adult Drug Treatment Court has been in existence since September 2005. This problem solving court was developed to address substance abuse and related criminal activity while holding accountable the eligible offenders who have either violated their Circuit Court probation or have an original case for sentencing in the Circuit Court. An individual may be eligible for the program if they are determined to be non-violent adult offenders who reside in Wicomico County and have substance abuse as their primary diagnosis. Drug Treatment Court hearings are held every Friday in Courtroom Two. Currently, there are thirty-two participants, and the program lasts a minimum of fifteen to twenty-four months, depending on the participants' compliance with the program requirements.

Successful completion of the program involves satisfaction of a rigorous protocol, which includes adhering to their substance abuse treatment plan, maintaining employment and community service as well as compliance with their standard probation requirements. Participants are also afforded a life skills case plan known as "Made for Excellence" in core areas that include health, education, employment, legal, financial, and housing. To date, the program has worked with over 100 participants and successfully graduated thirty participants. The most recent graduation ceremony was held on October 29, 2010 with six participants graduating. The Wicomico County Health Department, the Office of the Public Defender, the Wicomico County State's Attorney's Office, the Department of Parole and Probation, the Wicomico County Detention Center and local law enforcement agencies are partners with the Drug Court. In addition, numerous businesses and community resources in Wicomico County

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Tax Relief Act: What It Means To You

by Douglas McCabe

President Obama recently signed the 2010 Tax Relief Act into law. The 2010 Tax Relief Act, in part, changes the federal estate tax system and I would like to take this opportunity to provide you with some of those changes.

FEDERAL ESTATE TAX COMPROMISE

The 2010 Tax Relief Act reinstates the federal estate tax with an exclusion amount of \$5 million and a top federal estate tax rate of thirty-five percent. The 2010 Tax Relief Act eliminates the modified carryover basis rules imposed under Economic Growth and Tax Relief Act (“EGTRRA”) for 2010 and replaces them with the full stepped-up in basis rules that had applied until 2010. This new federal estate tax system under the 2010 Tax Relief Act is temporary and is scheduled to sunset after December 31, 2012.

EGTRRA eliminated federal estate taxes for decedents dying in 2010. EGTRRA also limited the estate’s ability to receive a full stepped-up in basis for the estate’s property for decedents dying in 2010. Under a modified carryover basis system that EGTRRA put into effect for 2010, the estate’s personal representative may increase the basis of estate property by a total of \$1.3 million for estate assets bequeathed to the decedent’s heirs other than the decedent’s spouse and \$3 million for estate property bequeathed to the decedent’s spouse. Property with a stepped-up basis receives a basis equal to the property’s fair market value on the date of the decedent’s death (or on an alternate valuation date). Other estate property takes a carryover basis equal to the lesser of the decedent’s basis or the fair market value of the property on the decedent’s death.

Option for 2010

The 2010 Tax Relief Act gives estates of decedents dying in 2010 the choice of which estate tax rules to apply, that of 2010 or 2011.

For estates with the decedent dying during 2010, the new law gives the estate the option to elect to apply either: (1) the estate tax based on the new thirty-five percent top rate and \$5 million exemption, with full stepped-up basis (2011 rules); or (2) no estate tax and modified carryover basis rules under EGTRRA (2010’s rules). Any election would be revocable only with the consent of the IRS.

Portability

The 2010 Tax Relief Act provides for “portability” between spouses of the maximum exclusion. Generally, portability would allow a surviving spouse to elect to take advantage of the unused portion of the estate tax exclusion of his or her predeceased spouse, thereby providing the surviving spouse with a larger exclusion amount. A deceased spousal exclusion amount would be available to the surviving spouse only if an election is made on a timely filed estate tax return. Portability is available after December 31, 2010.

IMPACT. With the election and careful estate planning, married couples can effectively shield up to \$10 million from federal estate tax by providing that each spouse maximize his or her \$5 million exemption under the 2010 Tax Relief Act.

EXAMPLE. Dan dies in 2011, having made taxable transfers of \$3 million and having no taxable estate. An election is made on Dan’s estate tax return to permit Dan’s wife Tracy to use Dan’s unused exclusion amount. At the time of Dan’s death, Tracy had made no taxable gifts. Tracy’s exclusion amount would be her \$5 million exclu-

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Tax Relief Act
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sion plus \$2 million of Dan's unused exclusion for a total exclusion amount of \$7 million.

COMMENT. If the surviving spouse is predeceased by more than one spouse, the exclusion amount available for use by the surviving spouse would be limited to the lesser of \$5 million or the unused exclusion of the last deceased spouse. Additionally, the surviving spouse would also get his/her unused exclusion amount (up to \$5 million). The 2010 Tax Relief Act continues the rule that prevents a surviving spouse from using the GST tax exemption of a predeceased spouse.

**State Death
Tax Credit/Deduction**

EGTRRA repealed the state death tax credit for decedents dying after 2004 and replaced it with a deduction. Under EGTRRA's sunset provisions, the state death tax credit was scheduled to be reinstated in 2011, however the 2010 Tax Relief Act extends the deduction through 2012.

Gift Taxes

For gifts made in 2010 the gift tax is computed using a rate schedule having a top tax rate of thirty-five percent and a maximum applicable lifetime exclusion amount of \$1 million. For gifts made after 2010, the gift tax is reunified with the estate tax with a top gift tax rate of thirty-five percent and a maximum applicable lifetime exclusion amount of \$5 million.

COMMENT. Donors of lifetime gifts continue to be able to apply an annual gift tax exclusion before having to use part of their now unified exclusion. For 2010 and 2011, that inflation-adjusted annual exclusion amount is \$13,000 (married couples may continue to "split" their gift and may make combined gifts of \$26,000 to each donee).

GST Tax

The 2010 Tax Relief Act provides a \$5 million exemption for 2010 and subsequent GST transfers (equal to the exclusion for estate tax purposes). The GST tax rate is zero percent for 2010, but for transfers made after 2010, the GST tax rate would be equal to the highest estate and gift tax rate in effect for the year (thirty-five percent for 2011 and 2012). The 2010 Tax Relief Act also extends certain technical provisions under EGTRRA affecting the GST tax.

This new federal estate tax law should provide some estate planning opportunities for our clients. Please contact Doug McCabe at 410-546-5600 or dmccabe@pkscpa.com if you need assistance with a client need or if you have any questions.

Filings for 2010 Estates

IRS Form 8939 is required to be filed for decedents dying during 2010 for whose Personal Representative elects to have the estate taxed under 2010's federal estate tax rules (EGTRRA). The purpose of IRS Form 8939 is to report to the IRS and the heirs which of the decedent's assets will receive a step-up in basis. IRS Form 8939 must be filed by April 18, 2011 (October 15, 2011 with a timely extension) and it must also be furnished to the decedent's heirs. Failure to file IRS Form 8939 could result in a \$10,000 penalty. Those 2010 estates electing to apply the estate tax rules under the 2010 Tax Relief Act would file a revised Form 706 and would not need to file IRS Form 8939.

Sources: CCH Tax Briefing, Tax Relief/Job Creation Act of 2010 (December 16, 2010).

CIRCULAR 230 DISCLOSURE: The following statement is provided pursuant to U.S. Treasury Department Regulations and IRS Circular 230. This communication is not intended or written to be used, and cannot be used, by the taxpayer for the purpose of avoiding penalties that

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News From The Circuit Court

❖ With the retirement of the Honorable Donald C. Davis on October 5, 2010, the Honorable Kathleen L. Beckstead was appointed by Chief Judge Robert Bell to serve as the Administrative Judge for the Circuit Court for Wicomico County.

❖ Maryland Rule 16-110, governing possession and use of cell phones, computers and cameras and other electronic devices, became effective January 1, 2011. This Rule will allow individuals to bring the devices into courthouses, but requires that usage be consistent with court orders. On January 7, 2010, Administrative Judge Kathleen Beckstead issued an Order Regarding Court Security and Protocol Measures, which sets forth the protocol for having the devices in the Circuit Court. A Memorandum was also issued to all members of the Bar. While possession of a cell phone or other electronic devices is no longer prohibited, their use is strictly limited. Cell phones and electronic devices must be off and inoperable prior to entering the courtroom or any corridor adjoining a courtroom. Copies of the Administrative Order and the accompanying memorandum may be obtained from Court Administrator Wendy Riley at 410-548-4822.

❖ Members of the Wicomico County Action Team for children in the child welfare system attended the second Child Welfare Summit in September 2010. Master Leah Seaton and Paula Erdie, Director of the Wicomico County Department of Social Services, co-chair the Wicomico County team. The first summit, held in June 2009, required each jurisdiction to create an action plan to improve outcomes for children in the child welfare system. The second symposium afforded an opportunity to revisit and revise the action plan. Wicomico County's team meets quarterly as part of the Juvenile Coordinating Council of the Circuit Court.

❖ Effective October 2010, the Circuit Court for Wicomico County began use of a new jury system. Funded by the Maryland Administrative Office of the Courts, the new system is planned for eventual statewide use. Considered a "medium-sized" court, the Circuit Court for Wicomico County processes a large number of jury trials. Between July 2009 and June 2010, the Court held 177 jury trials.

Drug Court

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have cooperated with the Drug Treatment Court to enable participants to be successful.

The measure of success with drug courts nationally is the reduction in recidivism of those individuals who graduate from the program versus those who complete standard probation. The Circuit Court Drug Court program's recidivism rate of its graduates within one year post graduation is under thirteen percent versus the standard probation average of sixty-nine percent within one year of completion of probation. ❖

Tax Relief Act

(Continued from pg. 5)

the Internal Revenue Service or applicable state or local law may impose on the taxpayer.

Doug McCabe works at PKS & Company and can be reached at dmccabe@pkscpa.com. ❖

Not a member?

Not a member of the Wicomico County Bar Association? Or have dues just slipped your mind? We'd love to have you join us! Contact Nicole at attygrl@aol.com for information.

News from the OAH Website

❖ The Office of Administrative Hearings has been working with the Motor Vehicle Administration to develop an integrated technology system that will streamline the processes for motor vehicle related hearings. The new system will provide Administrative Law Judges with the ability to have real-time access to driving records during the hearing process and will allow the hearing decision to be posted, in real time, to the individual's driving record. After piloting the project in select locations, the OAH will be implementing the system statewide.

❖ Maryland's new Foreclosure Mediation Law went into effect on July 1, 2010. The Office of Administrative Hearings will be providing mediation services for homeowners under the auspices of the new act.

More information about this and other OAH matters can be found at the OAH website, <http://www.oah.state.md.us>.

Speakers Bureau

To celebrate the 100th Anniversary of the Legal Aid Bureau, Inc., the Wicomico County Bar Association is joining with the Bureau to create a Speakers Bureau for the Lower Eastern Shore.

If you are interested in joining the Speakers Bureau, please send your name, contact information and areas of law that you are qualified to speak on to Susan at sjland@akmanpc.com.

This is a wonderful opportunity for members of the Association to help the community and get in those Pro Bono hours as well.

What the Heck is "cadi quaestio?"

Apparently, this Latin phrase means that a dispute or law suit has settled. Who knew? If you would prefer a less esoteric or bizarre name for this newsletter, please send your suggestions to Susan at sjland@akmanpc.com and put "Here's a name!" in the subject line.

The Board will select a new name from all submissions and the winner will receive a prize! If more than one member submits the same name, the winner will be chosen at random.

We also need a logo to be used on the newsletter and a possible new website as well. Send all submissions to Susan, with "logo" in the subject line.

Be creative, be original and help us make this the best Bar Association newsletter available! Submissions must be made by March 15, 2011.

Call for Articles

Come one, come all! Submit your articles, or ideas for article, for inclusion in future newsletters. If you would like to do a regular column or be a regular contributor, we welcome you! Articles should be relevant to law or our community. We are also looking for information regarding our members, such as moves, new hires, new jobs, etc. This newsletter will be only as great as the contributions you make to it.

Other events to look for this year:

Spring: Memorial Service

Summer: June 8-11, 2011: MSBA Convention
in Ocean City

Fall: WCBA Blood Drive

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