

SWIFT ACTION REUNITES MOTHER WITH CHILD

Attorney Marc B. Noren was working late one evening when he received a phone call from a Florida lawyer who had obtained an emergency custody order for his client, a stay at home mom of a four-month old. The lawyer explained that Mom and Dad had been living together when Dad ostensibly left for work at his normal time, leaving the rest of the household asleep. When Mom awoke, her baby was gone from his crib. Her husband had been trying to persuade her to move to his home state of Maryland, so Mom knew immediately what had happened. Dad had fled the jurisdiction with their baby in tow. She was able to verify that he was staying with his parents in Baltimore County.

The Uniform Child Custody Jurisdiction Act (UCCJA) has been enacted throughout the country to ensure that states honor each other's custody orders. Thus, Maryland is obligated when presented with a certified copy of a custody order from another state to honor and enforce the order. Marc B. Noren and Renée Bronfein Ades of ARD&H's family law section recently had a first hand opportunity to help execute on such a court order.

Noren's familiarity with the statute and Ades' hard work enabled them to arrange for the baby to be returned to Mom in less than twenty-four hours

That evening Noren spoke to our client and her family to get the necessary background information. In the morning, Ades called law enforcement officials to lay the groundwork for executing on the order, and to ensure that they would act on the order without requiring a separate order to be signed by a Maryland judge. (Although some jurisdictions require an appearance before a judge, it is not necessary under the UCCJA.)

Mom and Grandmom flew to Baltimore, called when their plane landed at BWI at 2 pm and were instructed to meet Noren and Ades at the Circuit Court to get the Order registered. After meeting Mom and Grandmom, the Order was registered and everyone immediately went to the sheriff's office. Plans were made for all to meet at an elementary school near where the baby was located. A team of local police was on standby.

Mom assisted the sheriff's plan for the encounter. At Dad's home, all exits had to be covered since Dad had made threats of fleeing if Mom tried to get their baby back. Noren accompanied Mom in the sheriff's car; after all exits were secured, a deputy was admitted to the home by Dad. Moments later the deputy summoned Mom and Noren into the home and Mom and baby were reunited.

Noren's familiarity with the statute and Ades' hard work enabled them to arrange for the baby to be returned to Mom in less than twenty-four hours from the time of the initial call! □

Congratulations



We are very pleased to announce that **Marc B. Noren** has become the newest Member of ARD&H. Mr.

Noren's hard work, dedication to the practice, expertise in family law and leadership qualities have been a valuable asset to the firm.

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The information contained in this publication is not intended to provide legal advice or opinion, and should not be acted upon without consulting an attorney. Additional information on the articles may be obtained by calling the authors.

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THE FEDERALIZATION OF THE CRIMINAL LAW

by Andrew Radding

Historically, the criminal laws have been, by and large, the province of the states. The vast majority of criminal cases were brought in state courts by state and local prosecutors. That has, over the past quarter century, changed drastically.

Federal criminal law traditionally encompassed crimes that had a direct federal nexus; i.e., fraud on the government, robbing a federally insured bank, mail fraud, counterfeiting of government issued currency, crimes on federal lands or against federal employees or officials.

Other crimes needed an interstate involvement or travel to become part of the federal criminal code.

Slowly but surely, however, the federal government has passed more laws and spread its authority in a way that not only seeks to usurp certain state prosecutorial authority but also of necessity dilutes the federal law enforcement effect.

The American Bar Association Task Force on the Federalization of Criminal Law noted in its 1998 report that of all the federal crimes prohibited since 1865, 40% have been created since 1970. The following year, in testimony before a Senate Committee, then Attorney General Janet Reno testified about law enforcement priorities in the Millennium for the Department of Justice.

Those priorities included:

1. Domestic Terrorism
2. Cyber Crimes
3. Violence on Federal Reservations
4. Firearms
5. Child Support Enforcement

Of this group, only one – firearms – had any such priority as recently as 10 years ago.

While it is difficult to argue with the inclusion of most of these, it is even more difficult to discern where the manpower – law enforcement, prosecutorial, judicial – will come from.

Domestic Terrorism is certainly the province of the federal government and, as the events of September 11, 2001 show us, will probably be even a larger part of the federal prosecutorial effort.

Cyber Crimes too, given their interstate context and sophisticated methodology clearly demand a federal criminal presence.

Violence on federal reservations can only be policed by the federal government.

Firearms are, have been and will be a major criminal issue for federal law enforcement even when combined with the increased emphasis on state firearms prosecutions. The recent public differences between United States Attorney Tom DiBiagio and Mayor Martin O'Malley have highlighted that.

As to criminal child support enforcement there is certainly a pandemic of failure to pay child support cases in this country. Congress has declared that when the child and the parent who pays support live in different states, or said parent leaves a state to avoid paying child support, it is now a federal crime punishable by incarceration.

With all of this, federal law enforcement cannot and will not let up on its prosecution of drug offenses, corruption, mail and wire fraud, bank robbery, tax violations and organized crime, all of which demand significant manpower.

The United States Attorney's Office in Maryland has approximately one-fourth the number of prosecutors as are in the Offices of the State's Attorneys for Baltimore City and County alone. The number of federal District Court judges in the State of Maryland number fifteen of which five are Senior Judges with limited caseloads – some sit on no criminal trials. The number of Circuit Court Judges in Baltimore City and County alone is three times that, yet even these numbers are not sufficient for their needs.

Ever increasing federalization of the criminal justice system cannot help but overburden and ultimately overpower the mechanisms responsible for its operations – law enforcement, prosecution, judiciary.

We have lived through a crisis situation in the Circuit Court for Baltimore City for criminal cases for the past few years. The prospect of a similar crisis in the federal courts by dint of overburdening the process must not be allowed to develop. □

SOME MISTAKES ARE EASY TO AVOID: FOUR COMMON MISCONCEPTIONS ABOUT INTELLECTUAL PROPERTY LAW

by J. Andrew McKinney, Jr.

ARD&H is emphasizing Intellectual Property (IP) Law as a growing practice area; IP includes patents, trademarks, copyrights and trade secret rights. Each establishes what amounts to a limited monopoly or right to exclude others.

Our business clients are usually familiar with tangible property such as real estate, equipment and inventory; IP may be less familiar but is often the most valuable asset of a modern company. Like tangible property, IP can be appraised, used as collateral for a loan or sold. IP law gives owners exclusive rights, such as the right to exclude competitors from producing a product, using a process, offering a service or using a name or logo.

We've noticed that clients seem to hold some common misconceptions about patents, trademarks and copyrights, and thought it would be useful to address them one by one.

1) We have our patent now, so we can make and sell our product because the U.S. Patent Office says so.

This is Wrong. The U.S. Patent Office does not issue a license to make a patented device. Instead, the Patent Office issues a right to exclude others from making, using, selling or importing a patented device. A patent may be analogized to a sword, but not a shield. The granting of a patent does not grant a right to make, use or sell one's own patented invention, since one may have obtained patent protection on an invention which infringes another's patent.

Patent Law protects new, unobvious and useful inventions and discoveries such as machines for making things, articles of manufacture having new and useful features, chemical compositions, manufacturing processes and, more recently, computer software and methods for doing business. Those inventions may be improvements of existing or basic inventions and the improvements, though different, may infringe the earlier patents on the basic inventions.

There are three types of patents, Utility patents, Design patents and Plant patents. Utility patents are appropriate for protecting a process, method, machine,

article of manufacture, composition of matter, computer software method or business method and improvements thereof. The scope of protection provided by a utility patent is determined by prosecution before a patent examiner and can be either broad or narrow, depending on the content of the prior art and the creativity of the patent attorney. Design patents cover the ornamental appearance of manufactured articles. Plant patents are available to protect novel asexually reproduced plant varieties. Even obtaining a breakthrough patent having broad scope does not automatically eliminate concerns over infringing the patents of others.

2) I "invented" the company's trade name, so it's mine.

No, wrong again. Trademark rights are created when someone actually uses a mark in commerce, and so the first user is the owner of the Trademark. Trademark Law generally protects words, designs or combinations of words and designs (or other source identifiers) used by manufacturers, merchants, and service providers to identify their goods or services and distinguish them from others in the market place. Trademarks serve to preserve and focus the user's good will in the market place. It is possible for a Trademark user to obtain federal registration for a trademark. The user is the owner.

3) My attorney registered my business name with the Maryland SDAT, so I can use my trade name, and stop others from using it.

No, not really. You need to have a search done for confusingly similar marks which may be federally registered and may also want to consider obtaining a federal registration for your trademark. Federal registration provides many substantive and procedural advantages, such as incontestability after a mark has been registered for five years. If you register only with the Maryland SDAT, you may find that an out-of-state user with a federal registration on the mark can compel you to stop using your trademark and take down your signs. Retooling with another trade name can be very expensive; a search of federal trademark registrations is recommended.

4) We paid a graphic design firm for its work on our logo, so now we own all rights, including copyright in the logo.

This can be an expensive mistake. Copyright belongs initially to the author or creator of a work and, unless the work was done by an employee working within the scope of her or his employment (e.g., not an outside contractor), the ownership of the work remains with the author or creator, unless a written assignment of ownership rights is executed after the work has been created. We've seen a client sued by a former graphic design firm asserting copyright infringement over how, where and when a company logo was used. A properly executed assignment after the logo design was completed but before payment of the Designer would have saved the client tens of thousands of dollars. The only way to acquire ownership of the copyright from the graphics design firm is to have the rights assigned, in writing, after the work has been created.

On a related matter, we have seen a number of employment and other agreements with clauses that purport to include an assignment of ownership in a work that has not yet been created. Such prospective assignments are not effective, because if the work does not yet exist, it cannot be assigned. A person can agree to assign work in the future but cannot legally assign work that does not exist.

Copyright Law protects against copying of creative, original expression set down in a tangible medium. Copyright protection is available for the mode of expression of an idea, but not the idea itself; thus protection is relatively limited in scope. For example, computer program code is copyrightable, but copyright protection does not extend to the method, operational concept or idea executed by the computer program. Text, art work, sound recordings, motion pictures, videos, computer software, video games and web site content are also copyrightable subject matter.

By thinking through IP ownership issues, expensive mistakes can be avoided. If any of these frequently unasked questions are of interest, please contact us at your earliest convenience. □

SECTION 529 COLLEGE EDUCATION PLANS: CONGRESS SWEETENS THE TAX BENEFITS

by *Scott A. Kirmil*

Recent changes to the Federal tax law have made section 529 Plans much more attractive as a vehicle for providing for your children's and grandchildren's college education.

Section 529 of the U.S. Internal Revenue Code authorizes states to set up the plans and provides for enticing federal tax benefits. Plans vary from state to state, and some states, including Maryland, have added a state income tax deduction.

There are two options available under 529 Plans: savings plans and prepaid tuition plans.

Under a savings plan, you can make cash contributions to an account that grows tax-free until the funds are used to pay for your child's college education. As of January 1, 2002, and effective at least through 2010, the accumulated earnings will not be subject to Federal income tax even when distributed from the account to pay for the beneficiary's tuition. (While this provision 'sunset' in 2010, Congress is likely to extend it.) Prior to 2002, earnings were taxed upon distribution from the account.

Under a prepaid tuition plan, you can purchase credits for one or more years of tuition for your child at today's prices, and when your child attends college, you will not have to bear the cost of tuition increases because you will have paid for the tuition in advance. You prepay for tuition at schools in a specified state's public university system; even if your child decides to attend college elsewhere, the funds can be still be used, although you may not receive the equivalent value.

In either type of 529 Plan, funds or tuition credits can be rolled over from one beneficiary to another if your child does not use all of the money or credits for whatever reason. Rollovers will not be taxed as long as the new beneficiary is a family member of the original beneficiary, and a relatively expansive definition of family member is applied.

Maryland's 529 Plan offers both savings accounts and the prepaid tuition option, and you can deduct up to \$2,500 per year on your Maryland income tax return for each beneficiary for whom you make contributions. Contributions in excess of \$2,500 for any one year carry forward and can be deducted in future years. You can make a contribution on behalf of any beneficiary regardless of

relationship, and you can make contributions on behalf of any number of beneficiaries in the same year.

Funds in a Maryland 529 Plan savings account can be invested in one of ten investment options offered by T. Rowe Price, and you are allowed to change your election of investment options once per year. Funds in a savings account are not restricted to Maryland schools; alternatively, if you participate in the Maryland prepaid tuition 529 Plan and your child does not attend a Maryland public college, Maryland will apply a weighted-average formula to Maryland public college tuition rates (currently \$5,250 per year for four year colleges) and allow you to use that amount at the private or out-of-state college your child attends.

The gift and estate tax consequences of 529 Plans are favorable overall, but careful planning is still necessary. Contributions to a 529 Plan are treated as gifts made to the beneficiary, and gift tax may be imposed on the donor. In addition to the normal gift tax rule that a donor can exclude up to \$11,000 per year for gifts to each donee, section 529 allows for contributions to carry forward for up to five years for gift tax purposes. For example, you can contribute \$55,000 today to a 529 Plan for one child and pay no gift tax - the \$44,000 in excess of the \$11,000 exclusion allowed this year carries forward four more years. At the annual exclusion rate of \$11,000, you can exclude up to \$55,000 from gift tax over a five year period.

The estate tax consequences are enticing, as funds in a 529 Plan account are generally not included in the estate of any individual. Consequently, 529 Plans offer the unique benefit of allowing you to exclude funds from your estate while they grow tax-free, despite the fact that you may retain control over the account. Each account in a 529 Plan must have one account holder and one beneficiary, and the account holder can withdraw money at any time out of a 529 Plan at his or her discretion. However, if withdrawn funds are not used for the beneficiary's educational expenses, the portion of the withdrawal allocated to earnings will generally be taxed at ordinary federal income tax rates, plus a 10% penalty. Limits are imposed to prevent abuse, and Maryland's 529 Plan currently prohibits contributions to a savings account for a beneficiary if that bene-

ficiary's account balance is at or above \$175,000 (including earnings).

Residents of particular states are not necessarily limited to contributing to a 529 Plan in their home states. However, Maryland will not allow a state income tax deduction if the account holder has a balance in an out-of-state 529 Plan; also, if a Maryland resident uses an out-of-state 529 Plan, Maryland may currently tax the earnings. Under certain circumstances, you can make contributions to a 529 Plan by redeeming Series EE U.S. Savings Bonds, converting Coverdell accounts (formerly known as education IRAs), or by transferring funds from accounts established under the Uniform Gift to Minors Act (UGMA) and the Uniform Transfers to Minors Act (UTMA).

While the rules governing 529 Plans are somewhat complex and you may wish to seek professional advice before investing in a plan, 529 Plans provide the opportunity for unique and exceptional tax benefits while you provide for your children's college education.

PROFILE

Scott A. Kirmil



Mr. Kirmil, who joined ARD&H in January of 2002, focuses his practice on tax, business, corpo-

rate and real estate law. He also has experience in securities and employee benefits law. Mr. Kirmil received his LL.M., in Taxation, from Georgetown University Law Center in 2001, his J.D. from Georgetown University Law Center in 1998 and his B.A., cum laude, from the University of Maryland Baltimore County in 1994. He was admitted to the Maryland Bar in 1998. Mr. Kirmil is a member of the Bar Association of Baltimore City and the Maryland State Bar Association.

Adelberg, Rudow, Dorf & Hendler, LLC Privacy Policy

Attorneys, like all providers of personal financial legal services, are now required by law to inform their clients of their policies regarding privacy of client information. Attorneys have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by law.

Types of Nonpublic Personal Information We Collect

We collect nonpublic personal information about you that is provided to us by you or obtained by us with your authorization.

Parties to Whom We Disclose Information

For current and former clients, we do not disclose any nonpublic personal information obtained in the course of our practice except as required or permitted by law. Permitted disclosures include, for instance, providing information to our employees in connection with work to be performed on your matters, and, when we consider it appropriate, to unrelated third parties who need to know that information to assist us in providing services to you. In addition, we may provide your name and address to companies that perform marketing services on our behalf.

Protecting the Confidentiality and Security of Current and Former Clients' Information

We retain records that relate to professional services that we provide so that we are better able to assist you with your professional needs and to comply with professional guidelines. In order to guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with federal regulations and our professional standards.

Please call us at 410-539-5195 if you have any questions. Your privacy, our professional ethics, and the ability to provide you with quality legal services are very important to us.

PROFILE

Gregory M. Kline



Mr. Kline joined ARD&H in January of 2002 and focuses his practice on civil litigation. He previously worked for the United States Department of Justice representing the federal government in class action civil rights claims. Prior to joining the Justice Department, he concentrated in professional malpractice defense and complex litigation representing businesses and individuals. Mr. Kline received his J.D. from the Capital University Law and Graduate Center in 1996 and his B.A., in Political Science, from the University of Maryland Baltimore County in 1993. Mr. Kline was admitted to the Maryland Bar in 1996 and the West Virginia Bar in 1997. He is a member of the Bar Association of Baltimore City and the Maryland State Bar Association.

David B. Rudow is chairing a joint effort by the Baltimore Efficiency & Economy Foundation and the Greater Baltimore Board of Realtors to assist Baltimore City in its efforts to sell city surplus and excess real estate.

Former Judge Paul A. Dorf attended a 40-hour seminar on Circuit Civil Mediation Certification Training, presented by Dispute Resolution, Inc., on February 2, 2002. Also in February, Judge Dorf presented "The Top Ten Reasons to Use Alternative Dispute Resolution" at the Maryland State Bar Association's Mid-Year Meeting in Las Vegas, Nevada. He was the featured speaker at an Arbutus Roundtable & Arbutus Bar Association Luncheon, which was held on March 5, 2002. On March 13, 2002, Judge Dorf lectured at the Baltimore County Bar Association Family Law/Solo and Small Practice Committee meeting on "Marketing Techniques & Collection Tips."

Howard A. Rubenstein received the honor of being named "Who's Who in Bankruptcy Law" by the *Baltimore Business Journal* in December, 2001.

Michael G. Hendler recently attended the American Academy of Matrimonial Lawyers' Spring Meeting, held at the Sanibel Harbour Resort and Spa in Fort Meyer, Florida, March 2-10, 2002.

S. Leonard Rottman was recently successful securing in court (for a pro-bono client) Baltimore City Public School System's agreement to pay for a non-public school placement of a learning disabled child.

Andrew Radding is listed in the current edition (2002) of *Who's Who in American Law* and has been listed in this publication for the past 7 years. This past December, Mr. Radding taught the Professionalism Course required of all new lawyers for the University of Baltimore School of Law. He recently attended the ABA White Collar Criminal Defense seminar in Miami Beach, Florida. Mr. Radding continues to serve as a legal source for various newspapers and wire services.

Jerald B. Lurie will be installed as the 123rd President of the Bar Association of Baltimore City on May 30, 2002. As the incoming President, Mr. Lurie attended the American Bar Association Leadership Institute in Chicago from March 7-9, 2002 and will attend the Fourth Circuit Judicial Conference in White Sulphur Springs, West Virginia from June 27-29, 2002. He continues to serve as the Chairperson of the Maryland Board of Pilots and as Chairperson of the Maryland State Bar Association Business Law Section Council. Mr. Lurie was interviewed for and quoted in the *Baltimore Business Journal* article entitled *Hard Times - Local Stocks Falling Below Book Value*, published on November 2, 2001.

Walter R. Stone recently lectured for an event sponsored by the Women's Business Institute. The program, *Choice of a Business Entity*, was held at the Baltimore Urban League on March 19, 2002.

Renée Bronfein Ades was recently interviewed for and quoted in the *Nota Bene*, a seasonal publication produced by the University of Baltimore School of Law. The article, *Clinics Start Students on Career Paths*, highlighted Ms. Ades' experiences during her semester enrolled in UB's Family Law Clinic.

PROFILE

H. Scott Jones



Mr. Jones joined ARD&H in March of 2002 and focuses his practice on complex litigation. He also has experience in commercial transactions, taxation, and estate and trust matters. Mr. Jones is a Maryland Certified Public Accountant. He received his B.B.A., in Accounting, from Loyola College of Maryland in 1991. He received his J.D., cum laude, from the University of Maryland School of Law in 1996 and was the recipient of the American Jurisprudence Award for Criminal Procedure. Mr. Jones was admitted to the Bar in Maryland in 1996. He is a member of the Bar Association of Baltimore City and the Maryland State Bar Association.

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