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COURT OF APPEALS

Mayor and City Council of Baltimore v. ProVen Management, Inc., No. 8, September Term 2020, filed March 1, 2021. Opinion by Booth, J.

<https://www.courts.state.md.us/data/opinions/coa/2021/8a20.pdf>

ADMINISTRATIVE LAW & PROCEDURE – JUDICIAL REVIEW – COMMON LAW
MANDAMUS – RIGHT TO APPEAL

Facts:

In July 2013, the Baltimore City Department of Public Works (the “Department”) began soliciting bids to clean a large section of Baltimore City’s (the “City”) sewer system. ProVen Management, Inc. (“ProVen”) submitted a fixed price bid in the original sum of \$3,894,473 and was ultimately awarded the contract. On July 29, 2014, the Department issued a notice to proceed with the work and set July 30, 2015 as the completion date.

For various reasons, the cleaning proved more challenging than expected, and ProVen did not complete the sewer cleaning project until December 2016—roughly a year and a half behind schedule. And although ProVen and the Department agreed to several adjustments in time and compensation throughout the project, ProVen asserted it was entitled to additional compensation and time extensions. Unable to resolve the issue informally, ProVen sought administrative review in accordance with the contract’s disputes clause. After three levels of administrative review involving written submissions and a hearing before the Department’s Director, the Director issued a final written decision in favor of the City.

In accordance with Article II, § 4A(g) of the Baltimore City Charter, ProVen filed a petition for judicial review in the Circuit Court for Baltimore City, alleging the Department violated ProVen’s right to procedural due process and committed substantive errors. ProVen requested that the circuit court enter judgment in its favor on its monetary claims and remand the matter to the Director for a determination on damages. Finding neither substantive nor procedural errors, the circuit court affirmed the Director’s decision.

Dissatisfied, ProVen appealed the circuit court’s decision to the Court of Special Appeals, once again alleging that the Director made procedural and substantive errors. The City filed a motion

to dismiss in connection with its brief, alleging that the Court of Special Appeals lacked jurisdiction under Courts and Judicial Proceedings Article (“CJ”) § 12-302(a) to hear ProVen’s appeal. In an unreported opinion, the Court of Special Appeals denied the City’s motion to dismiss, concluding that it had jurisdiction to consider the matter because the court determined the case was in the nature of a common law mandamus action, and therefore, it had original appellate jurisdiction to consider the matter under CJ § 12-301. After determining that it had jurisdiction to consider the appeal, the intermediate appellate court “neither affirmed nor reversed” and remanded the matter to the circuit court with “instructions to remand the case to the Agency for further proceedings and the filing of a decision that complies with ministerial requirements.”

Held: Reversed.

The Court of Appeals held that because ProVen’s circuit court action was not in the nature of an action for common law mandamus, the Court of Special Appeals erred in concluding it had jurisdiction to consider ProVen’s appeal and dismissal was required under CJ § 12-302(a).

Under Maryland law, the right to appellate review “is determined entirely by statute, and . . . , therefore, a right of appeal must be legislatively granted.” Although CJ § 12-301 grants litigants a right of “appeal from a final judgment entered . . . by a circuit court[,]” CJ § 12-302(a) precludes appellate review where a petition for judicial review of an agency decision is filed under a local charter or ordinance for which there is no right of appellate review beyond the circuit court. This Court has held, however, that CJ § 12-302(a) is no bar to appellate review if a court examines the nature of a proceeding as a whole and determines, regardless of the caption or label, the substance of the case is in the nature of an original action seeking a writ of common law mandamus.

In the instant case, the Court concluded that no provision in the Baltimore City Charter authorized ProVen’s appeal to the Court of Special Appeals, and, as a result, appellate jurisdiction was only available to the extent ProVen’s circuit court action was in the nature of an original action seeking a writ of common law mandamus. In concluding ProVen’s action was not in the nature of a proceeding for common law mandamus, the Court observed that both the allegations raised and the relief sought in ProVen’s circuit court proceeding were the quintessential types of errors asserted, and relief requested, in traditional petitions for judicial review. Significantly, ProVen did not seek an order requiring the Director to perform a ministerial duty. Instead, ProVen sought a judicial determination overturning the Director’s decision on its substantive monetary claims with a limited remand for a damages determination—relief that is consistent with judicial review.

The Court held that, unless a review of the entire action leads to a conclusion that the substance of the action, including the relief sought, is in the nature of common law mandamus, its jurisprudence does not permit an appellate court to recharacterize the case as one sounding in

common law mandamus—thereby creating appellate jurisdiction— simply because the appellate court would not reach the same result as the circuit court after conducting its judicial review.

Attorney Grievance Commission of Maryland v. Angel Arturo Viladegut, Misc. Docket AG No. 54, September Term 2019, filed March 29, 2021. Opinion by McDonald, J.

<https://mdcourts.gov/data/opinions/coa/2021/54a19ag.pdf>

ATTORNEY DISCIPLINE – COMPETENCE, DILIGENCE, AND COMMUNICATION WITH CLIENT – MISHANDLING OF CLIENT FUNDS – MISREPRESENTATION – DISBARMENT

Facts:

Respondent Angel Arturo Viladegut has been a member of the Maryland Bar since December 2012. In the four matters at issue, he provided immigration-related legal services.

In March 2015, a Honduran woman and her young son entered the United States illegally, fleeing domestic violence. The woman’s mother sought help from Mr. Viladegut in the woman and her son’s removal proceedings. Despite agreeing to represent the woman and her son for payment, Mr. Viladegut filed pleadings with the immigration court stating that his representation was *pro bono*. Mr. Viladegut later agreed to file asylum and work visa applications for the woman as well as custody and visa applications for her son. None of the agreements Mr. Viladegut made with the woman and/or her mother were memorialized in writing. While Mr. Viladegut did file an error-ridden asylum application for the woman, he failed to file anything else. He also misled the woman about the status of her son’s custody application, failed to notify her when one of her hearing dates had changed, and touched her inappropriately during a visit to his office. The woman eventually terminated Mr. Viladegut. She requested her file from Mr. Viladegut numerous times. He failed to respond. In total, the woman and her family paid Mr. Viladegut \$4,315 and he failed to deposit or maintain those funds in an attorney trust account until earned or provide any accounting of his services.

In June 2017, a young Salvadoran girl entered the United States illegally to join her mother. The girl’s mother sought help from Mr. Viladegut in the girl’s removal proceedings. Mr. Viladegut agreed to represent the girl. This agreement was not memorialized in writing. For two months thereafter, Mr. Viladegut failed to either appear in the girl’s case or determine its status. As a result, the girl missed a hearing and was ordered removed from the country. Thereafter, Mr. Viladegut attempted to file a notice to appear and motion to reopen the girl’s removal proceeding. The immigration court rejected those pleadings, and Mr. Viladegut failed to take action to amend or re-file them for approximately two months. He later refiled the pleadings. Despite agreeing to represent the girl for payment, the pleadings stated that Mr. Viladegut’s representation was *pro bono*. The immigration court accepted the pleadings, granted the motion to reopen, and scheduled a new hearing. Mr. Viladegut failed to advise the girl of the new hearing. As a result, the girl missed the hearing and was ordered removed from the country a second time. Mr. Viladegut did not advise the girl or her mother of the second removal order

and, when asked to provide updates on the girl's case, stated that "all was well" and did not provide any other substantive information. The girl's mother eventually terminated Mr. Viladegut and hired successor counsel, at which point she discovered the second removal order. Both successor counsel and the girl's mother requested the girl's file from Mr. Viladegut. He failed to respond. In total, the girl's mother paid Mr. Viladegut \$4,315 and he failed to deposit or maintain those funds in an attorney trust account until earned or provide any accounting of his services.

In 2013, two young Salvadoran children entered the United States illegally to join their mother. The children's mother sought help from Mr. Viladegut in the children's removal proceedings. Mr. Viladegut agreed to represent the children in immigration court and file custody applications for them. During an initial hearing in immigration court, Mr. Viladegut misrepresented to the Court that the children's custody applications had been "re-filed" when they had in fact been filed for the first time that day. Meanwhile, the State court where the custody applications were filed twice dismissed those applications due to lack of prosecution. Mr. Viladegut successfully vacated the first dismissal but failed to respond to the second. In response to inquiries from the mother about the status of her children's cases, Mr. Viladegut said the cases were advancing but did not mention the State court dismissals. In a subsequent hearing in immigration court, Mr. Viladegut misrepresented to the immigration court that he was still waiting for a hearing date for the custody applications in State court. Eventually, Mr. Viladegut stopped responding to inquiries from the mother about her children's cases. The mother obtained successor counsel, who requested children's files from Mr. Viladegut. He failed to respond. In total, the children's mother paid Mr. Viladegut \$5,500 and he failed to deposit or maintain those funds in an attorney trust account until earned or provide any accounting of his services.

In May 2006, a Salvadoran man entered the United States illegally to join his family. When he was arrested in 2018, he was placed in removal proceedings due to his immigration status. His wife sought help from Mr. Viladegut. Mr. Viladegut agreed to file an asylum application for the husband and did so. Thereafter, Mr. Viladegut replied to repeated texts and calls from the wife for updates on her husband's case with no substantive information, eventually telling her to call him only in an emergency. Frustrated with the lack of substantive responses, the wife eventually obtained successor counsel for her husband. Successor counsel requested the husband's file from Mr. Viladegut. He failed to respond. Successor counsel was only able to independently obtain a copy of the husband's file immediately prior to an upcoming hearing. The husband's asylum application was eventually denied, and he was deported.

Complaints were filed against Mr. Viladegut regarding all four matters. Bar Counsel forwarded each of those complaints to Mr. Viladegut and requested a response. Bar Counsel also sent numerous follow-up letters to Mr. Viladegut when he failed to respond. Mr. Viladegut either failed to respond to Bar Counsel's letters entirely or provided no substantive response.

In December 2019, the Attorney Grievance Commission, through Bar Counsel, filed a petition for disciplinary or remedial action against Mr. Viladegut, alleging violations of the Maryland Attorneys' Rules of Professional Conduct. Bar Counsel alleged violations of Rules 1.1 (competence), 1.2(a) (scope of representation), 1.3 (diligence), 1.4(a) and (b) (communication),

1.5(a) and (b) (fees), 1.15(a) and (d) (safekeeping property), 1.16(d) (declining or terminating representation), 3.3(a) (candor to the tribunal), 8.1(a) and (b) (bar admission and disciplinary matters), and 8.4(a), (c), and (d) (misconduct). Bar Counsel also alleged that Mr. Viladegut had violated former Maryland Rule 16-606.1 (attorney trust account recordkeeping), but later withdrew that charge.

An evidentiary hearing was held on October 19, 2020, which Mr. Viladegut did not attend. The hearing judge found that Mr. Viladegut had violated the provisions charged by Bar Counsel. The hearing judge also found certain aggravating factors (selfish motive, pattern of misconduct, multiple violations, bad faith obstruction, failure to acknowledge the wrongfulness of conduct, failure to make restitution, and vulnerable victims) and one mitigating factor (absence of prior disciplinary record).

Held: Disbarred.

The Court of Appeals concluded that Mr. Viladegut had committed the violations found by the hearing judge. It also agreed with the hearing judge's assessment of aggravating factors and mitigating factor. The Court concluded that, in light of the numerous aggravating factors, single mitigating factor, and Mr. Viladegut's conduct, the appropriate sanction was disbarment.

Attorney Grievance Commission of Maryland v. Samuel Sperling, Misc. Docket AG No. 6, September Term 2019, filed March 1, 2021. Opinion by Biran, J.

Watts, Getty, and Booth, JJ., dissent.

<https://mdcourts.gov/data/opinions/coa/2021/6a19ag.pdf>

ATTORNEY DISCIPLINE – COMPETENCE, DILIGENCE, AND COMMUNICATION WITH CLIENTS – CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE – SUSPENSION

ATTORNEY DISCIPLINE – AGGRAVATING FACTORS – PRIOR DISCIPLINARY OFFENSES

ATTORNEY DISCIPLINE – COLLATERAL ESTOPPEL AND RES JUDICATA – EFFECT OF GRANT OF PRIOR PETITION FOR REINSTATEMENT

ATTORNEY DISCIPLINE – MITIGATING FACTORS – TIMING OF GRANT OF PETITION FOR REINSTATEMENT

Facts:

Respondent Samuel Sperling operates a solo law practice in Baltimore County, Maryland, known as The Sperling Firm, LLC. Mr. Sperling’s prior disciplinary history consists of a 90-day suspension in 2018 as well as a public reprimand, also issued in 2018. Ebony Boyd and Darius Bailey filed Bar complaints against Mr. Sperling during the pendency of Mr. Sperling’s 90-day suspension. After Mr. Sperling filed a petition for reinstatement in August 2018, Bar Counsel objected to the petition, in part, on the ground that the Boyd/Bailey complaints warranted further investigation. On September 28, 2018, the Court of Appeals granted Mr. Sperling’s petition for reinstatement over Bar Counsel’s objections.

On June 11, 2019, the Attorney Grievance Commission of Maryland (“AGC”), acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action against Mr. Sperling, alleging that Mr. Sperling violated several of the Maryland Attorneys’ Rules of Professional Conduct in connection with his representation of Ms. Boyd and Mr. Bailey in 2016-18 as plaintiffs in the same motor vehicle tort case. Specifically, the AGC alleged that Mr. Sperling violated Rule 19-301.1 (competence); Rule 19-301.3 (diligence); Rules 19-301.4(a) and (b) (communication); Rule 19-301.6 (confidentiality of information); Rule 19-301.7 (conflict of interest); Rule 19-308.1(a) (knowing false statement of material fact in a disciplinary matter); and Rules 19-308.4(a), (c), and (d) (misconduct). Bar Counsel subsequently withdrew the allegation concerning Rule 19-301.6. After conducting an evidentiary hearing on January 22 and 23, 2020, the Honorable Jan M. Alexander of the Circuit Court for Baltimore County concluded that Mr.

Sperling violated Rule 19-301.1; Rule 19-301.3; Rules 19-301.4(a) and (b); Rule 19-308.1(a); and Rules 19-308.4(a), (c), and (d).

Mr. Sperling filed various exceptions to the hearing judge's findings of fact and conclusions of law. Bar Counsel excepted to the hearing judge's failure to identify certain aggravating factors.

Held: Suspended for 120 days.

Although the Court of Appeals sustained several of Mr. Sperling's exceptions, the Court held that that Mr. Sperling violated Rules 19-301.1, 19-301.3, 19-301.4(a)(2) and (b), and 19 308.4(a) and (d). These violations were based on four lapses: (1) After moving for and receiving a deferral of dismissal of Ms. Boyd's and Mr. Bailey's lawsuit against the at-fault driver in their automobile accident, Mr. Sperling failed to take further steps to locate a service address for the at-fault driver, leading to dismissal of the case without prejudice; (2) Mr. Sperling did not tell the clients that he had been unable to serve the at-fault driver and that, as a result, the case was dismissed; (3) Mr. Sperling failed to convey a settlement offer to the clients from the at-fault driver's insurer; and (4) Mr. Sperling failed to transmit Ms. Boyd's medical records to the insurer, which the insurer had asked to review for the purpose of evaluating settlement.

The Court took judicial notice of Mr. Sperling's prior public reprimand, notwithstanding that Bar Counsel had not made that reprimand part of the record before the hearing judge. In addition, the Court rejected Mr. Sperling's argument that his two prior disciplinary offenses could not be considered as aggravating circumstances in this case, because they involved different kinds of misconduct than alleged in this case, and because the sanctions were imposed after Mr. Sperling committed the acts that formed the basis for the violations in this case.

The Court also held that the 39-day period between the end of Mr. Sperling's prior suspension period and the date of his reinstatement to the Bar was not a mitigating factor.

The Court also held that its prior grant of Mr. Sperling's petition for reinstatement was not a judgment on the merits of the current allegations. Thus, the doctrines of collateral estoppel and res judicata do not preclude the imposition of a sanction in this case.

The Court held that the appropriate sanction for Mr. Sperling's misconduct is a suspension for 120 days. As a condition of reinstatement, Mr. Sperling will be required to employ a practice monitor approved by Bar Counsel for a period of one year.

Attorney Grievance Commission of Maryland v. Chauncey Bayarculus Johnson, Misc. Docket AG No. 63, September Term 2018, filed March 16, 2021. Opinion by Getty, J.

Watts, J., dissents.

<https://mdcourts.gov/data/opinions/coa/2021/63a18ag.pdf>

ATTORNEY DISCIPLINE – SANCTION – INDEFINITE SUSPENSION

Facts:

The Attorney Grievance Commission of Maryland, acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action (the “Petition”) with this Court alleging that Chauncey Bayarculus Johnson violated the Maryland Lawyers’ Rules of Professional Conduct, the Maryland Attorneys’ Rules of Professional Conduct, the Maryland Rules, and Maryland Code (1989, 2018 Repl. Vol.) Bus. Occ. & Prof. (“BOP”) § 10-306. The Petition concerned Mr. Johnson’s failure to deposit client funds into an attorney trust account, several instances of financial mismanagement after Mr. Johnson opened an attorney trust account, comingling of funds, failure to supervise a non-attorney employee’s handling of funds, failure to promptly remit funds due to clients, and misrepresentations to clients about their settlements.

The Petition alleged that Mr. Johnson violated the following provisions of the Maryland Lawyers’ Rules of Professional Conduct (“MLRPC”) and the Maryland Attorneys’ Rules of Professional Conduct (“MARPC”): 1.1 (Competence); 1.4 (Communication); 1.15 (Safekeeping Property); 5.3 (Responsibilities Regarding Non-Attorney Assistants); 5.5 (Unauthorized Practice of Law); and 8.4 (Misconduct). The Petition also alleged violations of the following Maryland Rules: 16-603 (Duty to Maintain Account); 16-604 (Trust Account—Required Deposits); 16-607 and 19-408 (Commingling of Funds); and 16-609 and 19-410 (Prohibited Transactions). Lastly, the Petition alleged that Mr. Johnson violated BOP § 10-306.

The Court of Appeals transmitted this matter to the Circuit Court for Prince George’s County and designated the Honorable Leo E. Green, Jr. to conduct an evidentiary hearing and make findings of fact and recommend conclusions of law. On May 22, 2019, the Court reassigned the case to be heard by the Honorable Wytonja L. Curry (the “hearing judge”) and the hearing took place on December 2, 3, 4, 5, 9, and 10, 2019.

The hearing judge found the following pertinent facts. Mr. Johnson immigrated to the United States from Liberia in 1991 and received numerous academic degrees, including his law degree in 2001. Mr. Johnson was admitted to the Maryland Bar in 2001. Mr. Johnson worked as a teacher until 2013, when he began practicing law part-time as a solo practitioner. While practicing law part-time, Mr. Johnson initially provided notice to his clients that he did not intend to hold their funds in an attorney trust account. After December 2014, however, Mr.

Johnson began practicing law full-time and failed to obtain his clients' informed consent before depositing their funds into his operating account, which was not an attorney trust account. Mr. Johnson did not open an IOLTA attorney trust account until October 2015.

Shortly thereafter, Mr. Johnson contends that his nephew and employee—Romeo Clarke—began misappropriating client funds from his attorney trust account by transferring those funds to the operating account. Mr. Johnson contends that Mr. Clarke then used a debit card associated with the operating account to steal the misappropriated client funds. Mr. Clarke's alleged misappropriation set off a wide-ranging pattern of misconduct, in which the hearing judge made findings for twenty-one different personal injury clients. Among those findings, the hearing judge determined that Mr. Johnson made misrepresentations to two clients about their settlements, failed to timely remit client settlement funds, commingled funds in his attorney trust account, and failed to maintain his trust obligations to clients. Because Mr. Clarke, Mr. Johnson, and his wife, Andrea Johnson, all used the debit card associated with the operating account, the hearing judge declined to make a finding that Mr. Johnson misappropriated his clients' funds. However, the hearing judge determined that Mr. Johnson knew, or should have known, that client funds were being misappropriated from his attorney trust account.

Held: Indefinite Suspension with the Right to Reapply After One Year

The Court of Appeals concluded that Mr. Johnson violated the following MARPC: 1.1 (Competence); 1.4 (Communication); 1.15 (Safekeeping Property); and 8.4 (Misconduct). The Court also concluded that Mr. Johnson violated Maryland Rules 16-603 (Duty to Maintain Account); 16-604 (Trust Account—Required Deposits); 19-408 (Commingling of Funds); and 19-410 (Prohibited Transactions).

The Court concluded that an indefinite suspension with the right to reapply after one year is the appropriate sanction for Mr. Johnson's numerous violations, providing that he attends a course emphasizing the responsible maintenance of an attorney trust account. While Mr. Johnson did not intentionally misappropriate client funds, the Court agreed with the hearing judge that Mr. Johnson knew, or should have known, that funds were being misappropriated from his attorney trust account. The Court accordingly determined that Mr. Johnson's mismanagement of his attorney trust account and subsequent misconduct demonstrated a significant failure to adhere to fundamental standards in maintaining his law practice.

The Court also determined that, while Mr. Johnson's intentionally dishonest behavior towards two clients could have resulted in disbarment, significant mitigation militated against that sanction. The hearing judge correctly determined that Mr. Johnson's selfish motive—lying to clients to prolong the time he had to remit their settlement funds—was an aggravating factor. The hearing judge also correctly determined that Mr. Johnson's lack of disciplinary history was a mitigating factor. However, in addition to the hearing judge's findings, the Court considered Mr. Johnson's inexperience, cooperation with Bar Counsel, willingness to take responsibility, and full restitution made to clients as mitigating factors. On the other hand, the Court agreed with

the hearing judge that Mr. Johnson's gastrointestinal stromal tumor ("GIST") did not mitigate his misconduct. In fashioning an appropriate sanction, the Court noted that Mr. Johnson exhibited an egregious pattern of misconduct. However, in light of numerous mitigating factors, one aggravating factor, and the hearing judge's declination to make a finding that Mr. Johnson intentionally misappropriated client funds, the Court concluded that an indefinite suspension with the right to reapply after one year sufficiently protects the public while serving to deter similar misconduct.

Attorney Grievance Commission of Maryland v. Celio Warren Young, Misc. Docket AG No. 23, September Term 2019, filed March 31, 2021. Opinion by Barbera, C.J.

<https://www.courts.state.md.us/data/opinions/coa/2021/23a19ag.pdf>

ATTORNEY MISCONDUCT – DISCIPLINE – DISBARMENT

Facts:

The Attorney Grievance Commission of Maryland, acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action with the Court of Appeals alleging that Celio Warren Young violated Maryland Lawyers’ Rules of Professional Conduct (“MLRPC”) 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a), (b) (Communication), 1.5(a) Fees, 1.8(a), (h) (Conflict of Interest; Current Clients), 1.15(a), (c) (Safekeeping Property), 1.16(a) (Declining or Terminating Representation), 5.5 (a), (b) (Unauthorized Practice of Law), 7.3(a) (Direct Contact with Prospective Clients), and 8.4(a), (b), (c), and (d) (Misconduct). The Petition further alleged violations of the Maryland Attorneys’ Rules of Professional Conduct (“MARPC”) 19-308.1(b) (Bar Admission and Disciplinary Matters) and 19-308.4(a), (c), and (d) (Misconduct).

The Court of Appeals designated the Honorable Lawrence V. Hill, Jr. of the Circuit Court for Prince George’s County to serve as the hearing judge. Young did not file an answer to the Petition or respond to Bar Counsel’s Request for Admission of Facts and Genuineness of Documents. As a result, Petitioner filed a Motion for Order of Default, which the circuit court granted on January 16, 2020. Young did not file a motion to vacate that order within thirty days, pursuant to Maryland Rule 2-613.

The hearing, originally scheduled for February 21, 2020, was continued until July 28, 2020 and conducted virtually owing to the COVID-19 pandemic. Young did not appear at the hearing or otherwise attempt to provide evidence or argument. At the July 28, 2020 hearing, the hearing judge formally deemed admitted and received into evidence Petitioner’s requests for admission of facts and genuineness of documents. On September 8, 2020, the hearing judge issued written findings of fact and proposed conclusions of law based on the averments in the Petition and the deemed admission of facts and genuineness of documents, pursuant to Maryland Rule 2-424(b).

The hearing judge concluded that Young had violated the aforementioned provisions of the Rules of Professional Conduct. These violations arose from Young’s unauthorized practice of law in Maryland, as he did not have a license to practice law in Maryland at all times relevant to the attorney grievance matter, intentional misrepresentations to his client, Mr. O’Pharrow, about the status of his case, failure to properly maintain client funds in an attorney trust account, failure to advise his client to seek independent legal advice before settling a legal malpractice claim against him, failure to use funds to negotiate lower medical expenses for his client as agreed

upon in a settlement agreement, and failure to respond to numerous lawful requests for information from Bar Counsel.

On November 5, 2020, Bar Counsel filed with the Court of Appeals a request to waive oral argument and decide the matter on the papers. The Court issued a Show Cause Order on November 6, 2020, directing Young to show cause by Monday, December 1, 2020 why oral argument should be held. Young filed a late response on December 4, 2020 that did not request oral argument. The Petitioner's request to waive oral argument and decide the case on the papers was granted. Neither party filed exceptions. Accordingly, the hearing judge's findings of fact were treated as conclusively established, pursuant to Maryland Rules 2-424(b), (d), and 19-741(b)(2)(A).

Held: Disbarred.

The Court of Appeals upheld the hearing judge's findings of fact and proposed conclusions of law. The Court agreed with Bar Counsel that disbarment was the appropriate sanction for Young's misconduct. Young led Mr. O'Pharrow to believe that he had a license to practice law in Maryland when he did not, demonstrated a lack of the basic attorney skills of competence, diligence, and communication during the course of the representation of his client, did not hold settlement funds in an attorney trust account, did not inform his client for months that an insurance claim had been denied, and, when he faced a potential malpractice claim from his client, did not advise the client to seek independent legal advice before entering into a settlement agreement with him. Furthermore, Young was unresponsive to numerous requests for information from Bar Counsel and failed to respond to the substance of the client's complaint.

The Court of Appeals found multiple aggravating factors and no mitigating factors. Young had substantial experience in the practice of law as a licensed D.C. attorney, yet he intentionally practiced law in Maryland without a license and made multiple misrepresentations to his client during the representation and subsequent settlement agreements with the client. Young also failed to participate in the attorney grievance proceeding or attend his hearing. Young attempted to explain some of his behavior in a late-filed Show Cause Order Response. However, the Court determined that because Young did not participate in the proceedings or respond in a timely manner, he had not established mitigation by a preponderance of the evidence. Additionally, the facts Young asked the Court to accept as mitigation took place after most of the misconduct occurred. Accordingly, the Court of Appeals concluded that the multiple infractions of the Rules of Professional Conduct along with the presence of several aggravating factors and no mitigating factors warranted disbarment.

United Bank v. Richard Buckingham, et al., Misc. No. 1, September Term 2020, filed March 9, 2021. Opinion by Getty, J.

<https://mdcourts.gov/data/opinions/coa/2021/1a20m.pdf>

COMMERCIAL LAW – MARYLAND UNIFORM FRAUDULENT CONVEYANCE ACT – CHANGE IN LIFE INSURANCE BENEFICIARY CONSTITUTES CONVEYANCE

ESTATES & TRUSTS – GUARDIANSHIP – CHANGE IN LIFE INSURANCE BENEFICIARY

Facts:

The United States District Court for the District of Maryland certified two questions to this Court. The first question before the Court is whether a change in life insurance beneficiary constituted a conveyance under the Maryland Uniform Fraudulent Conveyance Act (“MUFCA”), Maryland Code, Commercial Law Article (“CL”) §§ 15-201 to 15-214, particularly in light of § 16-111(d) of the Insurance Article (“IN”) of the Maryland Code. The second question is whether § 15-102 of the Estates and Trusts Article (“ET”) of the Maryland Code grants a guardian of property the authority to change the beneficiary of a life insurance policy of a ward.

The certified questions arose in the context of a decade-long dispute between the adult children of the Buckingham family (“the Buckinghams”) and United Bank (“the Bank”), a creditor of the family’s business. In response to the deteriorating health of John Buckingham, the family’s patriarch, one of the Buckingham children was appointed sole guardian of John’s property and co-guardian of John’s person. While the family business suffered significant financial decline, and in overlapping capacities as guardian of the property and directors of the family business, the Buckinghams formed various trusts and successfully diverted hundreds of thousands of dollars in life insurance proceeds away from the family business and to their personal use. In an elaborate web of procedural history, federal and state courts have both attempted to conclusively determine whether this diversion of life insurance proceeds was an appropriate use of familial resources to assist ailing parents, or instead an act undertaken by the Buckinghams to intentionally defraud the Bank.

CL § 15-201(c) provides, “[c]onveyance’ includes every payment of money, assignment, release, transfer, lease, mortgage, or pledge of tangible or intangible property, and also the creation of any lien or incumbrance.”

IN § 16-111(d) provides, “[a] change of beneficiary, assignment, or other transfer is valid except for transfer with actual intent to hinder, delay, or defraud creditors.”

ET § 15-102(t) provides, “[a] fiduciary may exercise options, rights and privileges contained in a life insurance policy, annuity, or endowment contract constituting property of the fiduciary

estate, including the right to obtain the cash surrender value, convert a policy to another type of policy, revoke any mode of settlement, and pay any part or all of the premiums on the policy or contract.”

ET § 13-203(c)(1) grants a court “all the powers over the property of the minor or disabled person that the person could exercise if not disabled or a minor.”

Held:

In response to the first certified question, this Court held:

A change in a life insurance beneficiary falls within the meaning of “conveyance” as defined in CL § 15-201(c) and therefore constitutes a conveyance under MUFCA. First engaging in a plain language analysis of CL § 15-201, this Court concluded that the term “includes” in CL § 15-201(c) was illustrative, not limiting. In reaching this conclusion, the Court examined CL § 15-201 in its entirety, noting that “means” appeared twice as a limiting term and “includes” appeared three times as a contrasting and, therefore, illustrative term. Also supporting this conclusion, the Court noted § 1-110 of the General Provisions Article of the Maryland Code, which provides, “[i]ncludes’

. . . means . . . by way of illustration and not by way of limitation” and analyzed the disjunctive nature of the language provided in CL § 15-201(c).

Next, the Court traced the legislative history of MUFCA, determining that the legislative intent of the fraudulent conveyance statute has not been altered since its original adoption in 1920, and the objective of the statute remained “to enhance and not impair the remedies of the creditor.” *Damazo v. Wahby*, 269 Md. 252, 256–57 (1973). In turning to IN § 16-111(d), this Court noted that the General Assembly expressly rejected the limitation on a creditor’s remedies in the event of a fraudulent transfer of life insurance beneficiary and for that express limitation to have meaningful effect, a remedy for defrauded creditors must be available elsewhere under Maryland law. The Court reasoned one such remedy is available under MUFCA. Additionally, the language of IN § 16-111(d) paralleled that of CL § 15-207 of MUFCA. Both discuss the “intent . . . to hinder, delay, or defraud . . . creditors.”

In response to the second certified question, this Court held:

A guardian of property does not have the authority to change a beneficiary of a life insurance policy of the ward under ET § 15-102. In reaching this conclusion, the Court provided a historical overview of the powers of guardians of property beginning with Maryland’s adoption of the English common law under the Maryland Declaration of Rights and concluding with modern guardianship law reforms. The Court determined that the common law purpose of guardianship—that is, to ensure the estate of the ward is preserved and not diminished—has been consistently referenced in caselaw and has remained unaltered after five decades of guardianship

law reform. Thus, the Court concluded that ET § 15-102(t) does not provide a guardian with the power to change a beneficiary designation on a life insurance policy of the ward, and under ET § 13-203(c)(1) a guardian may apply to the court to make such a change.

State of Maryland, et al. v. Valerie Rovin, No. 29, September Term 2020, filed March 2, 2021. Opinion by Watts, J.

McDonald, J., concurs in the judgment.

<https://www.mdcourts.gov/data/opinions/coa/2021/29a20.pdf>

SUMMARY JUDGMENT – PROSECUTORIAL IMMUNITY – JUDICIAL IMMUNITY – MARYLAND TORT CLAIMS ACT – STATE PERSONNEL IMMUNITY

Facts:

On the same day of the conclusion of a jury trial in which her daughter was found guilty of criminal charges, including drunk driving, Valerie Rovin (“Ms. Rovin”), Respondent, went to the workplace of Robert Rovin (“Mr. Rovin”), who had served as the foreperson of the jury. (Mr. Rovin is not related to Ms. Rovin.) Ms. Rovin and Mr. Rovin have offered differing accounts of their encounter that day. Ms. Rovin has alleged that she and Mr. Rovin had a conversation, whereas Mr. Rovin has alleged that Ms. Rovin verbally assaulted him and threatened to have someone cause him bodily harm. After Ms. Rovin left, Mr. Rovin called the Wicomico County Sheriff’s Office to report the encounter. Deputy Sheriff Matthew Cook responded to the call. The next day, Mr. Rovin filed a petition for a peace order in the District Court of Maryland, sitting in Wicomico County, regarding Ms. Rovin’s alleged conduct. The District Court denied the petition but advised that there is a statute making it a criminal offense to intimidate a juror and that Ms. Rovin may have committed a crime.

According to Deputy Cook, he consulted with the Office of the State’s Attorney for Wicomico County, was advised to apply for a statement of charges, and did so. A District Court Commissioner approved the application for a statement of charges and issued an arrest warrant for Ms. Rovin. Ms. Rovin was arrested, detained overnight, and released on bond with a condition of electronic monitoring. The State filed a criminal information, which the State’s Attorney for Wicomico County Matthew A. Maciarelo signed, charging Ms. Rovin with juror intimidation in violation of Md. Code Ann., Crim. Law (2002, 2012 Repl. Vol.) (“CR”) § 9-305(a) and second-degree assault. While Ms. Rovin’s criminal case was pending, the Sheriff of Wicomico County, Michael Lewis, made statements about the case on the Sheriff’s Office Facebook page and in the media. At a jury trial in Ms. Rovin’s case, in which the State was represented by Assistant State’s Attorney Richard Brueckner, the Circuit Court for Wicomico County granted a motion for judgment of acquittal as to both charges, upon finding that Ms. Rovin’s interaction with Mr. Rovin did not constitute juror intimidation under CR § 9-305(a) or assault.

Subsequently, in the circuit court, Ms. Rovin sued the State, Maciarelo, Assistant State’s Attorney Brueckner, Sheriff Lewis, and Deputy Cook (together, “Petitioners”) for false arrest, false imprisonment, malicious prosecution, violation of Article 24 of the Maryland Declaration

of Rights, false light invasion of privacy, defamation, and intentional infliction of emotional distress. The State and prosecutors filed a motion to dismiss or for summary judgment. The officers filed a separate motion to dismiss or for summary judgment. After Ms. Rovin filed a request for production of documents, the State and prosecutors filed a motion for a protective order. The circuit court granted the motion for a protective order, and granted summary judgment in favor of all of the Petitioners as to all of Ms. Rovin's claims. The circuit court concluded, among other things, that Maciarelo and Assistant State's Attorney Brueckner were entitled to prosecutorial immunity for all claims brought against them, which extended to the State as well, and that the prosecutors and the officers were entitled to qualified immunity and Sheriff Lewis had not made defamatory statements.

Ms. Rovin appealed, and the Court of Special Appeals vacated the circuit court's judgment and remanded the case to the circuit court. The Court of Special Appeals reasoned that the circuit court abused its discretion in precluding Ms. Rovin from engaging in discovery before granting summary judgment. The Court of Special Appeals held that the circuit court erred in granting summary judgment because there was a genuine dispute of material fact as to whether the reason that the defendants pursued criminal charges against Ms. Rovin was that the circumstances justified doing so or that the defendants had an ulterior or otherwise inappropriate motive for doing so. In the Court of Appeals, the State filed a petition for a writ of *certiorari* on behalf of itself, Maciarelo, Assistant State's Attorney Brueckner, Sheriff Lewis, and Deputy Cook, which the Court granted.

Held: Reversed in part and affirmed in part.

Upon careful consideration of the record and applicable case law, the Court of Appeals held that the circuit court was correct in concluding that there was no genuine dispute of material fact as to Maciarelo's and Assistant State's Attorney Brueckner's entitlement to absolute common law immunity in the form of prosecutorial immunity, and that the grant of summary judgment in favor of the prosecutors was warranted as a matter of law as to all of Ms. Rovin's claims. The Court concluded that, because Maciarelo and Assistant State's Attorney Brueckner were entitled to prosecutorial immunity, the State was not civilly liable for their actions in the case. The Court determined that, as such, the circuit court was correct in granting summary judgment in favor of the State, Maciarelo, and Assistant State's Attorney Brueckner as to any action in the complaint alleged to have been taken by the prosecutors.

The Court of Appeals held that the officers, Sheriff Lewis and Deputy Cook, were not entitled to absolute common law immunity in the form of prosecutorial immunity or judicial immunity. The Court declined to extend judicial immunity under the holding in *Keller-Bee v. State*, 448 Md. 300, 138 A.3d 1253 (2016), to the officers. The Court concluded, however, that State personnel statutory immunity under the Maryland Tort Claims Act ("the MTCA") barred Ms. Rovin's claims against the officers, as well as the prosecutors, in their individual capacities. The Court determined that, as such, the State did not have immunity under the MTCA, but whether the State was liable for any actions taken by Deputy Cook and Sheriff Lewis, who did not have

absolute common law immunity, was a matter to be resolved by further proceedings in the circuit court.

The Court of Appeals declined Petitioners' request that the Court apply the Supreme Court's holding in *Heien v. North Carolina*, 574 U.S. 54 (2014), to the officers' conduct in the case as Petitioners failed to raise an issue regarding the applicability of *Heien* in the circuit court and before the Court of Special Appeals. The Court also concluded that, because Petitioners did not raise, in the petition for a writ of *certiorari*, any issue, apart from the applicability of common law and statutory immunities, as to the claims for defamation and false light invasion of privacy, Petitioners' contention that the Court of Special Appeals erred in reversing the grant of summary judgment as to those claims on the ground that statements made by Sheriff Lewis were not false was not before Court. The Court stated that these issues may be considered by the circuit court on remand.

The Court of Appeals reversed the Court of Special Appeals's judgment vacating the grant of summary judgment in favor of Maciarelo and Assistant State's Attorney Brueckner and the State with respect to any action in the complaint alleged to have been taken by Maciarelo and Assistant State's Attorney Brueckner. The Court of Appeals also reversed the Court of Special Appeals's judgment vacating the grant of summary judgment in favor of Sheriff Lewis and Deputy Cook as the officers were entitled to State personnel immunity under the MTCA. But, the Court of Appeals affirmed the judgment of Court of Special Appeals vacating the grant of summary judgment in favor of the State as to any action in the complaint alleged to have been taken by the officers, Sheriff Lewis and Deputy Cook. As a result of these determinations, all of the claims against the State based on the alleged actions of Sheriff Lewis and Deputy Cook with respect to the claims of false arrest, false imprisonment, malicious prosecution, violation of Article 24 of the Maryland Declaration of Rights, defamation, false light invasion of privacy, and intentional infliction of emotional distress remained.

Keith Merryman and Fraternal Order of Police, Lodge 146 v. University of Baltimore, No. 33, September Term 2020, filed March 26, 2021. Opinion by Watts, J.

<https://www.mdcourts.gov/data/opinions/coa/2021/33a20.pdf>

LABOR AND EMPLOYMENT – MD. CODE ANN., EDUC. (1978, 2014 REPL. VOL.) (“ED”) §§ 13-201 TO 13-207 – GRIEVANCE PROCEDURE – ED § 13-201(c) – “GRIEVANCE” – “GRIEVABLE ISSUE”

Facts:

The Fraternal Order of Police, Lodge 146 (“the Union”), Petitioner, is the bargaining unit representative of the police officers who work at the University of Baltimore (“the University”), Respondent. Keith Merryman, Petitioner, is a police officer employed by the University and the President of the Union. In January 2018, the University implemented a work schedule change for police officers, moving from five eight-hour shifts to four ten-hour shifts per week. The schedule change did not affect the total number of hours police officers were required to work a week. According to Merryman, because, as a result of the schedule change, an officer’s workday now consisted of ten hours, each holiday should also “be credited at the same rate of 10 hours.” In other words, the Union sought to have a holiday defined as consisting of ten hours, seeking a total of 110 hours rather than eighty-eight hours of holiday leave per year, essentially requesting twenty-two additional holiday leave hours per year for all officers of the Union.

Merryman, on behalf of himself and all other members of the Union, initiated a Step 1 Grievance through the statutory grievance procedure, which had been incorporated into a memorandum of understanding between the parties. The University concluded that the complaint pertained to fringe benefits and staffing and was not a grievable issue under the memorandum of understanding and Md. Code Ann., Educ. (1978, 2014 Repl. Vol.) (“ED”) § 13-201(c), which sets forth the definition of a grievance and identifies certain matters as not grievable issues. Merryman next submitted a Step 2 Grievance. The University again concluded that, pursuant to the memorandum of understanding and ED § 13-201(c), holiday leave is a fringe benefit, and a dispute involving holiday leave is not a grievable issue. Additionally, the University determined that it could not increase the amount of holiday leave authorized by the University System of Maryland and the Board of Regents.

The Union filed a Step 3 Grievance with the Office of Administrative Hearings, requesting a hearing before an administrative law judge (“ALJ”). The University moved to dismiss the grievance on the ground that a complaint about holiday leave was not grievable because it was a complaint pertaining to fringe benefits. Following a hearing on the motion to dismiss, the ALJ denied the motion, concluding that the issue raised by the Union was one of contract interpretation and thus grievable. Thereafter, the ALJ conducted an evidentiary hearing on the merits, and issued a written decision ruling in favor of the Union. Among other things, the ALJ

concluded that, as a result of the schedule change, the University effectively changed the definition of a workday from eight hours to ten hours and that the memorandum of understanding should be interpreted to provide officers with ten hours of paid leave for each holiday (rather than eight hours). The ALJ ordered the parties to identify the officers affected by the schedule change (officers who had used non-holiday leave hours for a holiday) and to credit those officers with the non-holiday hours used.

The University sought judicial review in the Circuit Court for Baltimore City. After a hearing on the matter, the circuit court issued an order affirming in part and reversing in part the ALJ's decision. The circuit court affirmed the ALJ's conclusion that the University changed the definition of a workday to ten hours and that the change affected the allocation of holiday leave. The circuit court reversed, however, as to all other conclusions made by the ALJ. The circuit court found that, pursuant to ED § 12-105, neither the circuit court nor the ALJ could issue an order that had the effect of increasing the budget of the University System of Maryland.

The Union appealed to the Court of Special Appeals, which, in a reported opinion, held that the ALJ lacked jurisdiction over the complaint because the dispute was not a grievable issue under the statutory grievance procedure contained in the memorandum of understanding. *See Merryman v. Univ. of Baltimore*, 246 Md. App. 544, 560, 231 A.3d 498, 508 (2020). The Court of Special Appeals concluded that the parties could not, by agreement, confer jurisdiction upon the ALJ by expanding the scope of grievances covered by the statutory procedures incorporated into the memorandum of understanding. *See id.* at 559, 231 A.3d at 507. Because it held that the ALJ lacked jurisdiction, the Court of Special Appeals did not address the merits of the ALJ's decision or the propriety of the remedy ordered. *See id.* at 560, 231 A.3d at 508. The Court of Special Appeals vacated the circuit court's judgment and remanded the case to that court with instruction to remand the case to the ALJ for the ALJ to dismiss the grievance proceeding. *See id.* at 561, 231 A.3d at 508. Thereafter, the Union filed a petition for a writ of *certiorari*, which the Court of Appeals granted. *See Merryman v. Univ. of Baltimore*, 471 Md. 101, 240 A.3d 852 (2020).

Held: Affirmed.

The Court of Appeals held that, under the memorandum of understanding, which incorporated the grievance procedures set forth in ED §§ 13-201 to 13-207, including the definition of a "grievance" set forth in ED § 13-201(c), the complaint brought by the Union concerning holiday leave did not constitute a grievable issue because it was a dispute that "pertain[ed] to the general level of . . . fringe benefits, or to other broad areas of financial management and staffing[.]" The Court concluded that holiday leave is a fringe benefit and that the complaint concerning the number of hours of holiday leave to which officers are entitled—which essentially requested that each officer receive an additional twenty-two hours of holiday leave per year—was a complaint pertaining to the general level of fringe benefits provided to officers and as such was not a grievable issue.

The Court of Appeals noted that the issues in this case were not issues of jurisdiction in a traditional sense. At issue was whether the dispute about holiday leave constituted a grievable issue under the memorandum of understanding and the statutory grievance procedures, which were incorporated into the memorandum of understanding. The Court stated that, although the first question raised in the petition for a writ of *certiorari* was phrased in terms of whether the Office of Administration Hearings had jurisdiction over the complaint and the Court of Special Appeals held that the ALJ lacked jurisdiction over the dispute, the question was really whether the complaint about holiday leave constituted a grievable issue. The Court observed that ED § 13-203(d) provides an ALJ with jurisdiction to hear a grievance at Step Three. The power or authority, *i.e.*, jurisdiction, of an ALJ to hear a grievance is different from the question of whether a dispute involves a grievable issue under ED § 13-201(c).

The Court of Appeals stated that, in addition to being expressly excluded as a grievable issue, the dispute about holiday leave raised an issue as to whether it was a complaint concerning the “interpretation or application of University rules or departmental procedures over which the University management has control.” ED § 13-201(c). The Court of Appeals agreed with the Court of Special Appeals that the issue of whether the Board of Regents or the University determines the number of holiday leave hours did not appear to have been decided by the ALJ at Step Three of the grievance procedure. In the absence of a factual finding on the matter, like the Court of Special Appeals, the Court of Appeals did not explicitly conclude that an increase in holiday leave for officers was a matter beyond the control of University management.

Clear Channel Outdoor, Inc. v. Director, Department of Finance of Baltimore City, No. 9, September Term 2020, filed March 15, 2021. Opinion by McDonald, J.

Getty, J., dissents.

<https://mdcourts.gov/data/opinions/coa/2021/9a20.pdf>

TAXATION – FREEDOM OF SPEECH – BILLBOARDS – ADVERTISING

Facts:

In June 2013, Baltimore City enacted an excise tax “on the privilege of exhibiting” billboards in the City. Ordinance 13-139 (June 20, 2013), *codified as amended at* Baltimore City Code, Article 28 (Taxes), §29-1 et seq. (2020) (“the Ordinance”). The Ordinance applies only to billboards advertising a business or other activity not on the premises – *i.e.* off-premises billboards. According to the City, the sole purpose of the Ordinance is to generate revenue.

The Ordinance affects only four entities, including Clear Channel Outdoor, Inc. (“Clear Channel”), which shoulders approximately 90% of the Ordinance’s tax burden because it owns the vast majority of the affected billboards. Clear Channel primarily displays the content of paying third parties on its billboards but also occasionally displays its own content.

Clear Channel sought to have the Ordinance struck down as unconstitutionally regulating commercial speech in violation of the First and Fourteenth Amendments of the United States Constitution. Clear Channel’s initial suit in federal court failed for lack of jurisdiction, after which it paid taxes due and requested a refund from the City – reiterating its federal arguments and invoking Article 40 of the Maryland Declaration of Rights. The City denied the refund request, asserting that the Ordinance was a revenue-raising measure that would survive rational basis review.

Clear Channel pursued an administrative appeal of the City’s denial in the Maryland Tax Court, invoking the same federal and state constitutional provisions. More specifically, Clear Channel argued that the Ordinance targets a limited number of speakers, thereby chilling speech, and that its burden on speech is not narrowly tailored to and outweighs any governmental interest that the Ordinance advances.

The Tax Court rejected Clear Channel’s arguments. It first noted a “strong presumption in favor of duly enacted taxation schemes” like the Ordinance. The Tax Court then concluded that the Ordinance was “a tax on the privilege of continuing in business, not on exercising free speech” and thus that Clear Channel’s role as a billboard operator was insufficiently communicative for the First Amendment to come “into play.” It also concluded that the Ordinance did not target a limited number of speakers because the criteria used to determine the amount of tax – size and

type of billboard – were unrelated to the extent of circulation, it applied to all off-premises billboards, and there was a rational basis for classifying large and immobile billboards separately from other signs for tax purposes.

Clear Channel sought judicial review of the Tax Court’s decision in both the Circuit Court for Baltimore City and the Court of Special Appeals, both of which affirmed the Tax Court and reiterated much of its analysis.

Held: Affirmed

The Court of Appeals held that the Ordinance does not violate the First Amendment to the federal Constitution or Article 40 of the Maryland Declaration of Rights and that the Tax Court properly upheld the City’s denial of Clear Channel’s refund request.

As a threshold matter, the Court of Appeals noted that there was no dispute that the Ordinance was within the taxing power of the City, that it had been properly enacted, and that a strong presumption of validity was accorded to such enactments.

The Court of Appeals explained that the proper framework to analyze the validity of the Ordinance was *Leathers v. Medlock*, 499 U.S. 439, 447 (1991), which subjects differential taxation to heightened scrutiny “when it threatens to suppress the expression of particular ideas of viewpoints,” by (1) singling out the press, (2) targeting a small group of speakers, or (3) discriminating on the basis of the content of taxpayer speech.

The Court of Appeals held that none of the three *Leathers* criteria applied. First, the Ordinance did not single out the press because there was no indication the City taxed billboard operators to interfere with First Amendment activities, nor was it structured to raise suspicions that it was intended to do so. Unlike other taxes struck down under this criterion, the Ordinance did not curtail circulation or function as a penalty on only the largest members of the press. Second, the Ordinance did not target a small group of speakers because it applied to all off-premises billboards in the City for which the operator charges customers for displaying the customer’s advertising, not distinguishing among factors like the duration or extent of speech or its subject matter. Third, the Ordinance did not discriminate based on content because the tax did not depend on what was displayed on a billboard and, contrary to Clear Channel’s argument, a distinction between on-premises signs and off-premises signs in a regulatory or tax law does not discriminate on the basis of content.

Because none of the *Leathers* criteria applied, the Court of Appeals held that the Ordinance was not subject to heightened scrutiny. Additionally, the Court of Appeals held that the Ordinance clearly survives the application of a rational basis test and, accordingly, was constitutional.

Bruce Uthus v. Valley Mill Camp Inc., No. 7, September Term 2020, filed March 4, 2021. Opinion by Hotten, J.

<https://www.courts.state.md.us/data/opinions/coa/2021/7a20.pdf>

REAL PROPERTY – LANDLORD-TENANT – LICENSEES

COURTS AND JUDICIAL PROCEEDINGS – JURISDICTION – DISTRICT COURT – WRONGFUL DETAINER.

Facts:

Respondent, Valley Mill Camp, Inc., terminated the employment of Petitioner, Bruce Uthus, following the escalation of disagreements regarding the family owned business, and asked him to vacate the campground residence where he had been living for approximately twenty years. When Uthus refused to leave, Valley Mill filed a trespass action against him in the Circuit Court for Montgomery County. In response to a motion for partial summary judgment advanced by Valley Mill, the court entered judgment in its favor.

Uthus timely appealed to the Court of Special Appeals, arguing that the grant of summary judgment on the trespass claim was erroneous for lack of subject matter jurisdiction, and alternatively, that no trespass occurred because Uthus was in physical possession. The Court of Special Appeals affirmed. First, the Court of Special Appeals held that the circuit court properly exercised jurisdiction over the trespass claim because Uthus was a licensee of Valley Mill, not a tenant. According to the Court of Special Appeals, the failure of Uthus to pay rent reflected that his status was a licensee of Valley Mill. Second, the Court of Special Appeals held that there was a valid trespass claim because the elements of a trespass action—intentional interference with the possessory interest of another—had been established. Thereafter, Uthus timely appealed to the Court of Appeals, which granted *certiorari* to resolve the following question: “Can a person claiming the right to possession against a person in actual peaceable possession of real property bring an action in circuit court for common law trespass to recover possession of the property?”

Held: Affirmed.

The Court held that Valley Mill had the choice to pursue a trespass action in circuit court. Pursuant to Maryland Code, Courts & Judicial Proceedings Article § 4-401(4), “the District Court has exclusive original civil jurisdiction in . . . [a]n action involving landlord and tenant, [] or wrongful detainer, regardless of the amount involved[.]” Relying on *Delauter v. Shafer*, 374 Md. 317, 324, 822 A.2d 423, 427 (2003), the Court determined that the lack of exclusive possession and not paying rent indicated that Uthus was a licensee of Valley Mill, not a tenant.

The Court then determined that the wrongful detainer statute provides for a permissive action because it contains the operative term “may.” Maryland Code, Real Property Article § 14-132(d) (a “person claiming possession *may* make complaint in writing to the District Court of the county in which the property is located.”) (emphasis added). Finally, the Court determined that Valley Mill had established the elements required for a common law trespass action in circuit court. Because Uthus was not a tenant of Valley Mill, Valley Mill was not required to pursue an action for wrongful detainer, and the elements for a trespass action had been met, the Court held that the circuit court properly had jurisdiction to adjudicate Valley Mill’s trespass claim against Uthus in circuit court.

In re: Anthony D. Walker and Denicia P. Walker, Misc. No. 8, September Term 2020, filed March 30, 2021. Opinion by Hotten, J.

<https://www.courts.state.md.us/data/opinions/coa/2021/8a20m.pdf>

CERTIFIED QUESTION OF LAW – STAUTORY INTERPRETATION – LIENS

Facts:

Appellee and debtor, Denicia P. Walker, purchased a condominium unit at the Long Reach Knolls Condominium, Inc. Appellant serves as the governing body of the condominium unit owners. Appellant’s bylaws require unit owners to pay monthly “assessments” or fees, which Appellant uses to cover common expenses, including insurance, landscaping, property management, and improvement of common areas.

Walker defaulted multiple times on her monthly assessments, and Appellant recorded eight liens against Walker’s unit between December 31, 2002, and April 4, 2014. The liens secured unpaid assessments, interest, and attorney’s fees. Appellant also obtained three personal judgments against Walker during this time span. On October 6, 2015, Appellant notified Walker of its intent to record a ninth lien against her unit. The lien notice stated that it would secure \$4,702.80 in unpaid damages owed as of October 6, 2015, “plus all sums becoming due thereafter[.]” Appellant recorded its ninth lien on December 22, 2015 and obtained a fourth personal judgment against Walker in the District Court of Maryland for Howard County on August 9, 2016. The court entered a judgment of \$13,933.99 against Walker, which included unpaid assessments from January 1, 2014 through December 31, 2016.

Walker filed for Chapter 13 bankruptcy relief in the United States Bankruptcy Court for the District of Maryland (“the Bankruptcy Court”). Appellant filed proof of a secured claim for \$42,298.89 on October 31, 2018. This amount partly consisted of assessments, interest, and other costs that did not accrue until after Appellant recorded its ninth lien. Walker objected to Appellant’s proof of secured claim on August 5, 2019. Walker asserted that the Maryland Contract Lien Act (“MCLA”) does not permit a lien to secure assessments, costs of collection, and attorney’s fees that accrue following the recordation of the lien. Appellant filed a response on August 29, 2019. The parties agreed to petition the Bankruptcy Court to certify the following question to this Court:

Can a community association’s lien perfected under the [MCLA], Md. Code Ann., Real Property (“Real Prop.”) §§ 14-201[–206] secure unpaid damages, costs of collection, late charges, and attorney’s fees arising under the association’s governing documents that accrue subsequent to the recordation of the lien?

Held: Certified question from the United States Bankruptcy Court for the District of Maryland answered in the negative.

The Court held that that the MCLA, Real Prop. §§ 14-201–206 did not permit a lien that secures unpaid damages, costs, charges, and fees which accrue after the recordation of the lien, otherwise known as a continuing lien. The plain language of Real Prop. § 14-202 limited sums that can be secured by the lien to unpaid damages, costs, and fees due under contract. A continuing lien would sweep future damages, costs and fees that have yet, and may never materialize into the lien’s scope. Such an outcome was not supported by the plain text of the statute.

A continuing lien appeared similarly at odds with the legislative purpose of the MCLA because it deprived debtors of the opportunity to challenge the accrual of a finite amount of debt in a proceeding before the condominium association records the lien. In *Select Portfolio Servicing, Inc. v. Saddlebrook West Utility Company, LLC*, 455 Md. 313, 167 A.3d 606 (2017), this Court dismissed the creditor’s reading of the MCLA that it permitted “creation of a lien simply by virtue of the existence of a contract[,]” in part, because “[n]othing in the *legislative history* of the statute supports such a reading.” *Id.* at 335, 336, 167 A.3d at 619 (emphasis added and footnote omitted). Similar to *Select Portfolio*, nothing in the legislative history of the MCLA demonstrated the intent of the General Assembly to permit continuing liens. The General Assembly amended the MCLA to better protect the due process rights of the debtor. The legislative history demonstrated that the General Assembly did not contemplate or evaluate continuing liens in amending the MCLA. The Court concluded that when a continuing lien “is not only inconsistent with the structure and language of the [MCLA], but it is also at odds with the legislative history[,]” it is not permitted. *Id.* at 335, 167 A.3d at 619.

The plain text, legislative history, and case law relevant to the MCLA collectively demonstrated the intent of the General Assembly to prohibit continuing liens. The Court accordingly answered the certified question in the negative: Real Prop. §§ 14-201–206 does not secure unpaid damages, costs of collection, late charges, and attorney’s fees that accrue subsequent to the recordation of the lien.

Lolita D. Fowlkes v. Shabbir Ahmed Choudhry, No. 6, September Term 2020, filed March 26, 2021. Opinion by Battaglia, J.

<https://mdcourts.gov/data/opinions/coa/2021/6a20.pdf>

WRONGFUL DEATH – DAMAGES – PROOF OF PECUNIARY LOSS

Facts:

In March of 2013, Ms. Yenita Owens died from complications related to an infection, after receiving treatment from various medical providers, including Dr. Shabbir Choudhry, Respondent. Her mother, Ms. Lolita Fowlkes, Petitioner, sued the medical providers, alleging that their negligence caused her daughter’s death. Under Maryland’s Wrongful Death statute, Sections 3-901 to 3-904 of the Courts and Judicial Proceedings Article, Ms. Fowlkes sought non-economic damages, as well as economic damages related to household services, which Ms. Fowlkes alleged that she had lost as a result of her daughter’s death.

At trial, in the Circuit Court for Baltimore City, Ms. Fowlkes testified that she and her daughter had lived together throughout her daughter’s life and that the two had been very close. Ms. Fowlkes also stated that her daughter had performed household tasks for as much as two hours a day and that her daughter had periodically driven Ms. Fowlkes to shop for groceries. Her testimony was the only evidence that Ms. Fowlkes presented in support of her economic damages claim.

Dr. Choudhry moved for judgment on the issue of the economic damages claim at the close of Ms. Fowlkes’s case and at the close of the evidence. The trial court denied both motions. The jury returned a verdict in favor of Ms. Fowlkes and awarded her \$500,000 in non-economic damages and \$500,000 in economic damages for the loss of her daughter’s household services.

On appeal to the Court of Special Appeals, Dr. Choudhry, the only medical provider found liable, who appealed solely on the issue of economic damages, argued that the trial court should have granted his motions for judgment, because Ms. Fowlkes had failed to present evidence sufficient to allow a jury to render a non-speculative damage award. Ms. Fowlkes obviously disagreed. The Court of Special Appeals, in a published opinion, *Choudhry v. Fowlkes*, 243 Md. App. 75 (2019), agreed with Dr. Choudhry, holding that in a wrongful death action, a parent could recover economic damages for loss of household services, but that Ms. Fowlkes had not produced sufficient evidence to have the claim submitted to a jury.

The intermediate appellate court articulated a three-part “test” to evaluate claims for economic damages arising from the loss of household services performed for a parent by an adult child prior to her death. According to the intermediate appellate court, in order to recover economic damages for lost household services, a beneficiary must present evidence that (1) the household services performed had a market value; (2) the decedent had been regularly providing the

services in the past; and (3) the duration during which the decedent, had she lived, would have continued to provide the services. *Id.* at 86. The court reversed the economic damage award and held that Ms. Fowlkes had failed to satisfy the third element of its test.

Held: Affirmed.

The Court of Appeals affirmed the judgment of the Court of Special Appeals.

The Court held that in order to survive a directed verdict on the issue of economic damages for household services, which had been provided by an adult child, a parent must present evidence of her reasonable expectation to continued receipt of the services, which must be legally cognizable. A parent must also present evidence that the decedent intended to continue providing the services. An adult child's intent may be proven by legal obligation but may also be satisfied by evidence of a written or verbal promise to provide services or by evidence of actions taken by the decedent from which their intent may be inferred. The Court concluded that Ms. Fowlkes had failed to present sufficient evidence that her daughter intended to continue providing household services in the future and affirmed the Court of Special Appeals' reversal of the economic damage award.

COURT OF SPECIAL APPEALS

Roberto Facey, Sr. v. Esther Facey, No. 1183, September Term 2019, filed February 26, 2021. Opinion by Leahy, J.

<https://mdcourts.gov/data/opinions/cosa/2021/1183s19.pdf>

ENROLLED JUDGMENT – REVISORY POWER – OPENING OR VACATING JUDGMENT
– GROUNDS – FRAUD

ENROLLED JUDGMENT – REVISORY POWER – OPENING OR VACATING JUDGMENT
– GROUNDS – MISTAKE

Facts:

In 2006, attendant to the break-up of the couple’s nearly forty-year marriage, appellant Roberto Facey, Sr. executed a “Promissory and Confessed Judgment Note” in favor of appellee Esther Facey in the amount of \$75,000 (“2006 Note”). In 2008 and 2009, before any payments were made on the 2006 Note, Esther suffered a series of debilitating strokes.

Soralla Facey de Otts, the couple’s daughter, was responsible for taking care of her mother and, in May 2011, filed a “Complaint for Confession of Judgment” in the Circuit Court for Prince George’s County based on the 2006 Note. Soralla’s authority to file this action resided in a power of attorney purportedly executed by Esther in 2008 (“Power of Attorney”). In July 2011, the court issued a judgment against Roberto for \$75,000 (“2011 Judgment”). The court denied Roberto’s motion to vacate that judgment based on allegations of duress, undue influence, misrepresentation, and the statute of limitations.

Over seven years later, in October 2018, Roberto challenged the 2011 Judgment again in a second motion and claimed that the Power of Attorney relied upon by Soralla to bring the 2011 lawsuit was fraudulent. Specifically, he alleged that the Power of Attorney had been backdated to appear as though it was executed prior to Esther’s disability and that it did not contain Esther’s authentic signature.

The circuit court held an evidentiary hearing on Roberto’s motion on January 24, 2019. Several months later, the court issued an opinion and order denying the motion after finding that, while sufficient evidence was adduced establishing that the Power of Attorney was both fraudulently

procured and a forgery, the forgery did not constitute extrinsic fraud triggering the court's revisory power under Maryland Rule 2-535(b). Roberto timely noted an appeal.

Held: Affirmed.

The Court of Special Appeals reached two holdings. First, the Court held that the circuit court did not err in determining that the fraud in this case was intrinsic and not extrinsic for three reasons: 1) it did not prevent an adversarial trial; 2) it pertained to facts contained within the original motions hearing; and 3) it did not impact the jurisdiction of the court. In reaching this holding, the Court reviewed relevant precedent and provided a summary of precepts extrapolated from noteworthy cases to differentiate extrinsic from intrinsic fraud.

Second, the Court held that there was no jurisdictional mistake in this case. The circuit court had personal jurisdiction over Roberto, who is a Maryland resident and was properly served with process, and subject matter jurisdiction over the entry of the Confession of Judgment.

Marlon Koushall v. State of Maryland, No. 2031, September Term 2019, filed February 26, 2021. Opinion by Fader, C.J.

<https://mdcourts.gov/data/opinions/cosa/2021/2031s19.pdf>

MUNICIPAL CORPORATIONS – POLICE – CRIMINAL RESPONSIBILITY

PUBLIC EMPLOYMENT – CRIMINAL RESPONSIBILITY – OFFENSES

CRIMINAL LAW – NATURE AND ELEMENTS OF CRIME – MERGER OF OFFENSES

Facts:

Henrietta Middleton, an off-duty police sergeant with the Baltimore City Police Department (the “Department”), was with a group of companions in a crowded area in Baltimore City when one member of her group got into an altercation with another woman. An officer was attempting to separate the two women when Mr. Koushall, who was working as a sergeant with the Department at the time, arrived at the scene. Sgt. Middleton, who had been shepherding the rest of her party away from the altercation, turned and walked back toward it, spreading her arms out to her side as she did so. Mr. Koushall approached the altercation as well, shouting “back up” at Sgt. Middleton as she walked forward. Before Sgt. Middleton could respond to the command, Mr. Koushall pushed Sgt. Middleton back and then struck her in the face.

The State brought criminal charges against Mr. Koushall in the Circuit Court for Baltimore City, alleging he had committed second-degree assault and misconduct in office. Mr. Koushall asserted law-enforcement justification as a defense to the assault charge. At the conclusion of a bench trial, the trial court found Mr. Koushall guilty of both charges. The court sentenced Mr. Koushall to three years’ imprisonment, all suspended except time served for the assault charge, and six years, all suspended but time served for the misconduct charge. On appeal, Mr. Koushall argued that there was insufficient evidence to sustain his convictions and that the trial court erred by not merging his convictions for sentencing purposes.

Held: Affirmed.

First, the Court discussed whether the evidence presented at trial was sufficient to sustain the convictions. Regarding the conviction for second-degree assault, the Court concluded that there was sufficient evidence in the record for a court to find that Mr. Koushall’s conduct was objectively unreasonable and therefore unjustified. Regarding the conviction for misconduct in office, the Court determined that the assault satisfied the “corrupt behavior” element of misconduct in office, and that the other elements of the offense were also met. Accordingly, the Court affirmed both convictions.

Second, the Court concluded that the offenses of second-degree assault and misconduct in office did not merge for the purposes of sentencing. The Court concluded that the two offenses do not merge under the required evidence test because each crime contains an element that the other does not. Mr. Koushall argued that when a conviction for misconduct in office is based on an act of malfeasance—here, second-degree assault—the act of malfeasance then serves as the corrupt behavior element of misconduct in office and, therefore, becomes a lesser-included offense of misconduct in office. The Court rejected that argument because malfeasance is neither a modality of misconduct in office nor a separate offense. Instead, malfeasance is a type of behavior that can be used to prove the “corrupt behavior” element of misconduct in office. *See Sewell v. State*, 239 Md. App 571, 601 (2018). The Court accordingly held the trial court correctly imposed separate sentences for second-degree assault and misconduct in office.

Freddy Freeman v. State of Maryland, No. 2150, September Term 2019, filed January 28, 2021. Opinion by Moylan, J.

<https://mdcourts.gov/data/opinions/cosa/2021/2150s19.pdf>

DISTRIBUTION OF NARCOTICS – SUPPRESSION HEARING – PROBABLE CAUSE – TOTALITY OF THE CIRCUMSTANCES

Facts:

On the night of April 16, 2019, Officers Neal Bumgarner and Michael Schmidt of the Montgomery County Police Special Assignment Team were part of a surveillance team assigned to observe Freddy Freeman in the Cordell Avenue corridor of Bethesda, Maryland. Significantly, Officer Bumgarner and Officer Schmidt were experienced in the area of narcotics transactions having been members of the Montgomery County Police Department for 12 and 14 years respectively. The pertinent observations made by the officers on the night in question included: that the Cordell Avenue corridor is a high crime area known for the distribution of drugs, that Mr. Freeman went back and forth between two bars/restaurants in the area for approximately two and one-half hours without ever eating, drinking, or having meaningful social contact, that Mr. Freeman made frequent, short trips to the bathroom, that multiple people came up to Mr. Freeman throughout the night and conducted exchanges that lasted only a few seconds and sometimes consisted of suspected hand-to-hand transactions, and that a suspected buyer was stopped by police and cocaine was recovered on his person. After the apprehension of the suspected buyer, Mr. Freeman was immediately arrested. The search incident to arrest produced \$793 in cash and 27 small glassine baggies of cocaine, matching in size and shape the baggie that had been recovered from the suspected buyer.

Freddy Freeman was charged with the possession of cocaine with the intent to distribute and the distribution of cocaine. A pre-trial suppression hearing was held before the Honorable Judge Harry C. Storm in which Mr. Freeman argued that his warrantless arrest was not supported by probable cause and was, therefore, unconstitutional. Mr. Freeman argued that any evidence seized incident to that arrest must therefore be suppressed. Judge Storm denied the motion to suppress and Mr. Freeman was convicted of both counts in a bench trial before Judge James A. Bonifant in the Circuit Court for Montgomery County. Mr. Freeman timely appealed those convictions and the Court of Special Appeals affirmed.

Held: Affirmed.

The Court of Special Appeals held that the determination of whether or not probable cause existed to arrest a person suspected of possessing and distributing narcotics must be based on a totality of the circumstances and that the experience/training of the officers witnesses is vitally

important to that determination. The Court agreed with Judge Storm's finding that the arresting officers had probable cause to support the warrantless arrest of Freddy Freeman. Judge Storm, and the Court of Special appeals, made this determination after a comprehensive review of Mr. Freeman's behavior on the night in question, the place and time where the behavior occurred, and, importantly, the training and experience of the arresting officers. The Court found that Judge Storm acted within his discretion in finding the testimony of Officers Bumgarner and Schmidt credible.

The narcotics recovered from Mr. Freeman were seized incident to his arrest. Since the arrest was supported by probable cause, the pre-trial motion to suppress was properly denied. Convictions affirmed.

James Miller v. State of Maryland, No. 2097, September Term 2019, filed February 26, 2021. Opinion by Fader, C.J.

<https://mdcourts.gov/data/opinions/cosa/2021/2097s19.pdf>

SENTENCING AND PUNISHMENT – PROBATION AND RELATED DISPOSITIONS – REVOCATION

Facts:

In 2016, James Miller pleaded guilty to constructive criminal contempt in the Circuit Court for Wicomico County for failing to pay child support. The court sentenced him to a split sentence that included a period of supervised probation, the terms of which required Mr. Miller to make full and timely payments on the support obligation owed or, if he were not able to do that, to submit ten different verifiable job applications a week to his probation officer. Mr. Miller was also required to keep the probation officer updated and informed of his current address, work status, and the name and address of any employer.

In March 2018, the State filed a Petition for Violation of Probation, alleging in pertinent part that Mr. Miller had violated his probation by failing to make a single child support payment and by failing to submit copies of job applications to the probation officer. Mr. Miller argued that the failure to submit the job applications was a “technical violation” under the Justice Reinvestment Act (“JRA”), which would limit the amount of jail time the court could impose for a violation of probation. The State argued that the requirement to submit job applications was the equivalent of required contact with the probation officer, and, therefore, that the failure to comply constituted absconding, a non-technical violation. The sentencing court agreed with the State and sentenced Mr. Miller to serve four years of backup time.

Held: Sentence vacated and case remanded.

First, the Court reviewed the history of JRA, which established a category of “technical violations” and provided limits on the penalties courts could impose for such violations. Referencing its previous decision in *Brendoff v. State*, 242 Md. App. 90, 122 (2019), the Court discussed the meaning of absconding, noting that to “abscond,” a probationer must “willfully evade his or her supervising authority.” Drawing on the decision in *Brendoff*, the Court concluded that evidence of willful evasion required more than a lack of compliance with a term of probation. Instead, willful evasion requires a showing that the probationer had intentionally fled or failed to report to a supervisory officer to avoid detection and evade the legal process. Here, Mr. Miller’s failure to comply with the probation requirements that he make payments and submit job applications to his probation officer did not constitute absconding. The Court therefore vacated Mr. Miller’s sentence and remanded the case for resentencing.

State of Maryland v. Scott Corey Coale, No. 2001, September Term 2018, filed March 31, 2021. Opinion by Kehoe, J.

<https://mdcourts.gov/data/opinions/cosa/2021/2001s18.pdf>

CRIMINAL PROCEDURE – INTERSTATE AGREEMENT ON DETAINERS

Facts:

Scott Corey Coale was incarcerated in California when, in 2008, the State’s Attorneys in Anne Arundel and Howard Counties filed detainers against him for charges pending in their respective jurisdictions. Coale invoked his right under Article III of the Interstate Agreement on Detainers (“IAD”) for a speedy disposition of these charges. He then sent his paperwork to his warden for transmission to the Maryland prosecutors and the Maryland courts having jurisdiction over the pending charges. But the warden sent the paperwork only to the Howard County State’s Attorney’s Office.

The Howard County prosecutors received Coale’s paperwork on June 10, 2008. The Howard County State’s Attorney’s Office did not, however, send Coale’s paperwork to the Anne Arundel County State’s Attorney’s Office until July 15, 2008.

At a December 12, 2008 hearing, an Anne Arundel County prosecutor asked for continuances in the cases pending against Coale. Over defense counsel’s objection, the court granted the motion. Coale entered into a plea agreement with the State resolving the Anne Arundel County charges in January 2009.

In 2016, Coale filed a petition for post-conviction relief. He argued that his trial counsel provided ineffective assistance because he failed to pursue a motion for dismissal under the IAD. According to Coale, the Anne Arundel County State’s Attorney’s Office did not bring him to trial within the 180-day limit under Article III, so the charges against him were time-barred.

The post-conviction court granted his motion. The court concluded that, as a matter of law, all Maryland courts and prosecutors were on notice of Coale’s invocation of his IAD rights on June 13, 2008—the day the Howard County State’s Attorney’s Office filed a request for documents relating to Coale’s charges in the District Court for Howard County. The post-conviction court found that the Anne Arundel County State’s Attorney’s Office had to bring Coale to trial or to ask for a continuance by December 10, 2008 to be within the 180-day mandate of Article III. Because Coale’s trial counsel had not raised this contention in 2008, the post-conviction court concluded that Coale’s convictions were tainted and all of the charges against Coale had to be dismissed with prejudice.

The State timely appealed the post-conviction court’s decision to the Court of Special Appeals.

Held: Reversed.

The Court of Special Appeals held:

First, the IAD's 180-day limit for disposition of charges began to run on the date that the Anne Arundel State's Attorney's Office and the court having jurisdiction over the charges had actual notice of Coale's invocation of his Article III rights. *See Fex v. Michigan*, 507 U.S. 43 (1993). At the time that Coale invoked his rights, "the court having jurisdiction over the charges" was the District Court for Anne Arundel County. *See Brooks v. State*, 329 Md. 98 (1993). The Circuit Court for Anne Arundel County received actual notice of Coale's invocation of his rights when the pending charges were transferred to the circuit court pursuant to Md. Rule 4-221(h).

Second, Md. Code Corr. Servs. § 8-412 established an affirmative duty for prosecutors and other officials to work with one another and with the judicial system in enforcing the terms and effectuating the purposes of the IAD, including disposing of charges within the time limits specified in Article III. Even so, Corr. Servs. § 8-416 made clear that this duty arises only when the appropriate State's Attorney's Office has actual notice of a defendant's invocation of his right to a speedy disposition under Article III. On that date, notice can be imputed to the courts and the 180-day clock starts to tick.

Third, Coale's paperwork was not actually received by the Anne Arundel State's Attorney's Office until July 15, 2008. The 180-day clock began to run on that day. As a result, the Anne Arundel State's Attorney had until January 12, 2009, to ask for an extension or bring Coale to trial. The Anne Arundel State's Attorney's Office's request for a continuance was timely.

Fourth, the record showed that the motions court did not abuse its discretion in 2008 when it granted the State's request for a continuance. In light of this, there was nothing that defense counsel could have done that would have resulted in a substantial possibility that the outcome in the 2008–09 criminal proceedings would have been different.

Mario Ernesto Amaya, et al. v. DGS Construction, LLC, et al., No. 1857, September Term 2019, filed February 24, 2021. Opinion by Shaw Geter, J.

<https://mdcourts.gov/data/opinions/cosa/2021/1857s19.pdf>

STATUTES – LABOR AND EMPLOYMENT

Facts:

Mario Ernesto Amaya and Jose Norland Gonzalez were employed by DGS Construction, LLC (“DGS”) to perform carpentry at the construction site of the MGM National Harbor resort and casino. DGS required their employees to access the MGM site by parking at an offsite parking lot and riding an employer-provided shuttle bus to the site, at no cost to the employees. The employees went through security and clocked-in after reaching the site. At the end of their shifts, the employees were required to ride a shuttle back to the off-site parking lot.

The employees were not compensated for wait and shuttle travel time or time spent clearing security upon entry to, or departure from the MGM. On average, the total period of uncompensated time was two hours. During the employees’ transit time, they did not receive work directives or instructions, load or maintain tools or equipment, don or doff protective or specialty equipment or perform any construction work. All work was performed at the MGM.

Amaya and Gonzalez filed a complaint in the Circuit Court for Prince George’s County, seeking compensation for unpaid wait and travel time under the Maryland Wage and Hour Law (“MWHL”). The circuit court found that “because the General Assembly chose to graft the definition of employ directly from FLSA into the [MWHL], . . . the interpretative guidance . . . imposed by the existing Portal-to-Portal Act was also grafted into the MWHL.” The court held that appellants did not perform “work” at Rosecroft, and thus, Rosecroft was not a worksite for the purposes of the MWHL.

Held: Affirmed.

The Court of Special Appeals affirmed. The Court first noted the legislative histories and judicial interpretations of the Fair Labor Standards Act, the Portal-to-Portal Act, and the MWHL. The Court explained that the General Assembly enacted the MWHL with the context that federal regulations require that the FLSA and the Portal-to-Portal Act be read as “interrelated parts of the entire statutory scheme for the establishment of basic fair labor standards.” 29 C.F.R. § 790.2(a). The Court then noted that the Code of Maryland Regulations (“COMAR”) compiles regulations for the MWHL. Next, the Court expressed that the MWHL is the “state’s equivalent” of the FLSA and is the “State parallel.”

The Court articulated that it is unnecessary for Maryland to specifically express that we have adopted an amendment to a federal statute where the Legislature has enacted a state's equivalent of the federal statute. The Court added that it is acceptable practice to partially or entirely incorporate statutory provisions by reference. The Court held that the MWHL and its regulations are interrelated parts of a statutory scheme that includes the FLSA, Portal-to-Portal Act amendments and accompanying regulations as they relate to an employee's principal activity. The Court added that, in reference to an employee's principal activity, the MWHL and COMAR regulations incorporate the FLSA, Portal-to-Portal Act amendments thereto, and the Code of Federal Regulations. The Court further held that to determine what constitutes a worksite, courts must examine not whether the employee was required to report to a location, but whether the employee performed part of their job function at the location.

Keith Yacko, et al., v. Rene Mitchell, No. 1586, September Term 2019, filed February 26, 2021. Opinion by Leahy, J.

<https://mdcourts.gov/data/opinions/cosa/2021/1586s19.pdf>

FORECLOSURE PROCEEDINGS – POWER OF SALE – PRINCIPLES

TESTIMONY – CREDIBILITY DETERMINATION

Facts:

In June 2005, Rene Mitchell purchased residential property in the City of Bowie in Prince George’s County (the “Property”) and financed the \$555,900.00 purchase entirely through two loans, both secured by deeds of trust. The sales contract between Ms. Mitchell and her lender, Fremont Investment and Loan (“Fremont”), states that Ms. Mitchell would obtain a conventional fixed-rate loan. At the closing, however, the loan documents, that Ms. Mitchell executed, including the note and first deed of trust, were for an adjustable-rate mortgage.

According to Ms. Mitchell, she halted the closing, had “VOID” stamped on the executed documents, and requested acknowledgement of the cancellation to Fremont. Fremont then sent Ms. Mitchell three separate letters in which it agreed to cancel the loan transaction on the adjustable-rate loan and treat Ms. Mitchell’s loan as a fixed-rate loan. Fremont also returned a copy of the loan documents bearing the “VOID” marks to Ms. Mitchell. Evidently satisfied that she would receive the fixed-rate mortgage according to the terms of her contract, Ms. Mitchell began making fixed-rate payments on the loan and continued making payments until she defaulted in January 2013.

In August 2015, the Substitute Trustees, acting for the successors in interest of Fremont, filed an order to docket to foreclose on the Property and provided affidavits attesting that the note and first deed of trust, attached thereto, were true and accurate copies. None of the documents bore any void or cancellation marks. In response, Ms. Mitchell filed a motion to stay the sale and dismiss the foreclosure on the ground that the order to docket did not contain copies of a valid and enforceable note or deed of trust. The Substitute Trustees opposed Ms. Mitchell’s averments. The motion was denied without a hearing, and Ms. Mitchell filed the first appeal.

The Substitute Trustees argued in the first appeal, as in its opposition to Ms. Mitchell’s motion below, that the “record supported” the supposition that the parties did not intend to cancel the note or deed of trust but, instead, agreed to alter the interest rate (from variable to fixed). Ms. Mitchell asserted that the lien documents had been materially altered. We determined that Ms. Mitchell had presented a “facially valid defense to the foreclosure” that the instruments were forged and remanded the case. *Mitchell v. Yacko*, 232 Md. App. 624, 641 (2017).

On remand, the Substitute Trustees shifted their theory altogether and argued that the loan was never modified or cancelled. Instead, they claimed that Ms. Mitchell conjured her story and the supporting documents after foreclosure was imminent.

On remand, the Substitute Trustees first moved for limited discovery in advance of the evidentiary hearing but then confirmed, twice, at the evidentiary hearing, that proceeding directly with the hearing was “fine” and that their motion was “moot.”

The “summary” evidentiary proceeding then ended up taking nine days and concluded on August 20, 2019. Ms. Mitchell and her real estate agent, Ms. Paula Kearney, testified that Ms. Mitchell had contracted for a 30-year fixed mortgage, but, at the closing, voided the documents that she had signed upon discovering that the loan documents were for an adjustable-rate mortgage. Of the individuals who were present at the closing, only Ms. Mitchell and Ms. Kearney testified at the evidentiary hearing. Ms. Mitchell explained that she sent a letter to Fremont and received confirmation that it had cancelled the variable-rate loan and “adjusted” the transaction to reflect the conventional, fixed-rate loan.

Witnesses for the Substitute Trustees testified that they were unable to locate any voided loan documents or related correspondence that would support Ms. Mitchell’s account. According to the Substitute Trustees, the closing proceeded without incident, and Ms. Mitchell fabricated her account because it was not supported by any documentation in the servicer’s file or in the title agent’s file.

During the February 4, 2019 hearing, Ms. Mitchell moved, for the first time, for permission to present the testimony of a forensic document expert, and the court denied the motion as untimely. At the conclusion of the evidentiary hearing, the court asked the parties to submit proposed findings of fact and conclusions of law in lieu of closing arguments. The Substitute Trustees then requested the court to consider an equitable mortgage in its submission.

On September 5, 2019, the circuit dismissed the foreclosure action in a comprehensive opinion. The court determined that the Substitute Trustees do not hold a valid adjustable-rate mortgage because it was voided in lieu of a fixed-rate mortgage. The Substitute Trustees noted a timely appeal and presented four issues, and Ms. Mitchell noted a cross-appeal challenging the court’s decision to exclude her expert’s testimony as untimely.

Held: Affirmed.

First, the Court held that substantial evidence in the record supports the circuit court’s factual findings and that the court did not err in its determination that the lien instrument upon which the Substitute Trustees filed the order to docket foreclosure was invalid. The Court highlighted the ten points referenced by the trial judge to support her determination that the Substitute Trustees did not hold a valid lien for an adjustable-rate mortgage. The Court noted that, while contrary evidence was presented at the evidentiary hearing, the trial court’s finding that Ms. Mitchell’s

testimony was credible and that the evidence generally supported her version of events was not “erroneous—clearly or otherwise—merely because the circuit court could have drawn different ‘permissible inferences which might have been drawn from the evidence by another trier of the facts.’” *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011) (citation omitted). The Court concluded that the evidence presented by the Substitute Trustees to support their revised theory of the case—that Ms. Mitchell made everything up—fell woefully short, and the validity of the lien instrument could not be established against the unrefuted evidence presented by Ms. Mitchell.

Second, the Court concluded that conflicts in the evidence in this case did not present a “physical impossibility”; but rather, ordinary inconsistencies that the circuit court was entrusted to resolve. The Court noted that Ms. Mitchell’s testimony could be reconciled with the evidence very easily and found bewildering the Substitute Trustees’ claim that the court’s determination was legally “impossible” after they asserted the very same theory—that the interest rate was modified to a fixed-rate—in the first appeal and relied on the very same notice letters from Fremont cancelling the adjustable-rate mortgage and converting it to a fixed-rate.

Third, this Court held that the circuit court did not abuse its discretion in denying the Substitute Trustees’ request for discovery because the Substitute Trustees acquiesced to the circuit court’s decision to proceed with the evidentiary hearing without pre-hearing discovery.

Fourth, the Court held that the circuit court did not err by not considering the Substitute Trustees’ post-hearing request for an equitable mortgage because the impact of the Substitute Trustees’ last-minute request, after the close of all evidence, deprived Ms. Mitchell of any opportunity to respond and deprived her of the ability to present her evidence at the hearing in light of this claim.

Finally, the Court held that the trial judge did not err or abuse her discretion in excluding Ms. Mitchell’s expert testimony because Ms. Mitchell failed to follow the court’s expert disclosure requirement to give reasonable and proper notice.

Comptroller of Maryland v. Broadway Services, Inc., No. 2807, September Term 2018, filed March 31, 2021. Opinion by Gould, J.

<https://mdcourts.gov/data/opinions/cosa/2021/2807s18.pdf>

PRINCIPAL-AGENT RELATIONSHIP – ANALYSIS OF THE RELATIONSHIP – POWER TO ALTER LEGAL RELATIONSHIPS – DUTY TO ACT FOR BENEFIT OF THE PRINCIPAL – PRINCIPAL-AGENT RELATIONSHIP – THE PRINCIPAL’S RIGHT TO CONTROL THE AGENT

Facts:

Broadway Services, Inc. (“Broadway”) is in the business of providing security, parking, housekeeping, transportation, and facilities and property management services to its clients. Broadway is a for-profit company that provides services to clients both inside and outside of The Johns Hopkins Health System (“JHHS”). Broadway is a subsidiary of the DOME Corporation (“DOME”), which in turn is owned in equal shares by The Johns Hopkins University (the “University”) and JHHS. This case involves the services that Broadway to three non-profit hospitals within the JHHS system.

The Comptroller of Maryland (the “Comptroller”) conducted a sales tax audit of Broadway for the time-period of December 1, 2007 through November 30, 2011. Broadway responded to the audit with an application for an offset credit and refund in the amount of \$76,161.96 for the sales tax it had paid to its vendors for cleaning supplies used at the three non-profit hospitals. Broadway stated on its application that the taxes were “improperly paid on services and products purchased for resale.”

The Comptroller rejected Broadway’s reseller theory, denied its refund request, and assessed Broadway \$9,073.93 in unpaid sales and use taxes. Broadway appealed to the Tax Court. In its petition, Broadway asserted that the supplies were purchased “for resale to three tax-exempt hospitals” and that “[a]ll of the cleaning supplies were used by employees of the three exempt hospitals.”

At the conclusion of the evidence and the parties’ closing arguments, the Tax Court ruled, without any explanation, that Broadway’s purchases on the supplies did not qualify for the reseller exemption. The Tax Court found, however, that Broadway purchased the supplies as an agent of the hospitals, and on that basis concluded that Broadway “should not have been charged [a] sales tax.” Thus, the Tax Court concluded that Broadway was entitled to a refund from the State in the amount of \$76,161.96, plus interest.

The Comptroller filed a petition seeking judicial review of the Tax Court’s decision in the circuit court. The circuit court denied the Comptroller’s petition and affirmed the decision of the Tax Court. This timely appeal followed.

Held:

The arms-length relationship existed between Broadway and the hospitals notwithstanding the relationship between the parties. The contractual requirement for Broadway to comply with the hospitals' policies or guidelines did not provide the control indicative of an agency relationship.

Preliminarily, the Tax Court erred in treating "Johns Hopkins" and the hospitals as one and the same. The Tax Court's conflation of "Hopkins" and the three hospitals permeated its description of how the supplies were chosen and was factually incorrect and legally improper.

In determining whether an agency relationship exists, the central inquiry was whether each hospital and Broadway mutually intended to establish a fiduciary relationship. On this record, the relationships between Broadway and the three hospitals were voluntary and contractual. We concluded that the contracts established arms-length relationships between Broadway and the hospitals. So long as the supplies were permitted under the hospitals' infectious control standards, Broadway was left to its own devices in choosing what, how much, and when.

Moreover, the contracts each contained an integration clause and a "no oral modifications" clause that preclude the assumption of any duties not expressed in the contracts. Thus, the parties mutually agreed to cabin the terms of their business relationship to the four corners of the contracts and preclude any unwritten modifications.

We discerned no basis to put Broadway's contractual relationships with the hospitals on a different footing than any arms-length relationships. Thus, we held that the contracts between Broadway and the hospitals established a contractual relationship devoid of any fiduciary obligations, thereby precluding an agency finding as a matter of law.

The Tax Court focused on whether there was a change in the chemicals used or whether the parties amended or renegotiated their contracts misstated the issue; that was legally incorrect. The issue was whether Broadway had the power to alter the hospitals' legal relations with third parties or even with Broadway and there was no evidence in the record that Broadway had the right to change the hospitals' legal relationships with third parties, particularly with respect to the purchase of cleaning supplies. Thus, any changes in the terms of the contracts with the vendors altered only Broadway's legal relationships, not those of the hospitals.

The agent's duty to act primarily for the principal's benefit arises from the fiduciary nature of their relationship. RESTATEMENT (SECOND) OF AGENCY, § 13 cmt. a. In discussing this factor, the Tax Court misunderstood the issue. The issue was not whether the cleaning supplies were used for the benefit of the hospitals or who benefited from the fact that Broadway was the party responsible for ordering supplies. The Tax Court's misunderstanding of this factor was an error of law necessitating a reversal.

The central issue as to this factor was whether, in providing the service—here, the provision of cleaning supplies—the provider had a duty to place the interests of its client above its own interests. On that issue, the Tax Court made no finding, and that Broadway had no such duty is highlighted by the implications behind the parties’ agreements.

A principal’s level of control necessary to support a finding of an agency relationship is not susceptible to a formulaic articulation, but “the principal must have ultimate responsibility to control the end result of his or her agent’s actions; such control may be exercised by prescribing the agents’ obligations or duties before or after the agent acts, or both.” *Green v. H&R Block, Inc.*, 355 Md. 488, 510 (1999). Here, the Tax Court did not discuss the control factor expressly, other than stating that the hospitals “told [Broadway] what to buy.” As noted above, this was factually incorrect. A contractual requirement for a party to comply with company policies or legal obligations does not provide the control indicative of an agency relationship. *Brooks v. Euclid Sys. Corp.*, 151 Md. App. 487, 509 (2003). Accordingly, although the extent of the hospitals’ control over Broadway didn’t much factor into the Tax Court’s analysis, we concluded that it militated against a finding of an agency relationship.

Broadway contended that the Tax Court’s decision can be upheld based on the reseller theory that the Tax Court rejected. The Tax Court expressly considered and rejected Broadway’s reseller argument. It would therefore be inappropriate for us to affirm its decision on the grounds that the evidence *could have* supported a finding that the reseller exemption applied. Even if the Tax Court had not rejected Broadway’s reseller theory, our hands would still be tied. Thus, to the extent that Broadway urges us to affirm the Tax Court by searching the record for evidence that supports its reseller theory, we were constrained to decline.

Whether Broadway had the right to obtain judicial review of the Tax Court’s rejection of its reseller theory is another question. By statute, only “a party who is aggrieved by the final decision” “is permitted to seek judicial review.” Md. Ann. Code (2014) State Government § 10-222(a). The final decision of the Tax Court granted Broadway’s request for a tax refund; in that sense, therefore, Broadway could not have claimed aggrieved party status. However, once the Comptroller filed its petition for judicial review, Broadway’s status as a non-aggrieved party was put in jeopardy depending on the outcome of the judicial review process.

The question, therefore, became whether Broadway could have preserved the reseller issue by filing a conditional cross-petition for judicial review. Given the novelty of the issue and the absence of any briefing on this topic, under the circumstances, we concluded that Broadway should not be foreclosed of the right to seek judicial review of the Tax Court’s rejection of its reseller theory.

Board of Education of Harford County, et al. v. Linda A. Sanders, No. 111, September Term 2020, filed March 31, 2021. Opinion by Berger, J.

<https://mdcourts.gov/data/opinions/cosa/2021/0111s20.pdf>

ADMINISTRATIVE LAW AND PROCEDURE – JUDICIAL REMEDIES AND REVIEW – PROCEEDINGS TO OBTAIN REVIEW – APPEAL AND ERROR – MOTION TO REOPEN OR FOR MODIFICATION

Facts:

The claim giving rise to this case was filed by Linda A. Sanders (“Sanders”) after a work-related injury during her employment as a school bus driver by the Board of Education of Harford County and the Maryland Association of Boards of Education (“Appellants”). Sanders filed a claim with the Workers’ Compensation Commission (“Commission”). Sanders requested payment for her loss of work due to the injuries she suffered, along with requests for authorization of a particular shoulder surgery. The Commission denied Sanders’ request for shoulder surgery. Sanders did not file a petition for judicial review with the circuit court within thirty days of the issuance of the Commission’s decision. Three months after the Commission’s decision, Sanders underwent shoulder surgery using her personal health insurance.

Three years later, Sanders filed a request for modification of her claim with the Commission. Attached to the request, Sanders included a report from her doctor regarding her should surgery and requested payment of her medical bills. The Commission denied Sanders request without holding a hearing. Sanders filed a petition for judicial review with the Circuit Court for Harford County. Thereafter, Appellants filed a motion to dismiss. The trial court dismissed the petition without specifying its reasons. Subsequently, Sanders filed an additional request for modification of her claim with the Commission, attaching a deposition of her doctor. The next day, the Commission denied Sanders’ request for modification without holding a hearing. Sanders filed a petition for judicial review with the Circuit Court for Harford County. Appellants filed a motion to dismiss the petition, arguing that Sanders had no right to judicial review from the Commission’s refusal to reopen her claim. The trial court denied Appellants’ motion to dismiss after holding a hearing. Sanders filed a motion for summary judgment. Thereafter, Appellants filed a cross-motion for summary judgment. The trial court agreed with Sanders and granted her motion for summary judgment. The trial court remanded the case to the Commission with instructions to consider Sanders’ request for modification and to include any exercise of discretion in its order. Appellants noted a timely appeal.

Held: Reversed.

Judgment of the Circuit Court for Harford County reversed. Case remanded to the Circuit Court for Harford County with instructions to grant the Board of Education's motion to dismiss.

The Court of Special Appeals held that there is no right to judicial review of the Commission's explicit refusal to reopen a Sanders' claim without holding a hearing. The Court explained that the language of Md. Code Ann., Labor & Employment § 9-736(b) is clear in its limitations on the Commission's ability to exercise its authority to reopen prior awards. The Court agreed with Appellants that the Commission did not reopen or issue a new order in Sanders' claim. Rather, the Court held that the Commission refused to interfere with its original decision in the claim and left its original order unimpeached.

The Court agreed with the analysis in *Blevins v. Baltimore County*, 352 Md. 620 (1999) and reaffirmed the characteristics of Commission decisions which are, and which are not, subject to judicial review. Agreeing with Appellants, the Court noted that the Court of Appeals has distinguished between Commission decisions which hold a hearing or address the merits of a request to reopen and those which summarily deny such a request. Specifically, the Court explained that if the Commission holds a hearing on new evidence or issues a new order with reasoning based on the merits of the request, a new order has been made and it is subject to judicial review. Contrarily, the Court explained that if the Commission simply summarily denied a request without making new findings, the action is not subject to judicial review.

The Court of Special Appeals also rejected Sanders' argument that a request to reopen or modify under Md. Code Ann., Labor & Employment § 9-736(b) is subject to judicial review under an abuse of discretion standard due to its likeness to Maryland Rule 2-535. The Court found that Sanders' assertion for this analogy was based upon a footnote in a prior Court of Special Appeals case where the Court considered the issue in dicta. The Court explained the many limitations on motions filed under Maryland Rule 2-535 and noted the differences between the Rule and the provisions of Md. Code Ann., Labor & Employment § 9-736(b).

The Court concluded that the Commission decision not to reopen Sanders' claim was not subject to judicial review. The Court reasoned that the Commission did not hold a hearing and take any new evidence when considering Sanders' request. Further, the Court explained that the Commission did not make any findings regarding Sanders' request or alter the original order in any way. Therefore, the Court determined that the Commission's decision was not subject to judicial review.

Finally, the Court of Special Appeals held that the instructions in the trial court's remand negated the difference between the two types of denials of requests to reopen by the Commission. The Court held that the trial court's order to the Commission to exercise discretion would essentially take away the power of the Commission to summarily deny a claimant's request to reopen or modify. Therefore, the Court held that the trial court erred in denying Appellants' motion to dismiss Sanders' petition for judicial review.

ATTORNEY DISCIPLINE

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By an Order of the Court of Appeals dated March 1, 2021, the resignation of

VINCENT JOSEPH BRANSON

from the further practice of law in this State has been accepted.

*

By a Per Curiam Order of the Court of Appeals dated March 1, 2021, the following attorney has been disbarred:

ANGEL ARTURO VILADEGUT

*

By an Order of the Court of Appeals dated March 5, 2021, the following attorney has been placed on inactive status:

PETER JEROME EIDE

*

This is to certify that the name of

DAVID FERNANDO MORENO

has been replaced upon the register of attorneys in this State as of March 5, 2021.

*

By an Order of the Court of Appeals dated March 5, 2021, the following attorney has been indefinitely suspended by consent:

BRIAN DAVID SADUR

*

*

By an Order of the Court of Appeals dated January 4, 2021, the following attorney has been suspended for sixty days by consent, effective March 8, 2021:

DEBRA LEE ACKERMAN

*

By an Order of the Court of Appeals dated March 9, 2021, the following attorney has been placed on inactive status by consent:

PERRY ANDREW RESNICK

*

By an Order of the Court of Appeals dated March 11, 2021, the following attorney has been disbarred by consent:

JONATHAN STEVEN RESNICK

*

By an Order of the Court of Appeals dated February 5, 2021, the following attorney has been indefinitely suspended by consent, effective March 15, 2021:

OLUFOLAJIMI ABAYOMI KOLAWOLE

*

By Per Curiam Order of the Court of Appeals dated March 26, 2021, the following attorney has been disbarred:

ALISHA ANN PORTILLO

*

By an Order of the Court of Appeals dated October 23, 2020, the following attorney has been temporarily suspended by consent, effective March 31, 2021:

STEPHEN LAWRENCE SNYDER

*

*

By an Opinion and Order of the Court of Appeals dated March 1, 2021, the following attorney has been suspended for 120 days, effective March 31, 2021:

SAMUEL SPERLING

*

By an Opinion and Order of the Court of Appeals dated March 31, 2021, the following non-admitted attorney is excluded from exercising the privilege of practicing law in this State:

CELIO WARREN YOUNG

*

RULES ORDERS AND REPORTS

*

A Rules Order pertaining to the 206th Report of the Standing Committee on Rules of Practice and Procedure was filed on March 30, 2021.

<https://mdcourts.gov/sites/default/files/rules/order/ro206.pdf>

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UNREPORTED OPINIONS

The full text of Court of Special Appeals unreported opinions can be found online:

<https://mdcourts.gov/appellate/unreportedopinions>

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