



THE

# DEFENSE LINE

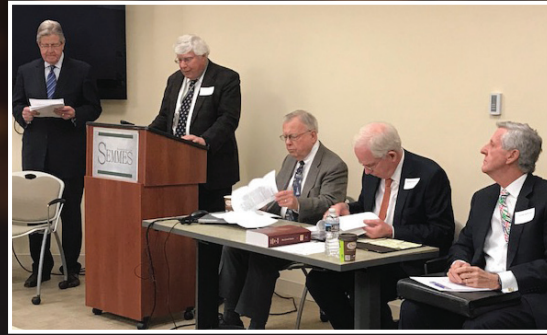
A Publication From The Maryland Defense Counsel, Inc.

March 2018



## Featured MDC Event: 2018 Deposition Bootcamp

See page 17 for a full report.



### Also Featured

Maryland Healthy Working Families Act  
Debt Collection and Limitations

10 LinkedIn Tips for Lawyers Collateral Attacks  
of Void Judgments

Reasons Your Firm Needs a Social Media Policy  
*Martaz Johnson v. State of Maryland*

## Leadership as Vision

Welcome to the latest addition of Maryland Defense Counsel's *The Defense Line*. Thank you for your continued support of MDC and all its activities.

It has been a busy spring for MDC. We have hosted a number of events including the recent Deposition Bootcamp and a number of Lunch & Learns. All were very well received. MDC has also interviewed judicial candidates throughout the State, helping to ensure the bench in Maryland is strong. Finally, a number of MDC members testified in the Legislature on various issues concerning the defense bar and our clients. Continued engagement with policy makers is a key goal of MDC.

Starting this year, we transitioned this space from the traditional President's address to an opportunity to share thoughts on key issues. I was tasked with writing this issue's commentary on an important leadership quality.

Of all the aspects of leaders I have admired, I think, as George H.W. Bush said, "It is the vision thing." It is hard to lead without goals. The best leaders set clear goals and then work with their team to reach them. Without those goals the journey becomes meaningless and too often the team finds itself adrift. Sports and politics provide clear examples of this.

We have all faced circumstances that in retrospect reveal themselves to be great learning opportunities — especially if a great leader was involved. One I now fondly remember — though I certainly didn't then — is playing J.V. high school football against our arch-rival. We lost 77-0. Not only does that sound bad, it was physically and mentally painful for all the players involved. It would have been easy to quit, and maybe rational too. But, our coach would have none

of it. He preached like an old school minister that with work and dedication our team could become winners. Three years later, and after a lot of hard work, that same core group of guys beat our arch-rival and won the county championship. Without his vision none of that would have been possible. Without setting the goal we would have been directionless.

On a much larger scale, I was recently reminded of how important a leader's goals can be especially in times of stress while reading the Gettysburg Address. Shortly after the Battle of Gettysburg, a battle in which approximately 50,000 men died over three days of fighting, President Lincoln was asked to dedicate the battlefield. He could have gloated in victory. He could have belittled his opponents. He could have been short-sighted. Instead, in only 272 words he laid out his vision for America. It was this: "That government of the people, by the people, for the people, shall not perish from the earth." For that, tens of thousands more soldiers would fight and die in the Civil War; because they had a goal worthy of their sacrifice.

In our own lives, we regularly face circumstances that call for leadership. Providing a clear vision of a laudable goal can energize your team and make it much more likely that it will work together in pursuit of that goal. As former CEO of General Electric, Jack Welch said, "Good leaders create a vision, articulate the vision, passionately own the vision, and relentlessly drive it to completion."

Look for examples in your own lives to lead. Maybe it is at home or in your community. Maybe it is at work or with organizations like MDC. Whatever you do identify a goal, articulate it clearly, and then lead your team to success!



John T. Sly,  
Esquire

Waranch & Brown, LLC

# THE DEFENSE LINE

March 2018



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# Maryland Healthy Working Families Act

## Employer Best Practices to Avoid Traps for the Unwary

Paul M. Finamore



**O**n January 18, 2018, the Maryland General Assembly voted to override Governor Hogan's veto of the sick and safe leave provisions of the Maryland Healthy Working Families Act. By doing so, Maryland joins the list of many state and local jurisdictions adopting paid leave for employees. The law went into effect on February 11, 2018, and employers should be ensuring that their existing policies are in compliance. The law applies to all Maryland employers, including law firms, so MDC members should be paying attention to the changes as well. For small firms, the sick and safe leave will be unpaid, but for those with more than 15 employees, the leave will be paid.

The law is complex, with many exceptions to the exceptions, such that careful review of the entire law is necessary. Considering this, this article points out certain areas for more focused attention by employers as they implement the provisions of the law, and draws attention to the traps in the law for the unwary. Due to the specific nature in which certain occupations are treated, employers in those industries should carefully review existing policies to ensure compliance.

⚠ It is essential to note that the law provides for accrual for existing employees starting on January 1, 2018, as such the February 11, 2018 implementation date will not affect accrual.

### Covered Employers

Virtually all Maryland employers are covered, including state and local governments. The question of coverage focuses less upon whether an employer is covered, with certain enumerated exceptions, and more on whether a covered employer must provide unpaid or paid leave.

For employers with 14 or fewer employees, earned sick and safe leave is unpaid. For employers with 15 or more employees, earned sick and safe leave is paid at the same wage rate that the employee typically earns.

⚠ The counting rules provide that the number is determined by the average monthly number of employees during the preceding year, including not only full-time employees,

but also part-time, temporary and seasonal employees without regard to their status and eligibility for safe or sick leave.

### Covered Employees

The law is intended to cover all employees except those in certain enumerated categories, including the following:

- Those regularly working less than 12 hours per week
- Under 18 years of age
- Independent contractors
- Real estate agents or brokers
- Those working in the agricultural sector
- Those in certain temporary services agencies
- Those working on an as-needed basis in the health or human services industry
- Those in the construction industry
- Those covered under a collective bargaining agreement, provided that the provisions of the new law are expressly waived in clear and unambiguous terms

⚠ The coverage provisions are complicated and contain exceptions to the exceptions; employers in the industries listed above need to carefully review the exceptions. For example, the exception for the construction industry includes seven separate job titles that are not excluded. Likewise, the exceptions for temporary services agencies are subject to exceptions and qualifications as are those in the as-needed health or human services fields.

The law covers sick and safe leave for employees or for leave due to their family members. The definition of family member is broad, particularly the definition of parents, which includes not only biological, adoptive and step-parents, but also foster parents, those *in loco parentis* regardless of the child's age, legal guardians or with whom a minor is in custody, those acting as parents to an employee or the employee's spouse when a minor, and similarly situated grandparents. Parents include those of the employee and their spouse. Siblings, be it biological, adopted, foster and stepsibling, of an employee are also included in the definition.

### Accrual

Sick and safe leave accrues at a rate of at least 1 hour for every 30 worked. Exempt employees are assumed to work 40 hours per week. For employees who regularly work less than 40 hours per week, the hours are counted based on the hours worked.

Employers may award sick and safe leave in a lump sum at the beginning of the year or provide for accrual during the year.

Employers are not required to allow employees to earn more than 40 hours in a year or to use more than 64 hours in a year. Likewise, total accrual may be capped at 64 hours.

⚠ For those employers providing leave in a lump sum at the beginning of the year, carry over of earned leave may be prohibited. For non-profits or governmental employers, carry over may also be prohibited if the employee is employed pursuant to a grant that is limited to one year and not subject to renewal.

Sick and safe leave does not accrue if an employee works less than 24 hours in any two-week pay period or fewer than a combined total of 24 hours in the current and preceding pay period. For employers paid twice monthly, sick and safe leave does not accrue for those who work less than 26 hours in the pay period.

For separated employees who return within 37 weeks after termination, earned leave must be reinstated unless the accrued, but unused sick and safe leave was paid at termination.

### Use

Sick and safe leave is for an employee and his/her family member's medical or preventive care due to illness or injury, maternity or paternity leave, and absence due to domestic violence, sexual assault, and stalking, including time needed to obtain legal advice, victim support, and to relocate.

The leave may be taken in the smallest increment that an employer uses to account for absences. Employers may require an employee to take leave in increments not exceeding 4 hours.

Employers may permit use of sick and safe leave before an employee accrues it.

⚠ Employers who choose to permit this must obtain a specific written authorization

*Continued on page 7*

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## **Hon. Daniel M. Long (Ret.)**

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The Honorable Daniel M. Long recently retired after over thirty years of distinguished public service. Judge Long served as Judge for the Circuit Court of Somerset County for twenty-six years, during which time he served as Circuit Administration Judge and County Administrative Judge. Prior to his appointment to the bench, Judge Long was elected as a Member of the Maryland House of Delegates, where he served admirably for seven years while also maintaining a successful private law practice in Somerset and Worcester Counties. Judge Long is a Recipient of the Judge Anselm Sodaro Judicial Civility Award from the Maryland State Bar Association, and he was selected as 2015's "Judge of the Year" by the Litigation Section of the Maryland State Bar Association. Judge Long now brings this exemplary record of service and achievement to The McCammon Group to serve the mediation, arbitration, and special master needs of lawyers and litigants throughout Maryland and beyond.

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(MD HEALTHY WORKING FAMILIES ACT) *Continued from page 5*

signed by the employee to allow for deduction of the amount paid from final pay.

For leave that is foreseeable, employers may require notice 7 days before the leave would begin. If the leave is unforeseeable, employees are required to give notice as soon as practicable and must comply with existing leave policies, provided that the policies do not interfere with an employee's ability to use the leave.

Denial of leave is limited, including in those instances where an employee fails to follow the provisions requiring notice for foreseeable or unforeseeable leave, but the absence under such circumstances must cause a disruption to the employer to be denied. For employers providing services to the developmentally disabled or mentally ill, leave may be denied if the leave was foreseeable, a suitable replacement cannot be located, and service disruption to at least one client would occur due to the absence.

For new employees, sick and safe leave can be denied during the first 106 calendar days worked.

Employers may not require an employee to find a substitute as a condition of granting a request for leave. However, an employer may enter into an agreement with an employee to work additional hours in a pay period or the following pay period, to trade shifts to account for the leave, or to make up hours to cover the hours. In that event, an employer may not deduct accrued sick and safe leave if the hours are covered. Employers are not required to offer schedule changes or to accept requests from employees to alter their hours. In addition, employers are not required to accept schedule changes that would result in an employee's entitlement to overtime. Accrued, but unused sick and safe leave is not payable at termination of employment.

⚠ There are specific rules regarding use of leave for the restaurant industry, particularly involving tipped employees.

## Verification

Employers may request verification for sick and safe leave that exceeds two consecutive scheduled shifts. Verification is also permissible for new employees who use leave between their 107th through 120th calendar days after starting employment. Failure to provide verification may result in denial of the leave request and for leave requested for the same reason.

⚠ Employers must add the verification requirement for new employees at on-board-

*Continued on page 19*

## Editors' Corner

The Publications Committee is pleased to publish this latest edition of *The Defense Line*, which features several articles from our members. **Paul M. Finamore**, of Niles, Barton & Wilmer, provides a valuable summary of the new sick and safe leave provisions of Maryland Healthy Working Families Act identifying tips for implementation and potential pitfalls for employers. An article by **Maryan Alexander**, of Wilson, Elser, Moskowitz, Edelman & Dicker, discusses the state of the law on debt collection and collateral attacks of void judgments. **Marisa A. Trasatti** and **Lauren S. Ellison**, of Wilson, Elser, Moskowitz, Edelman & Dicker, provide helpful advice to navigate the intersection of the legal community and social media platforms with articles focusing on legal marketing through LinkedIn and why law firms need to implement social media policies. **Christine R. Hogan**, of Wilson, Elser, Moskowitz, Edelman & Dicker, discusses a recent opinion from the Court of Appeals ruling that expert testimony is not required to explain GPS technology.

This Spring is shaping up to be a busy one for the MDC. The inaugural **MDC Deposition Bootcamp** took place on January 29, 2018 and was a sell-out success. **Christopher C. Jeffries**, of Kramon & Graham, provides a summary of the program and highlights the invaluable information and skills learned during the seminar. The MDC has a number of upcoming events scheduled and we invite you to attend a **Lunch & Learn** seminar as well at the **Trial Academy** on April 30, 2018.

The Publications Committee sincerely hopes the members of the MDC enjoy this edition of *The Defense Line*. If you have any comments, suggestions, or would like to submit an article or case spotlight for publication for a future edition, please contact one of the members of the Publications Committee below.



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## Please Welcome MDC's New Members

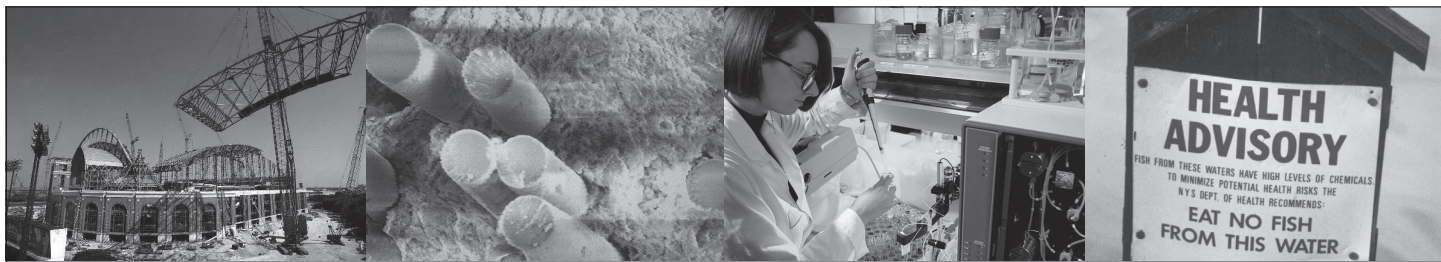
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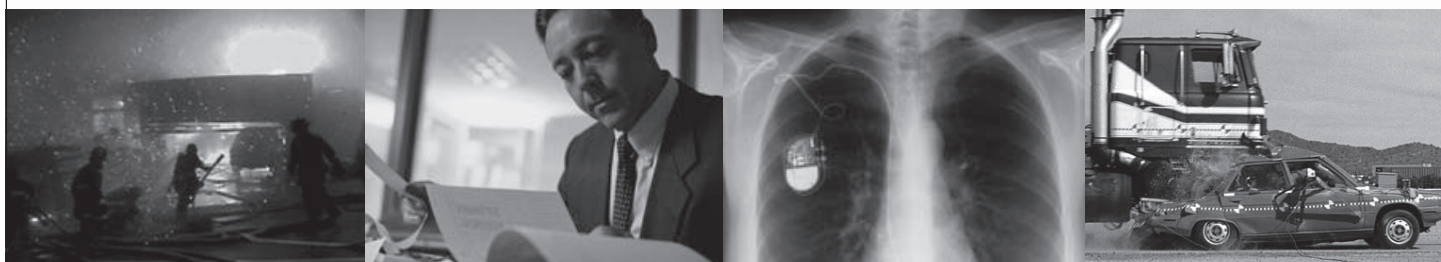
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# Debt Collection and Limitations on Collateral Attacks of Void Judgments

Maryan Alexander



In Maryland, judgments obtained by debt collection agencies that are unlicensed at the time of the debt collection action are void as a matter of law. The Maryland Collection Agency Licensing Act (MCALA), Md. Code Ann., Bus. Reg. §7-301, requires debt collectors to be licensed whenever they do business as a collection agency in Maryland. When an unlicensed debt collector brings a debt collection action, it is seeking to enforce a right that does not exist; therefore, if it lacks the statutorily required licensure, any judgment entered in its favor is void.

As a matter of first impression, the Court of Special Appeals (COSA), in *Finch v. LVNV Funding, LLC*, 212 Md. App. 748 (2013), considered whether the appellants, who are members of a class action, could challenge district court judgments obtained by LVNV Funding, LLC (LVNV), an entity that was not licensed as a collection agency, by bringing a collateral circuit court action against LVNV. COSA held that, because LVNV was unlicensed, its collection actions against appellants were a nullity and the judgments were therefore void and subject to collateral attack. COSA further held that a void judgment can be “assailed at all times” and can be attacked by appeal or collaterally. The case was remanded back to the Circuit Court for Baltimore City, and in May 2016, a Baltimore City jury rendered a \$38 million verdict, the largest verdict against a debt collector in Maryland history.

The *Finch* decision left the door open for judgment debtors to collaterally attack void judgments without being subject to a limitations period. Since the *Finch* decision, Maryland case law has developed to clarify the scope of the *Finch* decision. In *Jason v. National Loan Recoveries*, 227 Md. App. 516 (2016), COSA, while acknowledging the principles espoused in *Finch*, held that although the plaintiff’s unjust enrichment claim pertained to a voided judgment, the plaintiff’s unjust enrichment claim seeking monetary damages was still subject to the three-year statute of limitations. Notwithstanding *Finch* and the principle that void judgments can be attacked at any time, time limitations poten-

tially may be applicable to actions relative to void judgments depending on the nature of the action and the remedies sought. There is no time limitation or *laches* defense to an attack on a void judgment; however, certain remedies such as the return of property or its cash value are not immune to such defense.

In the most recent case, *Murray v. Midland Funding*, COSA clarified the time limitations applicable to collateral attacks on void judgments. COSA distinguished the limitations period applicable to actions based in law from those applicable to actions based in equity. In *Murray*, Cassandra Murray brought a claim against Midland Funding, LLC (Midland), an unlicensed debt collector, seeking to have Midland’s judgment against her voided and to recover any monies that she had paid to Midland. The Circuit Court for Anne Arundel County dismissed the monetary claims as being time-barred under the general three-year statute of limitations period prescribed by the Maryland Courts & Judicial Proceedings Article §5-101. Murray’s claims for declaratory and injunctive relief were later dismissed by the Circuit Court on the basis that those claims also were time-barred by the statute of limitations period found in the Courts & Judicial Proceedings Article §5-101.

Upon review, COSA vacated the Circuit Court’s judgment and remanded the case back to the Circuit Court to reconsider the limitations period on the declaratory judgment claims. COSA held that while monetary claims are subject to the general three-year statute of limitations period, as set forth in the Courts & Judicial Proceedings Article §5-101, equitable claims such as the injunctive relief sought by Murray are subject to *laches*. The applicability of *laches*, which also places time limitations on stale claims but has no definitive period of time, is determined by the judge who weighs the delay in bringing the claims against the prejudice it causes the defendant in having to defend.

As to declaratory relief, there is no time limitation so long as the declaratory relief is simply a declaration from the court as to the rights of the parties. For instance, there is no limitation on a plaintiff seeking to have a judgment declared void. However, in some instances, a declaratory judgment claim seeks more than just a declaration. In some instances, a plaintiff seeks some form

## The MDC Expert List

The MDC expert list is designed to be used as a contact list for informational purposes only. It provides names of experts sorted by area of expertise with corresponding contact names and email addresses of MDC members who have information about each expert as a result of experience with the expert either as a proponent or as an opponent of the expert in litigation. A member seeking information about an expert will be required to contact the listed MDC member(s) for details. The fact that an expert’s name appears on the list is not an endorsement or an indictment of that expert by MDC; it simply means that the listed MDC members may have useful information about that expert. MDC takes no position with regard to the licensure, qualifications, or suitability of any expert on the list.



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of ancillary relief, and where that is the case, the court should look to whether the ancillary relief is at law or at equity to determine whether the statutory limitations period or *laches* should be applied.

To the extent that Murray sought a declaration that the judgment against her is void, COSA ruled that there is no time bar. However, if, in conjunction with such declaration, Murray sought some ancillary relief, COSA ruled that those ancillary claims may be subject to the statute of limitations or *laches*.

*Continued on page 21*

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# 10 LinkedIn Tips for Lawyers: Legal Marketing Online

Marisa A. Trasatti & Lauren S. Ellison



**1. Create a Profile.** Creating a profile will allow you to market yourself to the world and say who you are, what you can do, and why you are here. When picking a tone for your profile, remember that this is your first “virtual” impression. At a minimum, add your professional headshot, resume, relevant experience, objective statement, and contact information to your profile.

**2. Build Your Connections.** Use LinkedIn to build a network by creating connections with registered users. There are second degree connections (a connection from a direct connection) and third degree connections (a connection of a connection from a direct connection). Use connections to gain an introduction to someone you wish to know through a mutual trusted contact. LinkedIn’s gated access approach ensures trust, so that contact with any registered user requires either a preexisting relationship or the intervention of a contact. Be wary of requests from unknown connections, solicitation on LinkedIn, though often beneficial, can also be misused.

**3. Who to Connect with.** Start by making connections with coworkers, friends, family, other attorneys, etc. Expand your presence by networking with other attorneys in your field of practice and beyond.

**4. Optimize Your Online Presence.** Joining sites like LinkedIn optimizes your online presence. For instance, when some-

one googles your name or firm name, your LinkedIn profile will pop up in the search engine results.

**5. Job Searching.** LinkedIn, because it is a professional social media site, is particularly useful for job searching and for locating business opportunities. Employers and recruiters can advertise job openings and search for potential candidates. The site offers a platform for resume submittal instead of having to extend personal email addresses. If you are interested in hiring a particular candidate, review his or her LinkedIn profile beforehand and check out common connections as additional references.

**6. Join a Group.** In addition to making connections, establish new business relationships by joining alumni, industry, and professional groups.

**7. Start a Group.** Any LinkedIn member can start a group. If you start a group, you can target and assemble the specific type of people you would like to gather in one place. As the creator, you are the center of the group, and you can send all members email messages about upcoming events, moderate group discussions, select news articles for the group to review, or share recent court decisions with other members.

**8. Save Time.** Once you get set up on multiple social media sites, link your accounts. If you do this, there is no need to post multiple updates on multiple social media sites. For instance, LinkedIn has a feature that allows you to link to your Facebook account, so that you can automatically share your Facebook posts as your LinkedIn status, and vice versa.

**9. Messaging.** Have a connection who you are interested in networking with, or know of a potential job candidate and want to connect on a professional platform? LinkedIn has a private messaging feature to kick start that

communication.

**10. Privacy Settings.** A fear of many LinkedIn users is viewing a connection’s profile. While this may come to shock newer users, when you view a connection’s profile, a notification is sent. At times, this notification can prove beneficial, perhaps a candidate seeks to gain the attention of a firm’s hiring partner, viewing the profile may draw attention. Alternatively, consider the privacy settings that enable users to view other profiles without that notification.

*Marisa A. Trasatti is General Counsel of the California-based dermatological laser and light medical device Company, Sciton, Inc. and a partner at Wilson, Elser, Moskowitz, Edelman & Dicker, LLP. Marisa served on the FDCC 2016 Nominating Committee, and received the 2016 Appleman Award for her service as Immediate-Past Chair of the FDCC Drug, Device, and Biotechnology Committee. In 2017, Marisa also received the Andrew C. Hecker Award for the publication of her article in FDCC Insights (December 2016), “The Internet of Things and its Impact on Data Retention, E-Discovery, Products Liability, and Cybersecurity.” She is currently serving as a Vice-Chair of the Publications Committee, Graduate Dean of Marketing for the Litigation Management College; the U.S. East Coast Coordinator of the Membership Development and Retention Committee for FDCC; a Faculty Member of the 2017 Boot Camp, also is working on the 2017 FDCC Insurance Industry Institute, and a Member of FDCC’s Admissions Committee. She has authored articles and/or presented on the Learned Intermediary Defense, the Sunshine Act, Lawyer Marketing Online, the ethics of social media, and investigating through social media. She is also active in her local community as President of Maryland Defense Counsel, her local Defense Bar Association, President of CLM’s Maryland Chapter, and a Member of Maryland Governor Hogan’s Judicial Disabilities Commission.*

*Lauren Ellison is an Associate in the Baltimore office of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP. She focuses her practice primarily on civil litigation with an emphasis on products liability, including cases involving drugs and medical devices.*

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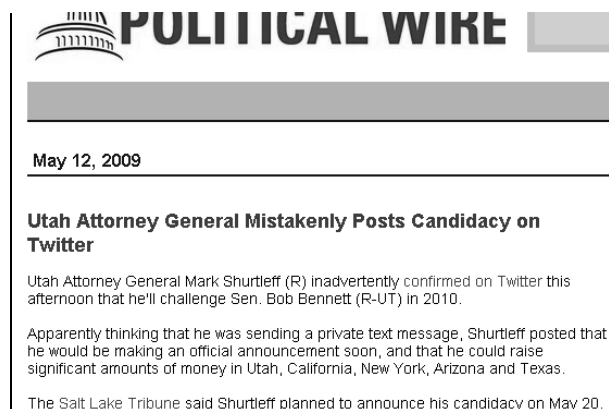
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# Reasons Your Firm Needs a Social Media Policy

Marisa A. Trasatti

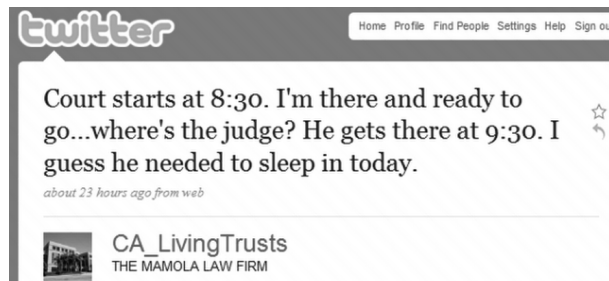
1. **"All I had left were my words,"** said Florida attorney Sean Conway, adding that he decided to use the strongest ones he had. The First Amendment did not come to his rescue. He was fined and reprimanded by the Florida bar. *Note to self:* Don't go on your blog and call your judge an "Evil, Unfair Witch."

2.



3. **Attorneys vent too.** "This stupid kid is taking the rap for his drug-dealing dirtbag of an older brother because 'he's no snitch.'" In this case, Illinois assistant public defender Kristine A. Peshek, used her blog as an outlet. It brought more release than she intended. When it was discovered, she was fired.

4.



5. This particular Twitter posting made some unflattering remarks about the city of Memphis the morning before meeting with a native Memphis client.



*His twitter was found. The respective client ended their relationship that same morning.*

6. When Employees Have Their Own Smart Phone, What Does That Mean for the "Workplace" ?



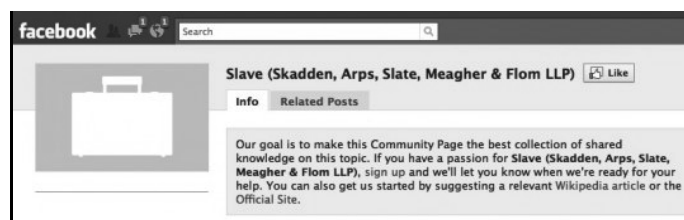
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8. Tweets like a little bird, stings like a bee...



9. If you listed your employment as "Slave" at Skadden Arps, you're responsible for this page:



*Here's a list of some of the pages that now exist thanks to disillusioned law firm employees: "Corporate gangster at Morrison & Foerster," "Human paper shredder at Cravath, and "Morlock at Latham & Watkins."*

10. Consider the following: Can attorneys provide advice to clients about social media when they don't use it themselves?

*Marisa A. Trasatti is General Counsel of the California-based dermatological laser and light medical device Company, Sciton, Inc. and a partner at Wilson, Elser, Moskowitz, Edelman & Dicker, LLP. Marisa served on the FDCC 2016 Nominating Committee, and received the 2016 Appleman Award for her service as Immediate-Past Chair of the FDCC Drug, Device, and Biotechnology Committee. In 2017, Marisa also received the Andrew C. Hecker Award for the publication of her article in FDCC Insights (December 2016), "The Internet of Things and its Impact on Data Retention, E-Discovery, Products Liability, and Cybersecurity." She is currently serving as a Vice-Chair of the Publications Committee, Graduate Dean of Marketing for the Litigation Management College; the U.S. East Coast Coordinator of the Membership Development and Retention Committee for FDCC; a Faculty Member of the 2017 Boot Camp, also is working on the 2017 FDCC Insurance Industry Institute, and a Member of FDCC's Admissions Committee. She has authored articles and/or presented on the Learned Intermediary Defense, the Sunshine Act, Lawyer Marketing Online, the ethics of social media, and investigating through social media. She is also active in her local community as President of Maryland Defense Counsel, her local Defense Bar Association, President of CLM's Maryland Chapter, and a Member of Maryland Governor Hogan's Judicial Disabilities Commission.*

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# TRIAL ACADEMY



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**April 30, 2018** ☆ 8:00 a.m. – 6:00 p.m.

SEMMES, BOWEN & SEMMES • BALTIMORE, MARYLAND 21201

7:30 am – 8:00 am — **Registration and Continental Breakfast**

8:00 am – 9:05 am — **Bruce R. Parker and John R. Penhallegon**

*Lecture: Opening statement*

9:05 am – 9:40 am — **Susan T. Preston**

*Lecture: Cross-examination of Plaintiff*

9:40 am – 10:15 am — **Christopher R. Dunn**

*Lecture: Direct Examination of Defendant*

10:15 am – 10:30 am — **Break**

10:30 am – 11:15 am — **F. Ford Loker**

*Lecture: Closing Argument*

11:15 am – 12:00 pm — **Jeanie S. Ismay with Dr. Rachel York Colangelo**

(National Managing Director of Jury Consulting) from Magna Legal Services

*Lecture: Jury Selection and Voir Dire*

12:00 pm – 1:30 pm — **Lunch and Judicial Panel of Keynote Speakers including three jurists**

**who have served on three levels of the Maryland Court System**

*(moderators: Richard M. Karceski and Robert E. Scott, Jr.)*

1:30 pm – 3:30 pm — **Thomas P. Bernier, Geoffrey H. Genth, Mary M. Dimaio, Chad I. Joseph**

*Practice Closing Arguments*

1:30 pm – 3:30 pm — **Theodore F. Roberts, Virginia W. Barnhart, Shadonna E. Hale, Wendy B. Karpel**

*Practice Cross Exam of Plaintiff*

3:30 pm – 3:45 pm — **Break**

3:45 pm – 5:45 pm — **Thomas P. Bernier, Geoffrey H. Genth, Mary M. Dimaio, Chad I. Joseph**

*Practice Closing Arguments*

3:45 pm – 5:45 pm — **Theodore F. Roberts, Virginia W. Barnhart, Shadonna E. Hale, Wendy B. Karpel**

*Practice Cross Exam of Plaintiff*

6:00 pm – 6:15 pm — **Closing Remarks**

6:15 pm – 7:00 pm — **Reception**

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# MDC's First Deposition Bootcamp

Christopher C. Jeffries



**O**n January 29, 2018, MDC hosted its first Deposition Bootcamp seminar. The deposition seminar was intended to supplement MDC's long running Trial Academy, which focuses on all aspects of trial, by giving participants practical tips for taking and defending all types of depositions.

The seminar was a sold-out success with 36 attendees from 17 different law firms. Esteemed members of the bar presented on all aspects of taking and defending depositions, a panel of current and former members of the Court of Appeals, Court of Special Appeals, and Circuit Court discussed using depositions at trial, and attendees spent the afternoon taking depositions of fact and expert witnesses.

The morning included six presentations by highly respected members of the Bar focusing on several aspects of taking and defending fact, expert, and corporate representative depositions. A lively and informative panel discussion featuring Judge Joseph F. Murphy, Judge James R. Eylar, and Judge C. Carey Deeley followed the morning's presentations. That discussion focused on the Bench's perspective on the use of depositions and *de bene esse* depositions at trial.

The afternoon session gave participants the opportunity to practice the skills they learned in the morning by deposing witnesses in a hypothetical case involving a motor vehicle accident. Seminar participants broke into small sections led by a coach, and deposed a police officer, a plaintiff, a plaintiff's treating physician, the plaintiff's accident reconstructionist, and a fact witness. The witnesses were played by experts from Rimkus Consulting Group, Inc., with the exception of plaintiff's treating physician, played by Harry S. Johnson. Participants received feedback from each of their coaches.

The seminar concluded with a networking reception.

A special thanks to all of the presenters, speakers, and sponsors. MDC looks forward to holding this seminar again in the future.

Please mark your calendars for April 30, when MDC will host its Trial Academy Seminar in the conference center at Semmes Bowen & Semmes.

*Chris Jeffries is a trial lawyer with a broad litigation practice, focusing primarily on commercial and personal injury litigation. Chris has tried several jury and bench trials to verdict and successfully briefed or argued in the appellate courts of Maryland. Chris has represented businesses in litigation matters, including breaches of contract and business defamation. Chris also has significant experience defending individuals and businesses in personal injury actions, particularly claims against property owners for alleged lead paint exposure. Chris also has significant trial experience representing police officers for alleged civil rights violations.*

### Upcoming Events:

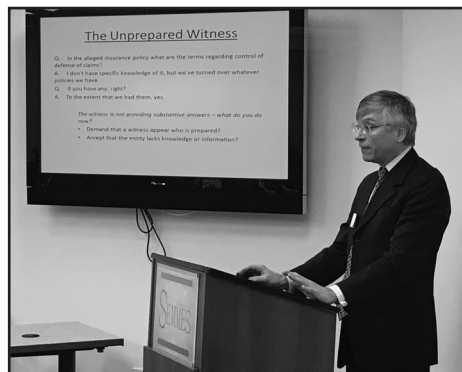
**April 5, 2018**  
Lunch & Learn:  
Advocacy in Mediation

**April 30, 2018**  
MDC Trial Academy

**May 17, 2018**  
Lunch & Learn:  
Use of Computer Simulation in Litigation

**June 6, 2018**  
Annual Meeting &  
Crab Feast

**June 20, 2018**  
Lunch & Learn:  
Accident Reconstruction





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(MD HEALTHY WORKING FAMILIES ACT) Continued from page 7

ing. The law allows for verification only if there is an agreement at the time of hire.

## Notice and Recordkeeping

Employers are required to notify employees of the new law and their rights, including the right to be free from retaliation for exercising rights under the law as well as the prohibition against an employee making a complaint, filing or testifying in an action in bad faith. The notice must also notify employees of the right to report alleged violations. The Maryland Department of Labor, Licensing and Regulation has been tasked to prepare the poster and post it on its website. DLLR must also prepare a model policy to assist employers.

In addition to the posting, employers are also required to provide employees with a written statement regarding the amount of leave available for use. This requirement can be satisfied by providing an online system that allows an employee to learn their leave balance.

Records must be kept for 3 years, which are subject to inspection by DLLR. Failure to display the records for inspection gives rise to a presumption of violation of the law.

## Violations

It is a violation for an employer to interfere with, restrain or deny an employee's rights under the law or to take adverse action. Complaints may be filed with DLLR, which has 90 days to investigate and attempt resolution. For violations, DLLR is empowered to order payment for the leave and to award economic damages, including treble damages and civil penalties of \$1,000 for each affected employee. If an employer fails to

comply, DLLR may seek enforcement in court. Should an employer fail to comply within 3 years after the date of the order, an employee may bring a private right of action under the law. A court may order treble damages, punitive damages, attorney's fees and injunctive relief as necessary.

## ⚠️ Next Steps for Employers

### Review existing leave policies

If the current policy is at least as generous as the new law, then the amount of leave does not need to be changed. However, a word of caution: while the law states that it does not require modification of existing policies, it expressly states that existing policies must permit accrual and use of leave under terms and conditions at least equivalent to that in the law. For many employers, policies may need to be amended if they do not cover family members in the same fashion as the law, do not cover the permissible uses enumerated in the law, or do not contain anti-retaliation provisions.

### Onboarding

Ensure that new employees agree to verification as part of the onboarding process.

### Authorizations

Ensure that every time that leave is advanced that it is accompanied by an authorization that provides for deduction from final pay in the event of termination before the leave has been accrued.

### Local laws

Montgomery County employers must continue to comply with the existing county law. The Montgomery County provisions

are more generous, such that compliance with the state law will not suffice there. The Maryland law provides that existing laws may remain in effect, but that laws enacted after January 1, 2017 are preempted. An example of a law that is preempted is the Prince George's County code provision.

### Watch DLLR's Website

Remember that DLLR is responsible for creating a poster and publishing a model policy. The law provides for posting on the DLLR website. Once the poster is online, post it. Review the model policy and compare it with existing policies.

### Recordkeeping

Accrual started on January 1, 2018. Review payroll practices and inform vendors of the requirements. Ensure that wage statements or online portals will be available to provide the requisite information at each pay period. Update recordkeeping policies and practices to ensure that the applicable records are maintained for 3 years.

*Paul Finamore is a member of the Baltimore, Maryland firm of Niles Barton & Wilmer. He is a trial lawyer admitted to practice in Maryland and the District of Columbia. He is a member of the firm's Management Committee and Chair of the firm's Diversity Committee. In the firm's Litigation Department, Mr. Finamore has been retained as lead counsel on a wide variety of cases in the areas of general liability, professional liability, and employment law. Mr. Finamore regularly counsels employers on employment issues, workplace policies, and compliance with federal, state, and local employment laws. Mr. Finamore began practicing in employment law while serving on active duty in the US Army Judge Advocate Generals Corps at Aberdeen Proving Ground.*

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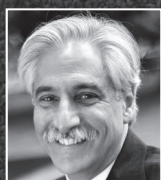
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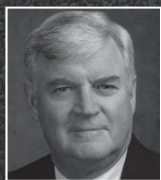
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(DEBT COLLECTION) *Continued from page 9*

## On the National Front: Criticisms of Debt Collection Practices

Debt collection practices also have been scrutinized at the national level. The *Finch* decision came at a time when criticism of debt collection practices drew the attention of the Consumer Financial Protection Bureau (CFPB), the government's consumer watchdog. Debt collection companies have been criticized by consumer advocates who claim that debt collection agencies purchase debts in large volumes and at deep discounts to turn a profit on collections. Critics claim that debt collection companies use automated systems to file lawsuits in bulk without

any due diligence in the hopes that they will obtain default judgments against consumers who do not receive the notice or who do not have the resources to respond.

In 2013, the CFPB began soliciting complaints and comments from the public as to debt collection practices as part of its consideration of new rules to crack down on debt collection companies. Under the Dodd-Frank Act, the CFPB has broad ranging power to regulate unfair, deceptive and abusive acts or practices associated with consumer financial products and services. The CFPB also is the first federal agency to have rule-making authority under the Fair Debt Collection Practices Act, codified as 15

U.S.C. §1692. It is expected that the CFPB will develop new rules to govern the debt collection industry and their practices.

*Maryam Alexander, a Partner at Wilson Elser, focuses her practice on complex commercial and civil litigation involving financial services, products liability, construction matters, toxic torts and other general casualty claims. She also handles contract negotiations and advises clients on insurance regulatory matters and third-party risk management.*

**Annual Meeting & Crab Feast**  
**June 6, 2018**

## *Martaz Johnson v. State of Maryland:* Maryland's Highest Court Rules that No Expert Testimony Required to Explain GPS Technology

Christine R. Hogan



On February 21, 2018, in a 5–2 decision, the Court of Appeals ruled that expert testimony was not required to explain Global Positioning System (GPS) technology to the jury during the trial of a state transit police officer who was ultimately convicted of assault and misconduct in office.

Maryland's highest court disagreed with the defense attorney's argument that the data placing the police officer at the victim's house should have been excluded at trial because prosecutors failed to call an expert to testify about GPS technology to the jury, reasoning that "GPS technology is pervasive and generally reliable." The Honorable Robert N. McDonald, who wrote the majority opinion, likened GPS technology to "other commonly

used devices such as clocks, scales, and thermometers," reasoning that although a user of GPS technology or other commonly used devices may not know exactly how the device works, "[t]he general public has a common-sense understanding of what information the device conveys — time, weight, temperature — and the margin of error to which such devices are ordinarily subject." The Court noted "[w]hile common sense does not change, common human experience does."

The Court distinguished GPS data from DNA data, which does require expert analysis, reasoning that "[a]n average juror may have some familiarity with the science and technology underlying DNA analysis from a high-school science class or television show, but jurors do not use DNA analysis in their daily lives."

The victim, a young woman, alleged that the defendant assaulted and raped her soon after she was involved in a traffic accident

with an MTA bus. The victim alleged that the defendant officer had responded to the scene of the accident in his official capacity and drove her home, where the offense took place. At the trial, which took place in the Circuit Court for Baltimore City, the State introduced, via the testimony of a police sergeant, GPS data from the defendant's device that matched the itinerary provided by the victim. The jury acquitted the officer of rape and burglary but found him guilty of misconduct and two counts of second degree assault.

*Christine Hogan joined Wilson Elser Moskowitz Edelman & Dicker LLP in November 2017. Her practice focuses on civil litigation and pharmaceutical/medical device law. She is a member of the Executive Counsel of the Young Lawyers' Division of the Bar Association for Baltimore City and co-chair of the YLD Mentoring Committee.*



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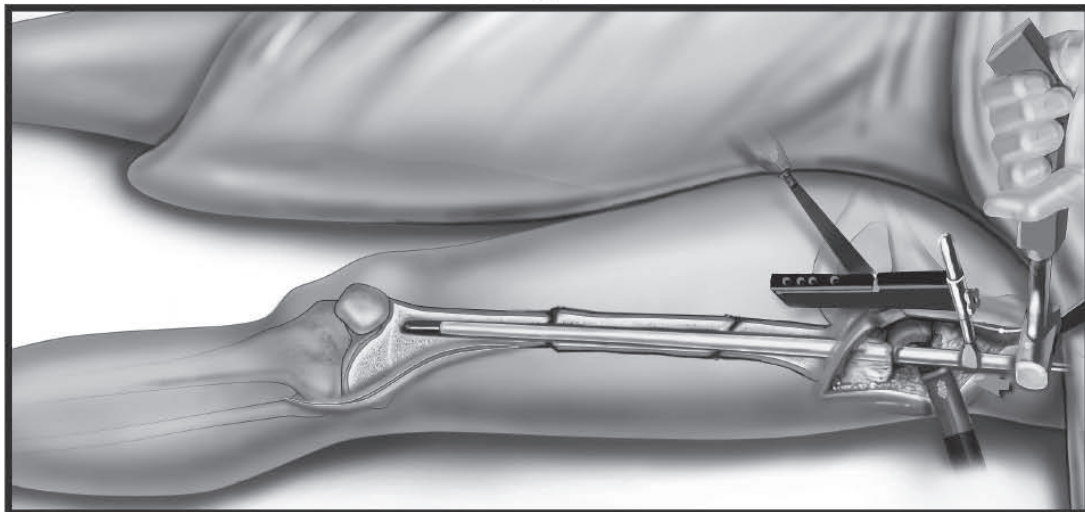
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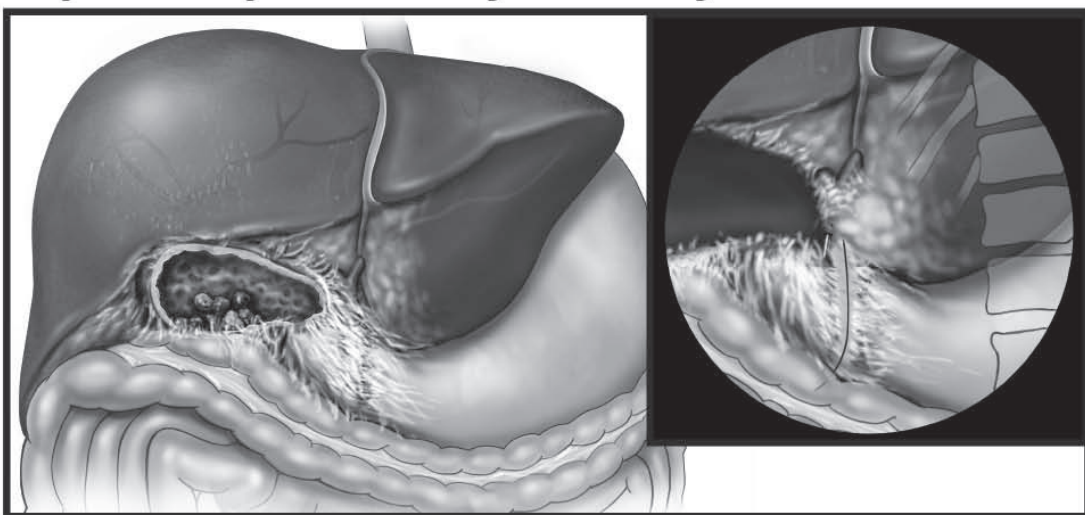
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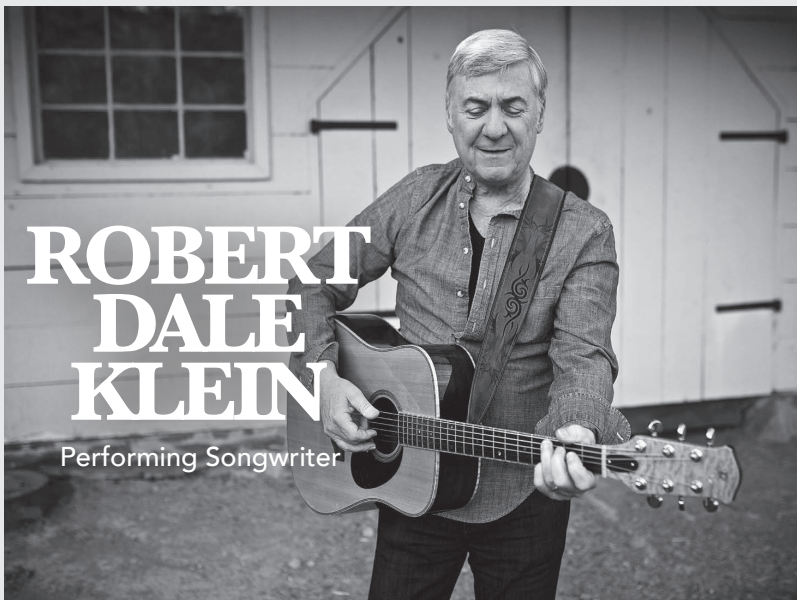
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Friends!

I am thrilled to announce the release of the album of my original songs that I recently recorded in Nashville, titled "This Side of the Dirt." The album may be ordered in both CD and digital download formats via links to major music distributors that can be accessed from my website: [www.robertdaleklein.com](http://www.robertdaleklein.com)

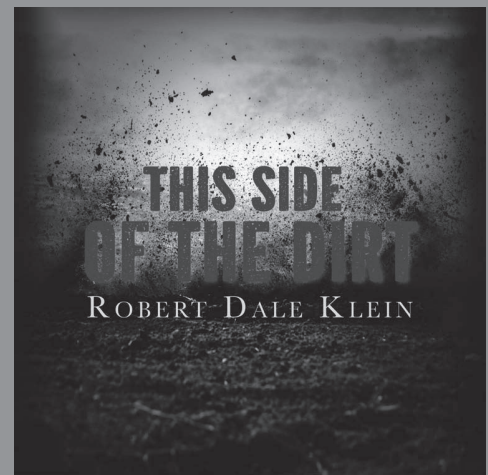
PLUS, if in the next 10 days you sign up to my official mail list through my website, you will receive as my "thank you" an immediate free download of the title track from This Side of the Dirt.

Produced by Phil Madeira (Emmylou Harris, Civil Wars, Lee Ann Womack) and recorded at the Butcher Shoppe Studio in Nashville, TN, This Side of the Dirt explores themes of life, death, the preciousness of time, and the love we share during our finite walk on this earth. With me supplying lead vocals and some guitar, the album features the vast musical talents of Phil Madeira (on a myriad of string instruments, keys and backing vocals) and two other members of Emmylou Harris's touring band, the legendary "Red Dirt Boys," namely, Will Kimbrough (electric guitar) and Chris Donohue (bass). They are teamed up with a host of other A-list Nashville musicians and singers, including Dennis Holt on drums, John Mark Painter on multiple stringed instruments, and David Mansfield (Sting, Bob Dylan, Jackson Brown, Bruce Hornsby, etc.) on fiddle and viola. Harmony and backing vocals are supplied by Grammy-nominated and Dove Award-winning artist, Cindy Morgan, and the fabulous Laura Donohue.

This album represents some of my very best work in a 50-year career as a songwriter. I hope you enjoy listening to these songs as much as I did recording them.

Thanks for your support of original music!

Robert Dale ("Bob") Klein  
**MDC Past President (1986 – 87)**  
[www.robertdaleklein.com](http://www.robertdaleklein.com)



## New Release: **THIS SIDE OF THE DIRT**

BIG CYRUS RECORDS

GENRE: Singer/Songwriter/Roots/  
 Outlaw Country/Gospel

RELEASE DATE: February 2018

Produced by Phil Madeira (Emmylou Harris, Civil Wars, Lee Ann Womack) and recorded at The Butcher Shoppe Studio in Nashville, TN, Robert Dale Klein's new 10-song album, This Side of the Dirt, is a rich and resonant exploration of life, death, the preciousness of time, and the love we share during our finite walk.

This combination of a stellar backing musicians and Robert Dale Klein's lifetime of singing, songwriting and soul searching, results in a genuine and powerful collection of songs faithful to the folk, outlaw country and gospel genres. If you enjoy the plainspoken storytelling of Johnny Cash and Kris Kristofferson, the melodic, wry, and engaging styles of James Taylor and Don Henley, or the nuanced chord progressions and musical passion of Jimmy Webb or Billy Joel, then there are plenty of well-crafted songs on This Side of the Dirt for you.

The album features the vast musical talents of Phil Madeira (a myriad of string instruments, keys and backing vocals) and two other members of Emmylou Harris's touring band, the legendary "Red Dirt Boys," namely, Will Kimbrough (electric guitar) and Chris Donohue (bass). They are teamed up with a host of other A-list Nashville musicians and singers, including Dennis Holt on drums, John Mark Painter on multiple stringed instruments, and David Mansfield on fiddle and viola. Harmony and backing vocals are supplied by Grammy-nominated and Dove Award-winning artist, Cindy Morgan, and the fabulous Laura Donohue.

# MDC 2017–2018 PROGRAMS

**June 15, 2017, 12 pm Lunch and Learn 1**

“Don’t Forget Causation”  
 Speakers: John T. Sly & Hon. Julie R. Rubin  
 Sponsors: Planet Depos, Social Detection, SEA Limited

**July 20, 2017, 12 pm Lunch and Learn 2**

Social Media & Litigation  
 Speakers: Marisa Trasatti & Scott Catron  
 Sponsors: Social Detection, Gore/Veritext

**August 24, 2017, 12 pm Lunch and Learn 3**

Data Security & Breach Response for Law Firms  
 Speakers: Veronica Jackson, Esq. & Mutungi Tumusiime  
 Sponsors: Gore/Veritext, National Forensic Consultants

**Sept. 12, 2017, 12 pm Lunch and Learn 4**

The Future of Autonomous Vehicles & the Impact on Litigation  
 Speakers: Erin Cancienne, Esq. & Tracie C. Eckstein  
 Sponsors: Gore/Veritext, Rimkus Consulting Group

**Sept. 26, 2017, 5:30 pm Past Presidents Reception**

Miles & Stockbridge P.C.

**Oct. 19, 2017, 12 pm Lunch and Learn 5**

New Concepts in Workers’ Compensation  
 Speakers: Wendy Karpel, Esq. & Mike Dailey, Esq.  
 Sponsor: Exam Partners

**Nov. 16, 2017, 12 pm Lunch and Learn 6**

The Importance of Forensic Engineering and Expert Witness Testimony in Admiralty and Maritime Law  
 Speakers: Walter Laird, PE, CMI, CFI & Steven E. Leder, Esq.  
 Sponsor: Forcon International

**Dec. 14, 2017, 12 pm Lunch and Learn 7**

Errors in the Operating Room — human factors in medical litigation  
 Speaker: Lindsay O’Hara Long, Ph.D.  
 Sponsor: Exponent

**Jan. 12, 2018 THE FALL DEFENSE LINE**

**Jan. 25, 2018, 12 pm Lunch and Learn 8**

“It’s Not the Knot... it’s a function of the fundamental principles involved”  
 Speaker: Timothy W. Ott  
 Sponsors: Nelson Forensics, Irwin Reporting

**Jan. 29, 2018, 8 am Deposition Boot Camp**

8 am – 6 pm  
 Location: Semmes Bowen & Semmes  
 Sponsors: Planet Depos, Rimkus Consulting

**Feb. 22, 2018, 12 pm Lunch and Learn 9**

Hacking and Wire Fraud: 99.9% of all new information is stored digitally and information is the new currency.  
 Location: Pessin Katz  
 Speaker: Stephan Y. Brennan

*\*Minnesota Lawyers Mutual has arranged for 1.0 hour of CLE credit in VA and PA*  
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**March 19, 2018, 5:30 pm Awards Dinner**

5:30 pm – 7:30 pm  
 Location: Semmes Bowen & Semmes  
 Keynote Speaker: Bruce Elliott, WCBM Radio Personality  
 The Honorable Herbert F. Murray Lifetime Achievement Award and  
 The John H. Mudd Lifetime Achievement Award  
 Sponsor: rti

**March 29, 2018, 12 pm Lunch and Learn 10**

In the Courtroom: Nuts & Bolts  
 Location: Semmes Bowen & Semmes  
 Speaker: Judge Matricciani (Ret.) — WTP  
 Sponsor: ADR of MD (Sustaining Member Benefit)

**March 30, 2018 THE WINTER DEFENSE LINE**

**April 2018 Happy Hour**

Organizer: Dwight Stone  
 Location: TBD

**April 5, 2018, 12 pm Lunch and Learn 11**

Advocacy in Mediation  
 Location: Semmes Bowen & Semmes  
 Speakers: The Honorable Martin P. Welch (Ret.), The Honorable Gale E. Rasin (Ret.) and The Honorable Daniel M. Long (Ret.)  
 Sponsor: The McCammon Group

**April 30, 2018, 8:00 am Trial Academy**

8:00 am – 6:00 pm  
 Location: Semmes Bowen & Semmes

**April 30, 2018 THE SPRING DEFENSE LINE**

**May 16, 2018, 9:00 am Strategic Planning Session**

9:00 am – 12:00 pm  
 Location: Ellin & Tucker  
 Facilitators: Steve Manekin (Ellin & Tucker) & Joseph Jagielski (MDC Historian)

**May 17, 2018, 12 pm Lunch and Learn 12**

“Use of Computer Simulation in Litigation – with emphasis on Vehicles, Humans, and Structures”  
 Location: Semmes Bowen & Semmes  
 Speakers: John Zolock, PhD, PE and Sri Danthurthi  
 Sponsor: Exponent

**June 1, 2018 THE SUMMER DEFENSE LINE**

**June 6, 2018, 5:30 pm Annual Meeting & Crab Feast**

Location: Nick’s Fish House

**June 20, 2018, 12 pm Lunch and Learn 13**

Accident Reconstruction  
 Location: Semmes Bowen & Semmes  
 Speaker: Tracie Eckstein  
 Sponsor: Rimkus  
*(Beginning of John Sly’s administration)*



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# ANNUAL MEETING AND CRAB FEAST



June 6, 2018  
5:30 P.M. – 7:30 P.M.

NICK'S FISH HOUSE  
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FOR MORE INFORMATION:

[ED@mddefensecounsel.org](mailto:ED@mddefensecounsel.org)



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