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ADMINISTRATIVE LAW - JUDICIAL REVIEW, REVIEWABILITY, STANDING

Facts: This case originated when Officer Kathleen Anderson, a member of the Prince George's County Park Police Department, conducted a registration check on a vehicle. Officer Anderson discovered that the vehicle's license plates had been reported stolen, attempted to pull the vehicle over, and, until the occupants abandoned on foot, pursued the vehicle. The Department charged Officer Anderson with violating the provisions of its vehicle pursuit policy and, as required by the Law Enforcement Officer's Bill of Rights, an administrative board conducted a hearing concerning the charges filed against her. The Board issued an oral finding of "not guilty" and entered a written decision.

The Maryland-National Capital Park Police Commission petitioned the Circuit Court for Prince George's County for judicial review of the Board's decision. Officer Anderson filed a Motion to Dismiss, asserting that the Commission lacked standing and, in the alternative, that the finding of "not guilty" terminated the action and that the Commission has no authority to appeal its own action. The Circuit Court granted the Motion to Dismiss and the Court of Special Appeals affirmed.

Held: Affirmed. The Commission may not seek judicial review of the Board's findings of "not guilty." The LEOBR sets forth specific requirements for when a decision is considered reviewable – a "guilty" decision from the hearing board and then a final order by either the Chief or by his designee regarding a penalty for the officer's conduct. While, in most situations, the agency would be entitled to judicial review under the Administrative Procedure Act, it is not entitled to judicial review in this situation because the LEOBR is the controlling provision and provides an exclusive remedy to police officers. In addition, the General Assembly expressly stated that the LEOBR supersedes conflicting provisions, and it is the more specific statute on the subject.

Maryland National Capital Park & Planning Commission v. Kathleen Anderson, No. 112, September Term 2005, filed October 19, 2006, Opinion by Greene, J.

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APPEALS - RECORD ON APPEAL - ABUSE OF DISCRETION-COURT OF SPECIAL APPEALS ACTED WITHIN ITS DISCRETION WHEN NOT CONSIDERING INFORMATION IT ORDERED SUPPLEMENTED INTO THE APPELLATE RECORD.

DISCOVERY RULE-BEFORE AN ACTION CAN ACCRUE FOR LIMITATIONS PURPOSES A PLAINTIFF MUST HAVE NOTICE OF THE NATURE AND CAUSE OF HIS OR HER INJURY.

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Facts: This case arises from an attorney malpractice claim filed by Charles E. Meeks, Jr. ("Meeks"), respondent, against Charles E. Dashiell, Jr., Esquire ("Dashiell"), petitioner. In 1989, Meeks asked Dashiell to draft a prenuptial agreement in the event that his upcoming marriage did not last. According to Meeks, the initial draft that Dashiell reviewed with him contained a waiver of alimony provision, but the version ultimately signed by Meeks failed to contain such a provision. Meeks asserted that, at the earliest, he did not learn of this discrepancy until he separated from his wife on May 10, 2001. The Circuit Court for Worcester County granted Meeks's pre-emptive request to pay rehabilitative alimony in addition to granting his motion seeking to enforce the prenuptial agreement.

On October 24, 2003, Meeks sued Dashiell in the Circuit Court for Wicomico County alleging that Dashiell was negligent in omitting the alimony waiver provision from the final prenuptial agreement and counseling Meeks to sign the prenuptial agreement without reading it. Dashiell moved to dismiss the complaint or, alternatively, for summary judgment on the grounds that the malpractice claim was barred by judicial estoppel or barred by the three-year statute of limitations. The trial judge, treating the motion as a motion for summary judgment, ruled that judicial estoppel did not bar the claim, but that the statute of limitations expired three years after Meeks signed the agreement.

On appeal to the Court of Special Appeals, Meeks argued that

the trial court erred by not applying the discovery rule. Dashiell argued that the claim was barred by the statute of limitations and, alternatively, that the trial court erred by not finding that the claim was barred by judicial estoppel. After argument and on its own motion, but prior to ruling on the issues before it, the Court of Special Appeals ordered that the entire record from the divorce proceedings in the Circuit Court for Worcester County, including the transcripts of the hearing in the divorce case regarding the enforcement of the prenuptial agreement, be delivered to the Court of Special Appeals. The intermediate appellate court, however, after having obtained that record, did not consider it and based solely on the record in the Wicomico County case, found that the trial court erred in ruling as a matter of law that the malpractice claim was barred by the statute of limitations. The Court of Special Appeals declined to rule on the trial court's finding with respect to judicial estoppel. The Court of Special Appeals vacated the judgment of the Circuit Court for Wicomico County and remanded the matter to that court for further proceedings.

Held: Affirmed. There is no requirement that an appellate court consider portions of the record that it has ordered to be obtained as a supplement to the existing record. The Court of Special Appeals did not abuse its discretion. In so holding, we affirm the judgment of the Court of Special Appeals that, in the context of summary judgment: (1) the Circuit Court for Wicomico County erred as a matter of law in finding that Meeks's claim was barred by the statute of limitations, and (2) the Circuit Court for Wicomico County did not abuse its discretion by denying Dashiell's motion for summary judgment on judicial estoppel grounds. Dashiell is free to assert the claims of limitations, judicial estoppel and any other defenses upon remand.

Charles R. Dashiell, Jr., et al. v. Charles E. Meeks, Jr., No. 27, September Term, 2006, filed December 14, 2006. Opinion by Cathell, J.

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ATTORNEYS - MISCONDUCT - FAILURE TO KEEP COMPLETE RECORDS, COMINGLING OF FUNDS

Facts: The Attorney Grievance Commission, through Bar Counsel ("Petitioner"), filed a petition for disciplinary or remedial action against Uzoma C. Obi, Esquire ("Respondent"), charging him with violations arising out of his handling of his client trust account, particularly his commingling of personal funds within the account. Petitioner alleged violations of Maryland Lawyer's Rules of Professional Conduct ("MRPC") 1.15 (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(d) (Misconduct), and Maryland Rules of Procedure ("MRP") 15-607 (Commingling of Funds) and 16-609 (Prohibited Transactions). Respondent's commingling of funds first came to Petitioner's attention when Chevy Chase Bank notified Petitioner that Respondent's IOLTA client trust account was overdrawn in the amount of $1,600.00. Petitioner informed Respondent of the overdraft, to which Respondent replied that the check in question was used to pay for his children's private school tuition. Respondent admitted that this constituted commingling and said that he appreciated the severity and possible consequences of his conduct. Furthermore, Respondent assured Petitioner that the funds in the account were not client funds, but were his personal funds for services rendered. Petitioner subsequently uncovered other instances of such commingling. In the course of Petitioner's investigation, Respondent failed to provide certain documents that were requested by Petitioner, including various bank statements and deposit slips.

At a hearing the Circuit Court found, by clear and convincing evidence, that Respondent had violated MRPC 1.15 and 8.1(b), as well as MRP 16-607 and 16-609. Respondent filed three exceptions to Judge Hotten's findings of fact and conclusions of law. Respondent objected to the judge's finding that 1) Petitioner requested ledger cards in order to determine the extent of client funds in Respondent's account, arguing that the evidence did not demonstrate that the client ledger cards were necessary to Petitioner's analysis; 2) Petitioner requested supporting documentation along with the cash receipt journal pages; 3) Petitioner was not provided with client ledger sheets. Respondent also filed exception to conclusions of law that he violated Rule 16-609 regarding Prohibited Transactions. Petitioner filed no exceptions.

Held: Affirmed. Respondent's assertion that there was no evidence that the materials requested by Petitioner were necessary to the investigation was immaterial, as Respondent had an obligation

to provide Petitioner with any relevant material requested in the course of an investigation. Respondent's statement that Petitioner did not ask for supporting documentation was without merit. Respondent's exception to the finding that no client ledger sheets were provided was immaterial as it was his obligation to maintain such records. Respondent knowingly failed to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter, in violation of Rule 8.1(b). Respondent violated Rule 1.15(a) when he failed to maintain a complete record of the trust account. Respondent violated Rule 16-609 by using funds in the trust account for an unauthorized purpose.

The Court of Appeals determined that an attorney who fails to maintain and keep complete records of client funds, commingles his or her own funds in the trust account, thereby using the account as a personal account, and fails to cooperate with Petitioner in the investigation of disciplinary matters is subject to sanctions. The appropriate sanction was a 30-day suspension from the practice of law.

Attorney Grievance Commission of Maryland v. Uzoma C. Obi, No. AG 11, September Term, 2005, filed August 1, 2006, Opinion by Greene, J.

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ATTORNEYS - MISCONDUCT - NEGLIGENCE, INCOMPETENCE, AND DILATORINESS IN REPRESENTING CLIENTS.

Facts: The Attorney Grievance Commission, through Bar Counsel ("Petitioner") and in conformance with Maryland Rule 16-751, filed a Petition for Disciplinary or Remedial Action against Respondent, Kenneth Stanford Ward, alleging violations of the Maryland Rules of Professional Conduct (MRPC) 1.1 (Competence), 1.2(a), (b), and (c) (Scope of Representation), 1.3 (Diligence),

1.4(a) and (b) (Communication), 1.5(a) (Fees), 3.3 (a)(1) (Candor Toward the Tribunal), 5.3(c) (Responsibilities Regarding Non Lawyer Assistants), 8.1(a) and (b) (Bar Admission and Disciplinary Matters), and 8.4(a), (c), and (d) (Misconduct). The Petition arose out of several incidences with two different clients, including that: Respondent permitted his secretary (a notary) to notarize his client's Power of Attorney document with the client signatory absent; Respondent failed to advise his client of the difficulties he was having with making proper arrangement for the client's funds; Respondent failed to follow his client's instructions and instead, collected in excess of the flat fee arrangement he had with his client; Respondent failed to communicate a postponement of a court date to his client; Respondent failed to communicate to his client that he had asked another attorney to represent the client in court; Respondent failed to provide to his client copies of pleadings that were requested by the client; and Respondent made misrepresentations to the investigator for Petitioner regarding Respondent's representation of his client.

At a hearing in the Circuit Court the judge concluded that Respondent had violated MRPC 1.1, 1.3, 1.4, 1.5, 3.3(a)(1), 5.3(a), 8.4 generally, and 8.4(d), and had not violated Rule 8.1(a). No specific findings as to MRPC 8.4(a) and (c) were made. Petitioner filed four exceptions, stating that the judge 1) abused her discretion in granting Respondent's motion to vacate the Order of Default; 2) failed to find a violation of Rule 1.1; 3) failed to grant Petitioner's request to compel discovery; and 4) erred in finding that Respondent did not violate Rule 8.1(a). Respondent also filed exceptions asserting that the judge erred in finding that Rules 1.5, 5.3(c), and 8.4 had been violated. In addition, Respondent contended that Judge Heard erred in finding that Respondent had violated MRPC 3.3(a)(1) and 8.4.

Held: Affirmed in part; reversed in part. The Circuit Court did not err when it 1) granted Respondent's motion to vacate the default order; 2) found that Respondent did not violate Rule 1.1 because Petitioner failed to prove by clear and convincing evidence that Respondent acted incompetently; 3) denied Petitioner's request to compel discovery because her findings that such discovery would be collateral to the substantive issues of the case and focused on a moot point were not clearly erroneous and were supported by clear and convincing evidence; and 4) held that although Respondent was inexperienced and sloppy, he did not necessarily knowingly or intentionally make false statements, and

therefore, did not violate Rule 8.1(a).

The Court of Appeals also held that the judge did not err when she found 1) that Respondent violated Rule 1.5 when he charged excessive fees because the judge employed proper findings of facts and conclusions of law; 2) that the evidence was sufficient to prove that Respondent violated Rule 5.3 in ordering his assistant to obtain the notarization of a document where the signer was not present; and 3) that Respondent violated Rule 8.4(d) due to his overall inaccurate representation of one of his clients. The Court of Appeals found that the judge erred when she held that Respondent violated 3.3(a)(1) because clear and convincing evidence did not exist that would support the allegation that Respondent knew that the statements he made about one of his clients were false.

The Court of Appeals determined that an indefinite suspension with the right to apply for reinstatement after 60 days was an appropriate sanction because Respondent was negligent, incompetent, and dilatory in representing his clients.

Attorney Grievance Commission of Maryland v. Ward, No. AG 47, September Term, 2004, filed August 2, 2006, Opinion by Greene, J.

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COMMERCIAL LAW - NEGLIGENCE - TITLE INSURANCE, LIENS ON REAL PROPERTY

Facts: This case originated with the refinancing of Mark A. Shannahan's home in 1997. Petitioner, First Equity, an agent for Petitioner, Chicago Title Insurance Company, conducted Shannahan's settlement. Shannahan granted an indemnity deed of trust ("IDOT") to Respondent, Farmers Bank of Maryland, where he also maintained several business and personal accounts. Several checks were

exchanged in order to complete Shannahan's refinancing. The two checks at issue were Check No. 1 and Check No. 2. Check No. 1 was delivered and made payable to Shannahan by First Equity to represent his "cash out" from the refinancing. Check No. 2 was made payable to Farmers Bank, and drawn on First Equity's checking account at Respondent, Allfirst Bank, representing payment for an outstanding line of credit. Both checks were delivered to Shannahan, along with a letter instructing Farmers Bank to pay off and close out the line of credit. The letter was never delivered to Farmers Bank, and both checks were indorsed and deposited by Shannahan into his personal account. Eventually, Farmers Bank initiated foreclosure proceedings in connection with the IDOT because the line of credit balance was in default. This foreclosure proceeding occurred when First Equity became aware that Farmers Bank still had a lien on Shannahan's property, and that Shannahan did not pay off the line of credit. When First Equity notified Allfirst about Check No. 2, it requested that Allfirst re-credit its account, which Allfirst refused.

First Equity filed a declaratory judgment action against Farmers Bank and Allfirst in the Circuit Court for Anne Arundel County, to which both Farmers and Allfirst banks filed a Counter Complaint for Interpleader against First Equity. The Circuit Court subsequently ordered Farmers Bank to release the IDOT lien on the property. It was also determined that Allfirst was not liable for debiting funds from First Equity's checking account through the processing of Check No. 2. First Equity filed a cross-appeal on that issue. The Court of Special Appeals affirmed the judgment of the Circuit Court. Chicago Title and First Equity filed a petition for writ of certiorari, and Farmers Bank filed a cross-petition for writ of certiorari, both of which were granted.

Held: Affirmed. The Court of Appeals held that Check No. 2 was properly payable because the words, or lack thereof, accompanying Farmers Bank's indorsement, the place of the stamp, and other circumstances surrounding Check No. 2 did not indicate a clear intent on the part of Farmers Bank not to sign the check as an indorser. The Court of Appeals held that an action in negligence against Farmers Bank was permitted under Maryland law. The Court opined that an action for negligence, where the damages are only economic, may be brought by a non-customer drawer against a depositary bank, where there is no violation of the provisions of the UCC, and where duty is established by a sufficient intimate nexus between the depositary bank and the non-customer, through privity or its equivalent.

Chicago Title Insurance Company, et al. v. Allfirst Bank, et al., No. 80, September Term 2005, filed August 4, 2006, Opinion by Greene, J.

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CRIMINAL LAW – EFFECT OF NEW TRIAL ON A PENDING TRIAL – MOOTNESS – THE GRANT OF A NEW TRIAL WHILE AN APPEAL IS PENDING RENDERS MOOT THE APPEAL, SUCH THAT THE APPEAL MUST BE DISMISSED

Facts: On June 2, 2004, after a non-jury trial in the Circuit Court for Baltimore County, Petitioner Nathaniel Cottman, Jr. was convicted of distribution of cocaine, conspiracy to distribute cocaine, and possession of cocaine. Prior to sentencing, the Circuit Court judge advised Cottman that he would grant Cottman a new trial if Cottman took, and passed a polygraph examination. The judge then sentenced Cottman to ten years in prison, without the possibility of parole, for distribution of cocaine. The remaining convictions were merged for sentencing purposes.

Cottman filed a timely notice of appeal to the Court of Special Appeals. While the appeal was pending, Cottman took, and passed, a polygraph examination. On August 18, 2005, the trial judge granted Cottman a new trial. On October 31, 2005, not having been informed by counsel of the grant of a new trial, the Court of Special Appeals filed its written opinion affirming the Circuit Court's initial judgment and sentence. *Cottman v. State*, 165 Md. App. 679, 886 A.2d 932 (2005). On November 4, 2005, prior to the Court of Special Appeals's issuance of the formal mandate, Cottman requested that the intermediate appellate court withdraw its opinion and dismiss the appeal as moot, in light of the Circuit Court's decision to grant him a new trial prior to the filing of the Court of Special Appeals's written opinion. On December 15, 2005, the Court of Special Appeals denied both of

Cottman's requests. Cottman filed a petition for writ of certiorari in the Court of Appeals and the State filed a cross-petition. The Court of Appeals granted both petitions. *Cottman v. State*, 391 Md. 577, 894 A.2d 545 (2006).

Held: Judgment of the Court of Special Appeals vacated. Case remanded to that court with directions to dismiss the appeal on grounds of mootness.

The Court of Appeals determined that the Circuit Court retained its fundamental jurisdiction to grant Cottman a new trial, even though the appeal was pending in the Court of Special Appeals. It held that the Court of Special Appeals erred, as a matter of law, in denying Cottman's request to dismiss the appeal after he had been granted a new trial, because the new trial rendered moot the challenge to the judgment of the trial court that was before the appellate court. Although the Circuit Court granted Cottman a new trial, the Court of Special Appeals retained the ability to express an opinion on the issue in the case because the intermediate appellate court determined that the issue was novel and would help provide guidance for future litigants. The Court of Appeals held, however, that the judgment of the intermediate appellate court could not provide an effective remedy because there was no longer an existing controversy between the parties at that time. Therefore, the Court of Special Appeals' judgment and the mandate should have reflected the moot status of the case by directing that the appeal be dismissed.

Cottman v. State, No. 1, September Term 2006, filed December 8, 2006. Opinion by Greene, J.

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CRIMINAL LAW – EXPUNGEMENT OF COUNTS IN INDICTMENT – MULTIPLE COUNTS AS UNIT – CHARGES STEMMING FROM DIFFERENT INCIDENTS, TRANSACTIONS, OR SET OF FACTS, EVEN IF CONTAINED IN THE SAME CHARGING DOCUMENT, DO NOT CONSTITUTE A UNIT AND THEREFORE CAN BE EXPUNGED – CHARGES ARISING FROM THE SAME INCIDENT, TRANSACTION, OR SET OF FACTS AS A CHARGE TO WHICH DEFENDANT PLED GUILTY DO COMPRISE A UNIT AND THEREFORE CANNOT BE EXPUNGED

Facts: Petitioner, Kevin Stoddard, a Towson University student, was arrested for burglary of an apartment within the University Village Apartment Complex in Towson, Maryland. At the time of his arrest, he confessed to that burglary and a series of other burglaries. Stoddard was charged with seven counts of first-degree burglary, two counts of fourth-degree burglary, seven counts of theft under $500, and one count of possession of drug paraphernalia. The State chose to consolidate all of the charges in a single, multiple-count indictment. All charges stemmed from Stoddard's involvement in a series of burglaries and related criminal offenses involving several individual apartments, located within the University Village Apartment Complex.

Pursuant to a plea agreement, Stoddard pled guilty to count 13, charging first-degree burglary, in exchange for the State entering a nolle prosequi as to the remaining 16 counts. Counts 13-15 arose from the same incident, transaction, and set of facts. Stoddard filed a Petition for Expungement, requesting that the court expunge counts 1-12 and 14-17. Because Stoddard pled guilty to count 13, that count could not be expunged. The Circuit Court denied the Petition for Expungement as to all counts. Stoddard appealed to the Court of Special Appeals. While the appeal was pending, the Court of Appeals issued a writ of certiorari on its own motion.

At issue in this case was Md. Code (2001), § 10-105 of the Criminal Procedure Article, which provides that in a criminal case, a defendant may file a petition for expungement of his or her record in certain situations, including, but not limited to, situations where the State enters a nolle prosequi. Section 10-107 of the same article provides that if a person is not entitled to expungement of one charge in a unit, that person is not entitled to expungement of any other charge in that unit. The Court of Appeals examined these provisions to determine the General Assembly's intended meaning of the word "unit."

Held: Judgment of the Circuit Court for Baltimore County affirmed in part and reversed in part.

Based on the clear language of § 10-107, a criminal defendant's commission of several acts of burglary across a period of weeks, in different apartments, against different victims, do not constitute a unit, notwithstanding that the State incorporated all of the charges in the same charging document. A criminal defendant is therefore entitled to expungement, under § 10-105, of those charges for which a nolle prosequi is entered and to which he did not plead guilty. Those crimes that were committed as a part of the same incident, transaction, or same set of facts as the burglary to which the criminal defendant pled guilty, do comprise a unit and therefore may not be expunged. The Circuit Court was therefore correct to reject Stoddard's request for expungement of counts 14 and 15 because those charges arose from the same incident, transaction, and set of facts as count 13. The Circuit Court was incorrect, however, to reject Stoddard's request for expungement of counts 1-12 and 16-17; because the burglary charges were separate incidents, transactions, or involved different facts, and thus, constituted nine separate units.

Stoddard v. State, No. 24, September Term 2006, filed December 5, 2006. Opinion by Greene, J.

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CRIMINAL LAW - HARMLESS ERROR - EVIDENCE

Facts: Petitioner, Saturio Grogrieo Fields, was convicted of

first degree murder and two counts of first degree assault for the shooting of three men at a bowling alley on the night of May 16-17, 2003. The State's evidence showed that on the night in question, petitioner became involved in an altercation with one of the victims. Two witnesses testified that subsequent to that altercation, petitioner reached into his car outside of the bowling alley and displayed a rifle. Petitioner fired the weapon killing one of the victims and seriously injuring the other two. Two additional witnesses testified that petitioner hid the murder weapon under the bed of petitioner's girlfriend, where police found it the following day. Ballistics reports matched that weapon to two shell casings found at the crime scene. DNA evidence indicated that petitioner's DNA was the major source on a sweater recovered from the bowling alley on the night of the shootings. The State produced evidence that petitioner used the nickname "Sat Dogg" and that the name "Sat Dogg" appeared on a monitor above one of the lanes at the bowling alley on the night of the shootings. Following his conviction, petitioner noted a timely appeal to the Court of Special Appeals, arguing that his nickname constituted inadmissible hearsay evidence. A divided panel affirmed, holding that the evidence was not hearsay because it "was not an implied assertion of the factual proposition that the appellant was present at the bowling alley."

Held: Affirmed. The Court of Appeals did not address the hearsay issue, assuming *arguendo*, that in view of all the other evidence tending to establish the defendant's criminal agency, even if there was error, the error was harmless beyond a reasonable doubt.

Saturio Grogrieo Fields v. State of Maryland, No. 34, September Term, 2006, filed December 8, 2006. Opinion by Raker, J.

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ELECTIONS - EARLY VOTING

Facts: Early voting legislation was enacted by the Maryland General Assembly through Senate Bill 478 (2005), Chapter 5, Laws of Maryland 2006, and was amended by House Bill 1368 (2006), Chapter 61, Laws of Maryland 2006. Early voting was codified as § 10-301.1 of the Election Law Article. The appellees, registered voters in Queen Anne's County, Maryland, filed, in the Circuit Court for Queen Anne's County, a Verified Complaint for Declaratory and Injunctive Relief against the appellants, alleging in the complaint that § 10-301.1 of the Election Law Article was enacted in derogation of Article I, § 1, Article XV, § 7, and Article XVII, §§ 1 and 2 of the Maryland Constitution.

The case was transferred to the Circuit Court for Anne Arundel County. The appellants filed an opposition to the appellees' Motion for Temporary Restraining Order and Preliminary Injunction, and their own motion to dismiss the complaint for failure to state a claim upon which relief may be granted. After the hearing, the Circuit Court issued its Memorandum Opinion. In the accompanying Order, it held that § 10-301.1 and the implementing legislation were unconstitutional and void. The appellants immediately noted an appeal of the judgment to the Court of Appeals and also filed a Petition for Certiorari.

Held: Judgment affirmed. The acts authorizing Maryland Code (2003, 2006 Cum. Supp.) § 10-301.1 are inconsistent with and in derogation of certain provisions of the Maryland Constitution, in particular, Article XV, § 7, and Article I, § 1, and are not constitutionally supported by Article I, § 3; therefore, these acts are unconstitutional and void.

Lamone v. Capozzi, No. 143, September Term 2005. Filed December 11, 2006. Opinion by Bell, C.J.

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ELECTIONS - SIGNATURES NEEDED FOR A REFERENDUM – JUDICIAL REVIEW

Facts: Early voting legislation was enacted by the Maryland General Assembly. The appellants initiated the referral process, obtaining approval from the Attorney General of the bill summaries to be placed at the top of referendum petition signature pages, and initiating the signature collection process. The referendum process required three percent of all voters to sign the petition by June 1; or, if one percent of the signatures was submitted by June 1, the deadline would be extended thirty days to obtain the remainder of the signatures. The appellants submitted 20,221 signatures in support of its petition by June 1; although more than the number required to be filed at that time, 17,062, or 1 percent of the full number of signatures required to complete the referendum petition, the number of signatures submitted was fewer than the number recommended by the Board of Elections to be filed. The Board informed the appellants on June 8 that their petition was deficient and would not be submitted to referendum. Knowing, however, that an appeal would be taken, it continued to verify the signatures, and, on June 21, 2006, informed the appellants that the local boards of elections had completed the validation of the signature pages, with the result that 16,924 names had been validated and accepted, 138 fewer than the number required, as a threshold, to extend the deadline. The State Administrator informed the appellants that the verification process would not continue, and revisited her June 8 letter, calling attention to its deficiency determination, and pointing out that it had not been challenged within ten days, as required by § 6-210 (e) (1) of the Election Law Article.

The appellants filed, in the Circuit Court for Anne Arundel County, a Verified Complaint and an Emergency Motion for Judicial Review. The appellees filed an Opposition to the Emergency Motion for Judicial Review. Defining the threshold issue to be whether the appellants' motion for judicial review was timely filed and, ultimately, whether it was time barred, the court found the motion to have been untimely filed and, thus, time barred. The appellants noted an appeal to the Court of Appeals and concurrently filed a petition for writ of certiorari.

Held: Judgment affirmed. A submission containing more than one third, but less than all, of the full number of signatures necessary to complete a referendum petition, submitted to the Secretary of State before June 1 for the purpose of extending the time for filing the signatures to complete the referendum petition within the meaning and contemplation of the Election Law Article, is still a petition. Accordingly, the State Board Administrator is required to make a validity determination of that petition, and judicial review must be sought within ten days as outlined by statute.

Roskelly v. Lamone, No. 141, September Term 2005. Filed December 11, 2006. Opinion by Bell, C.J.

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FAMILY LAW - PERMANENCY PLAN WITH OPTION OF ADOPTION - AN INITIAL CONCURRENT PERMANENCY PLAN ORDER THAT INCLUDES THE OPTION OF ADOPTION, OPERATES TO DEPRIVE A PARENT OF HIS OR HER FUNDAMENTAL RIGHT TO RAISE HIS OR HER OWN CHILD AND IS IMMEDIATELY APPEALABLE.

Facts: Karl Jr., and his brother, Anthony, are the children of Petitioner and his wife, Lisa H. Petitioner and his family came to the attention of the Charles County Department of Social Services ("CCDSS") on March 5, 2004, when the boys were five and three, respectively, because the family was homeless.

On March 25, 2004, a family friend reported to CCDSS that Mrs. H. had dropped the boys off at her home the preceding day, but had failed to return for them. Mrs. H. stated that she could not care for the boys at that time.

Petitioner met with the caseworker the next day and confirmed the existence of a protective order. He also informed the caseworker that in the past he had been convicted of domestic violence against Ms. H and previously served time in prison on a murder conviction. Petitioner admitted to a history of substance abuse and stated that he had relapsed, having used crack cocaine the previous evening. The boys were placed in emergency shelter care, and the Circuit Court for Charles County, sitting as a juvenile court, continued shelter care on March 29, 2004.

On December 10, 2004, the juvenile court conducted an initial permanency planning hearing for both boys. At the time of the hearing, the boys remained in the foster home in which they had been placed in March, and appeared to have adjusted well, having made friends in the community and at school. The juvenile court concluded that Petitioner and Mrs. H. were not yet able to care for their children at that time, as they still had "serious issues of their own" that had yet to be addressed. The Court ordered that the permanency plan was reunification with parents, concurrent with adoption, because Mr. and Mrs. H have not completed court-ordered recommendations.

Held: The problem with concurrent permanency plans that are diametrically inconsistent is that they give DSS (and the parents) no real guidance and can lead to arbitrary decision-making on the part of DSS. When the court approves a permanency plan that calls for reunification or family placement that should be the paramount goal. It should not share the spotlight with a completely inconsistent court-approved goal of terminating parental rights, especially when the inconsistent plan calls for a Termination of Parental Rights (TPR) petition to be filed before the next scheduled court review of the permanency plan. The objective of contingency planning can be achieved without a Janus-type order.

When a permanency plan for adoption, whether with a concurrent goal of reunification or adoption alone, is ordered, the statute requires the filing of a TPR petition. A party may appeal from an order "depriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order" Md. Code (1974, 2002 Repl. Vol.), § 12-303(3)(x) of the Courts and Judicial Proceedings Article.

The Court rejected the assertion that a concurrent plan of reunification and adoption is not an appealable interlocutory order and does not deprive parents of their rights to care and custody of their children. In determining whether an interlocutory order is appealable, in the context of custody cases, the focus should be on the extent to which that order changes the antecedent custody order. It is immaterial that the order appealed from emanated from the permanency planning hearing or from the periodic review hearing. If the change could deprive a parent of the fundamental right to care and custody of his or her child, whether immediately or in the future, the order is an appealable interlocutory order.

The Court held that a concurrent permanency plan that includes the option of adoption is sufficiently far enough along the continuum of depriving a parent of a fundamental right and is immediately appealable. Whether the concurrent permanency plan was

ordered at the permanency planning hearing or, subsequently, at the periodic review hearing, the detrimental effects are the same. Reunification and adoption are mutually exclusive goals. Reunification gives a parent the opportunity for reconciliation. The goal of adoption, however, guarantees that, under § 3-823(g) of the Family Law Article, after thirty days at the earliest, a petition will be filed to terminate parental rights.

The Court noted the need for a concurrent plan of reunification and adoption; however, the Court found that the implementation of those goals are not parallel. When the option of "adoption" enters into a permanency plan, whether alone or with a concurrent vision, under § 3-823(g) the "local department" must file a petition for TPR within thirty days (or sixty days if the local department does not support the plan). A parent is deprived of a six-month review of the permanency plan. The six-month review is replaced with a TPR hearing when "adoption" is a component of the permanency plan. *See* § 3-823(g). An interlocutory order which includes adoption as a possible outcome has the potential both to accelerate the termination and to terminate a parent's custodial rights; therefore, such orders adversely affect a parent's rights to care and custody and entitle the parent to an immediate appeal.

In Re Karl H. and Anthony H., No. 92, September Term 2005, filed September 6, 2006, Opinion by Greene, J.

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JUVENILE COURTS - CINA PROCEEDINGS - EXCLUSION OF A PARENT FROM A CINA ADJUDICATORY HEARING DURING CHILD'S TESTIMONY REQUIRES A HEARING OR EVIDENCE TO SUPPORT THE EXCLUSION

Facts: The Montgomery County Department of Health and Human

Services ("the Department") filed a petition alleging that Maria P. ("Gabby"), age 12, was a child in need of assistance ("CINA"). This was based on Gabby's allegations that her stepfather and another man who lived in their home had raped her. When it was discovered that Gabby was pregnant, the pregnancy was terminated. Gabby was placed in a foster home and stated she was uncertain about wanting to return home for fear that her grandmother and mother were angry at her and did not believe her allegations.

At the CINA adjudicatory hearing, held to determine whether the allegations in the CINA petition, other than the allegation that the child requires the court's intervention are true, Gabby's mother, Matrida R. ("Petitioner") was excluded because of the court's concern that Gabby might not testify truthfully in the presence of her mother.

Ultimately, the court declared Gabby a CINA and placed her in the care and custody of the Department. The court commended Petitioner for doing "almost everything she could do" but found Petitioner was unable or unwilling to give Gabby the proper care and attention that she needs. The court ordered supervised visitation for Petitioner at a minimum of once a week. Petitioner appealed to the Court of Special Appeals which cited Maryland Rule 11-110(b)and affirmed the juvenile court.

Held: Reversed and remanded. A judge may not exclude a parent from a CINA adjudicatory hearing during the child's testimony without a hearing or evidence to support the exclusion of the party.

It is well established that a parent's interest in raising a child is a fundamental right. That right, however, is not absolute and is subject to the best interests of the child standard.

In this case, Petitioner has a liberty interest in the care and custody of her child, and when, as in a CINA proceeding. The State seeks to change the parent-child relationship, the due process clause is implicated. One of the Department's goals in a CINA proceeding is to determine the best interests of the child and act accordingly. Petitioner is a parent and party to the action, with a fundamental interest in the care and welfare of her child.

The only evidence to support the exclusion of the parent from the adjudicatory hearing was the Department's allegation that Petitioner would unduly influence her daughter's testimony. There is no indication on the record that the hearing judge considered Petitioner's due process rights. No testimony was placed on the

record, and no inquiries were made of the Department as to the specific reasons for Petitioner's exclusion during Gabby's testimony.

Therefore, the hearing judge abused his discretion in excluding the Petitioner from the courtroom without first making a finding on the record to support a factual basis for his decision. This error was not harmless. The case was remanded to the juvenile court for further proceedings.

In Re Maria P., No. 89, September Term 2005, filed August 1, 2006, opinion by Greene, J.

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TORTS - *LEX LOCI DELICTI* - STANDARD OF CARE

Facts: This case came to the Court as three questions certified by the United States District Court for the District of Maryland. Petitioners are Maryland residents who sued a North Carolina lab for wrongful birth; for negligently misreading a test of amniotic fluid and falsely reporting that the fetus did not have cystic fibrosis. North Carolina law does not permit an action for wrongful birth, Maryland law is to the contrary. The District Court, which must apply Maryland law, including the Maryland law on conflicts of law, desired to know whether to apply the substantive law of Maryland, where the injury occurred, or of North Carolina, where the negligent acts or omissions took place and whether a laboratory that analyzes an amniocentesis specimen has a sufficient relationship with the father to give rise to a duty of care when the results are provided to the mother's physician but relied on by both parents.

Held: (1) As part of *lex loci delicti*, Maryland recognizes the Restatement (First) of Conflict Of Laws § 380(1), which provides the general rule for standard of care that the substantive law of the place where the wrong was committed applies and (2), which provides a limited exception to the general rule where the State in which the acts were committed has determined, either by judicial decision or statute, that a person who commits those acts either has, or has not, breached the applicable standard of care and therefore either is, or is not, negligent as a matter of law; the forum court must act in conformance with that judicial decision or statute, even if its own law, or the place of wrong, is different; (2) to apply North Carolina law barring an action for wrongful birth on the ground that no injury has occurred would be contrary to Maryland public policy; and (3) a genetic testing laboratory may owe a duty of care to the father of a child who would be responsible for child support.

Laboratory Corporation of America, et al. v. Hood, Misc. No. 1, Sept. Term, 2006, filed December 1, 2006. Opinion by Wilner, J.

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ZONING - NONCONFORMING USES - IN GENERAL - A NONCONFORMING USE EXISTS IF A PERSON UTILIZES PROPERTY IN A CERTAIN MANNER THAT IS LAWFUL BEFORE AND UP TO THE TIME OF THE ADOPTION OF A ZONING ORDINANCE, THOUGH THE THEN-ADOPTED ZONING ORDINANCE MAY MAKE THAT PREVIOUSLY LAWFUL USE NON-PERMITTED.

ZONING - NONCONFORMING USES - IN GENERAL - A PROPERTY CANNOT OPERATE WHERE THE USE IS BOTH A NONCONFORMING USE AND A SPECIAL EXCEPTION USE WHEN IT IS THE SAME USE BECAUSE THE PERMITTED USE EXTINGUISHES THE NONCONFORMING CHARACTER OF THE USE; THE LAW REQUIRES THAT THE CONFORMING PERMITTED USE BE FAVORED, I.E., THE SPECIAL EXCEPTION.

ZONING - NONCONFORMING USES - DISCONTINUANCE OR ABANDONMENT - IN GENERAL - ONCE A PROPERTY IS OPERATED AS A SPECIAL EXCEPTION IT ABANDONS A PREVIOUS NONCONFORMING USE STATUS PURSUANT TO ANY RELEVANT STATUTORY TIME PERIOD, IN THIS CASE ONCE SIX MONTHS ELAPSED THE NONCONFORMING USE COULD NOT BE REESTABLISHED.

Facts: This case arises out of a dispute involving a piece of property ("Property") in Montgomery County upon which a filling station is operated. The appellants, Cloverly Civic Association and Dr. Edward D. Purich, contested the use of the Property as a filling station under the Montgomery County Zoning Ordinance ("Zoning Ordinance"). The appellee, Draper Properties, Inc. ("DPI"), owns the Property.

The operation of filling stations in Montgomery County has required the obtaining of a special exception since 1963. Apparently, the filling station on the Property was in operation prior to 1963. Therefore, it was initially operating as a nonconforming use. In 1997, however, Shell Oil Co. ("Shell"), DPI's lessee of the Property, applied for a special exception for its use of the Property as a filling station and the special exception was granted.

On July 11, 2003, subject to the request of Petroleum Marketing Group ("PMG"), appellee's new lessee of the Property, the Montgomery County Board of Appeals (the "Board") "revoked" the special exception and found that the lawful nonconforming use remained. On July 18, 2003, appellants objected via a letter to the Board and requested a hearing. On December 1, 2004, the Board held a hearing and, on February 11, 2005, issued a written decision denying appellants' objection.

Appellants' appealed the Board's decision to the Circuit Court for Montgomery County and a hearing was held on August 4, 2005. On August 8, 2005, an order was issued by the Circuit Court affirming the Board's decision. Appellants then timely appealed to the Court of Special Appeals, but prior to any proceedings by that court, the Court of Appeals, on its own initiative, granted certiorari. *Purich v. Draper*, 393 Md. 160, 900 A.2d 206 (2006).

Held: Vacated. The Court of Appeals held that special exceptions in Montgomery County are provided for *uses* of property. The Court found that the once the special exception was applied for, and granted, the Property in question was in operation as a filling station pursuant to a special exception. Once that occurred, either the nonconforming use was immediately terminated or, at a minimum, the six month period of abandonment (provided by the Zoning

Ordinance) started in respect to the prior nonconforming use status of the Property. More than six months passed before appellees attempted to revert to the prior nonconforming use status, thus, if the nonconforming use was not sooner terminated, it was abandoned at that time. Based on this finding, the Court of Appeals vacated the judgment of the Circuit Court for Montgomery County and remanded the case to that court for a re-determination of the status of the Property's special exception.

Edward D. Purich v. Draper Properties, Inc., No. 9 September Term, 2006, filed December 7, 2006. Opinion by Cathell, J.

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COURT OF SPECIAL APPEALS

CONTRACTS – OPTION TO RENEW – TIME TO EXERCISE OPTION

Facts: The parties entered into a contract for Prison Health Services to provide health care services to inmates in the Baltimore County Detention Center. The contract provided for an initial term, ending June 30, 2005, and gave the County an option to renew the contract. The option language stated that the contract would "continue through 06/30/05 [. . .], at which time the County may exercise its option to renew. . . ."

On July 1, 2005, PHS notified the County that it considered the contract terminated because the option had not been exercised. Later that same day, the County notified PHS that it was exercising its option to renew. The County subsequently brought an action for declaratory judgment in the Circuit Court for Baltimore County. The circuit court held on summary judgment that the language in the contract was unambiguous and meant that the County could exercise the renewal option during a reasonable period before or after June 30, 2005.

Held: Reversed. The contract language is not ambiguous, and required that, if the County wanted to renew the contract, it had to exercise its renewal option no later than June 30, 2005. Time is always of the essence in an option contract, which is unilateral. Reasonable parties negotiating a contract to provide health care services to a jail population would not have intended that there be a vague, indefinite, and unspecified period of time, including after the expiration of the initial term of the contract, in which the contract could be renewed. The only reasonable interpretation of the contract language is that it fixed the time for exercising the option to renew no later than the last day of the initial contract term.

Prison Health Services, Inc. v. Baltimore County, No. 2287, September Term, 2005, filed December 6, 2006. Opinion by Eyler, Deborah S., J.

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CRIMINAL LAW - ADVISORY JURY INSTRUCTIONS - DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION; ARTICLE 23 OF THE MARYLAND DECLARATION OF RIGHTS; ADVISORY JURY INSTRUCTIONS; JURY AS JUDGES OF THE LAW AND FACTS; *IN RE WINSHIP*, 97 U.S. 364 (1970); *STEVENSON v. STATE*, 289 MD. 167 (1980); *MONTGOMERY v. STATE*, 292 MD. 84 (1981); *JENKINS v. HUTCHINSON*, 221 F. 3RD 679 (2000); BECAUSE OF THE FIRMLY ROOTED AND WELL-ESTABLISHED LEGAL PRECEDENT HOLDING THAT ARTICLE 23 OF THE MARYLAND DECLARATION OF RIGHTS DID NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, APPELLEE, WHOSE PETITION FOR *A WRIT OF CERTIORARI* WAS DENIED ON DECEMBER 2, 1980, 15 DAYS BEFORE THE COURT OF APPEALS ISSUED ITS DECISION IN *STEVENSON*, DID NOT WAIVE HIS RIGHT TO CHALLENGE THE CONSTITUTIONALITY OF ARTICLE 23, PROVIDING THAT, IN CRIMINAL CASES, THE JURY IS THE JUDGE OF THE LAW AND THE FACTS; ALTHOUGH THE SUPREME COURT OF THE UNITED STATES RECOGNIZED THAT A DEFINITION OF REASONABLE DOUBT VIOLATED DUE PROCESS FOR THE FIRST TIME IN *CAGE v. L.A.*, 498 U.S. 39 (1994), THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, IN *JENKINS*, MADE CLEAR THAT THE UNCONSTITUTIONALITY OF RELIEVING THE GOVERNMENT'S BURDEN OF PROOF IN A CRIMINAL CASE WAS ESTABLISHED BY THE PRONOUNCEMENT IN *IN RE WINSHIP* IN 1970 AND, THEREFORE, THE RULE IS TO BE RETROSPECTIVELY APPLIED TO APPELLEE'S CASE; CONSEQUENTLY, THE CIRCUIT COURT DID NOT ERR IN GRANTING APPELLEE'S REQUEST FOR POST CONVICTION RELIEF.

Facts: Appellee, Raymond Leon Adams was found guilty of first-degree rape, sexual assault and kidnapping. He was sentenced to life imprisonment for first-degree rape, twenty-one concurrent life sentences for the remaining rape and sexual offenses, thirty years, consecutive, for kidnapping and twenty years for robbery. The Court of Special Appeals affirmed appellee's conviction in an unreported opinion in September 1980. The Court of Appeals denied appellee's *Writ of Certiorari* in December 1980. In April 2004, appellee filed a Petition for Post Conviction Relief in the Circuit Court for Prince George's County collaterally challenging his convictions on the basis that the non-binding, "advisory" jury instructions violated his right to due process. On direct appeal, because a challenge to the advisory only jury charge was barred by established law, petitioner could not have raised this claim of error. Subsequent to a hearing held in December 2004 on appellee's post-conviction petition, the Petition for Relief, pursuant to the Post Conviction Procedure Act, was granted on April 5, 2005. The court ordered that Petitioner be awarded a new trial on all counts of the indictments. In May of 2004, the State filed its application for Leave to Appeal.

Held: Appellee did not waive his right to challenge the constitutionality of Article 23, providing that, in criminal

cases, the jury is the judge of the law and the facts; although the Supreme Court of the United States recognized that a definition of reasonable doubt violated due process for the first time in *Cage v. La.*, 498 U.S. 39 (1994), the decision of the United States Court of Appeals for the Fourth Circuit, in *Jenkins*, made clear that the unconstitutionality of relieving the government's burden of proof in a criminal case was established by the pronouncement in *In re Winship* in 1970 and, therefore, the rule is to be retrospectively applied to appellee's case. Consequently, the circuit court did not err in granting appellee's Request for Post Conviction Relief.

State of Maryland v. Raymond Leon Adams, No. 617, September Term, 2005, decided December 5, 2006. Opinion by Davis, J.

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CRIMINAL LAW - SEARCH AND SEIZURE - COCAINE FOUND IN COAT OF DEFENDANT ON REAR PASSENGER SEAT OF VEHICLE IS ADMISSIBLE .

Facts: Appellant was a passenger in a vehicle which was stopped by a police officer, who cited the driver for a revoked license, resulting from failure to pay insurance. Although the driver was not arrested, she and appellant were ordered out of the vehicle and appellant's jacket, located on the rear passenger side seat of the vehicle which contained baggies of cocaine, was recovered at a point in time, when appellant was seated on the grass several feet from the vehicle. Upon the officer's discovery of the cocaine, appellant was placed under arrest.

Held: Notwithstanding that neither was there the possibility of weapons within appellant's reach pursuant to *Chimel v. California,* 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969)

constituting a threat to the officer's safety nor the possibility that appellant could destroy evidence, the trial court properly denied appellant's motion to suppress in conformance with the holding of the Supreme Court in *New York v. Belton*, 453 U.S. 454, 455-56, 101 S. Ct. 2860, 2861-62 (1981), holding that the entire passenger compartment of the vehicle was subject to a search and establishing a bright line in order that the arresting officers need not make fine distinctions as to the proper course of action when effectuating a traffic stop.

James Davis Purnell v. State of Maryland, No. 210, September Term, 2005, filed December 4, 2006. Opinion by Davis, J.

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CRIMINAL LAW - SPEEDY TRIAL - STATUTORY AND CONSTITUTIONAL RIGHT TO SPEEDY TRIAL; MD. ANN. CODE, CRIMINAL PROCEDURE ARTICLE, § 6-103, MD. RULE 4-271; SIXTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES; *STATE v. HICKS*, 285 MD. 310 (1979); *STATE v. BROWN*, 307 MD. 651 (1986); *FARINHOLT v. STATE*, 299 MD. 32 (1984); *BARKER v. WINGO*, 407 U.S. 514 (1979); TRIAL COURT'S FINDING THAT APPELLANT'S *HICKS* WAIVER AND MOTION TO POSTPONE HIS TRIAL DATE BEYOND THE 180-DAY PERIOD BECAUSE OF HIS COUNSEL'S VACATION SCHEDULE WAS CONSENSUAL AND NOT THE PRODUCT OF DURESS WAS NOT CLEARLY ERRONEOUS AND WAS DISPOSITIVE OF APPELLANT'S CLAIM THAT THE STATE'S ENTRY OF A *NOL PROS*, THREE MONTHS AND TWENTY DAYS AFTER THE EXPIRATION OF THE *HICKS* DEADLINE, WAS NOT SHOWN TO HAVE HAD THE PURPOSE OR EFFECT OF CIRCUMVENTING THE REQUIREMENTS OF § 6-103 OR RULE 4-271 AS PROSCRIBED BY *CURLEY V. STATE*, 299 MD. 449 (1984); ALTHOUGH LENGTH OF DELAY TRIGGERED *BARKER V. WINGO*, BALANCING TEST AND REASONS FOR DELAY WERE CHARGEABLE PRINCIPALLY AGAINST THE STATE, THE FACTS THAT REASONS WERE NOT TO GAIN TACTICAL TRIAL ADVANTAGE BY THE STATE OR FOR OTHER ULTERIOR

MOTIVE, THAT APPELLANT MADE DEMANDS SHORTLY AFTER HE WAS CHARGED AND TOWARD THE END OF THE TIME HE WAS AWAITING TRIAL, BUT DID NOT DEMAND A SPEEDY TRIAL DURING THE INTERIM AND, AS TO THE MOST IMPORTANT FACTOR, THE SCALE WAS TIPPED IN FAVOR OF DENIAL OF APPELLANTS MOTION TO DISMISS BECAUSE HE DEMONSTRATED NO PREJUDICE BEYOND THAT PRESUMPTIVELY EXPERIENCED BY ANYONE AWAITING TRIAL,. *WILSON V. STATE*, 148 MD. APP. 601 (2002), *CERT. DENIED*. 374 MD. 841 (2003).

Facts: The proceedings against appellant, charged with child sexual abuse, commenced on January 28, 2004. On February 4, 2004, appellant filed an initial demand for a speedy trial. The initial trial date, set for June 8, 2004, was continued at the State's request because of a conflict with another case. A new trial date was scheduled; however, appellant requested a continuance to a date outside of the *Hicks* deadline and executed a *Hicks* waiver of Md. Rule 4-271, due to a conflict with counsel's vacation; the State did not object. After appellant's trial was postponed on two subsequent occasions, prior to commencement of the trial, the State moved to amend the indictments. In response to the court's denial of the motion, the State entered a *nol pros* on all charges. Immediately hereafter, a new indictment, charging the offenses for which a *nol pros* had been entered, was returned by the grand jury. Appellant's renewed motion to dismiss, alleging a denial of his right to a speedy trial, based on a violation of Md. Rule 4-271, was denied by the circuit court and trial commenced on May 23, 2005. Appellant was subsequently convicted.

Held: Affirmed. A sixteen-month delay triggered an analysis pursuant to *Barker*. Although the delay was principally attributable to the State, denial of appellant's motion to dismiss was based in large part, on his failure to demonstrate any prejudice beyond the normal anxiety experienced by one awaiting trial. Appellant's execution of a *Hicks* waiver of Md. Rule 4-271, requesting a date beyond the *Hicks* deadline because of a conflict with the vacation schedule of appellant's trial counsel, was deemed to be consensual and thus was not shown to have had the purpose or effect of circumventing Md. Rule 4-271 as proscribed by *Curley v. State*, 299 Md. 449 (1984).

Frank Sam Jules v. State of Maryland, Nos. 2035 and 2377, September Term, 2005, decided November 1, 2006. Opinion by Davis, J.

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ATTORNEY DISCIPLINE

By an Opinion and Order of the Court of Appeals of Maryland dated December 6, 2006, the following attorney has been disbarred effective immediately from the further practice of law in this State:

PATRICK J. MUHAMMAD

*

By an Opinion and Order of the Court of Appeals of Maryland dated December 8, 2006, the following attorney has been disbarred, from the further practice of law in this State:

MELINDA PORCHER HODGSON

*

By an Opinion and Order of the Court of Appeals dated December 11, 2006, the following attorney has been disbarred from the further practice of law in this State:

SEAN W. BAKER

*

By an Opinion and Order of the Court of Appeals of Maryland dated December 13, 2006, the following attorney has been indefinitely suspended from the further practice of law in this State:

WILLIAM HENRY MANGER

*

By an Opinion and Order of the Court of Appeals of Maryland dated December 18, 2006, the following attorney has been disbarred from the further practice of law in this State:

KENNETH STANFORD WARD

*

JUDICIAL APPOINTMENTS

On November 2, 2006, the Governor announced the appointment of District Court Judge **MARY ELIZABETH McCORMICK** to the Circuit Court for Montgomery County. Judge McCormick was sworn in on December 8, 2006 and fills the vacancy created by the retirement of the Hon. James L. Ryan.

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On November 2, 2006, the Governor announced the appointment of **JAMES BERNARD SARSFIELD** to the District Court for Montgomery County. Judge Sarsfield was sworn in on December 21, 2006 and fills the vacancy created by the elevation of Judge Mary Beth McCormick.

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