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# SUPREME COURT OF MARYLAND

*Attorney Grievance Commission of Maryland v. Francis Edward Yeatman*, AG No. 42, September Term 2023, filed November 22, 2024. Opinion by Biran, J.

<https://www.mdcourts.gov/data/opinions/coa/2024/42a23ag.pdf>

ATTORNEY MISCONDUCT – DISCIPLINE – DISBARMENT

## **Facts:**

On February 20, 2024, Petitioner, the Attorney Grievance Commission of Maryland, acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action (“PDRA”) against Respondent, Francis Edward Yeatman, in connection with two complaints filed against him. Petitioner alleged that Mr. Yeatman violated Maryland Attorneys’ Rules of Professional Conduct 19-301.1 (Competence), 19-301.3 (Diligence), 19-301.4(a)(2) and (3) (Communication), 19-308.1(b) (Bar Admission and Disciplinary Matters), and 19-308.4(a) and (d) (Misconduct).

The Supreme Court of Maryland designated the Honorable Sharon V. Burrell of the Circuit Court for Montgomery County to serve as the hearing judge. The hearing judge entered an order of default on May 1, 2024, after Mr. Yeatman failed to respond to the charges filed against him. Mr. Yeatman did not move to vacate the order of default. On May 20, 2024, Petitioner filed a motion for sanctions, based on Mr. Yeatman’s failure to respond to various discovery requests. Mr. Yeatman failed to respond to the motion for sanctions.

On June 11, 2024, the hearing judge conducted an evidentiary hearing. The hearing judge orally granted Petitioner’s motion for sanctions for the discovery violations, ordered the averments in the PDRA deemed admitted, and precluded Mr. Yeatman from calling any witnesses or presenting any documents at the hearing. However, the hearing judge permitted Mr. Yeatman to testify for purposes of establishing mitigating factors. The hearing judge issued Findings of Fact and Conclusions of Law on July 8, 2024, concluding that Mr. Yeatman committed all the violations alleged in the PDRA. Mr. Yeatman did not file any exceptions. Petitioner excepted to the hearing judge’s failure to find the existence of the aggravating factor of a pattern of misconduct.

Oral argument was held before the Court on October 7, 2024.

**Held:** Disbarred.

The Supreme Court of Maryland held that Mr. Yeatman violated Rules 19-301.1, 19-301.3, 19-301.4(a)(2) and (3), 19-308.1(b), and 19-308.4(a) and (d). These violations arose from Mr. Yeatman's conduct in two client matters, in which he failed to communicate with, and effectively abandoned, his clients. In addition, in connection with Bar Counsel's investigation, Mr. Yeatman failed to respond to requests for information by Bar Counsel.

In the first client matter, Mr. Yeatman's failure to timely file an estate accounting led to the issuance of a show cause referral to the Orphan's Court and two continued show cause hearings. Mr. Yeatman's failure to respond to his client's continued attempts for an update on outstanding tasks and requests for information led to his client seeking assistance from another attorney to restore communication with him. Although Mr. Yeatman directed his client to send all bills related to a property to him so that Mr. Yeatman could then convey them to a trustee, Mr. Yeatman waited more than a year to provide the bills and associated account information to the trustee. This delay created confusion for his client, who repeatedly had to forward unpaid bills to him.

In the second client matter, Mr. Yeatman failed to provide a trust beneficiary with a final distribution. Mr. Yeatman notified the organization of the bequest in 2013 and provided an initial distribution in 2014. On several occasions over the next six years, he told representatives of the organization that a final distribution would be forthcoming. Mr. Yeatman then ceased communicating with the organization. As of November 2022, despite several additional attempts to contact Mr. Yeatman, the organization had not heard again from him or received a final distribution.

The Court agreed with the hearing judge's findings concerning the mitigating factors of (1) absence of attorney discipline, and (2) unlikelihood of repetition of misconduct.

The Court also agreed with the hearing judge's finding of three aggravating factors: multiple violations, bad faith obstruction of the disciplinary proceeding, and substantial experience in the practice of law. However, the Court sustained Bar Counsel's exception regarding the aggravating factor of a pattern of misconduct because Mr. Yeatman committed multiple, similar violations over time in two separate matters. In addition, based on an independent review of the record and Mr. Yeatman's statements at oral argument, the Court concluded that another aggravating factor was present: failure to acknowledge the wrongful nature of the misconduct.

The Court held that disbarment was the appropriate sanction for Mr. Yeatman's rules violations and the existence of several aggravating factors. The Court stated: "We have considered that Respondent practiced law for 60 years without receiving any prior discipline. It is unfortunate that Respondent ended his career as he did. However, the aggravating factors significantly outweigh the mitigating factors in this case. From a client's perspective, professional misconduct is no less problematic at the end of a legal career than it is at the beginning. That is our perspective as well."

# APPELLATE COURT OF MARYLAND

*Kathleen Anderson, et al. v. Evan Hammerman, et al.*, No. 1254, September Term 2023, filed November 6, 2024. Opinion by Wells, C.J.

<https://www.mdcourts.gov/data/opinions/cosa/2024/1254s23.pdf>

LITIGATION PRIVILEGE – SCOPE – DEFAMATION – CONFLICT – PROFESSIONAL SERVICES EXEMPTION

## **Facts:**

This appeal arises from the Circuit Court of Montgomery County’s grant of a motion to dismiss a putative class action lawsuit filed by appellants Kathleen Anderson and Bianca Diehl (“Consumers”) against appellees, the Center for Innovative GYN Care, P.C.; Innovations Surgery Center, P.C.; 42 Services, LLC d/b/a Tower Surgical Partners; and Evan Hammerman (collectively, “Collectors”).

Consumers individually underwent surgery performed by an Innovative GYN Care physician. Both Consumers received checks from their health insurers as covered payments for their surgeries. Tower Surgical Partners told Consumers their accounts would be “zeroed” if they signed and forwarded the checks to Innovations Surgery Center and 360 Surgery Services at a post office box owned by Tower Surgical Partners. Innovative GYN Care also provided a similar promise to Diehl in a Financial Policy Disclosure statement. Consumers followed these instructions and believed they did not owe any more money.

However, Innovations Surgery Center filed suit against Anderson claiming she owed a total of \$16,644.44 in principal, interest, and attorney’s fees. Innovative GYN Care and Innovations Surgery Center also filed suit against Diehl claiming she owed a total of \$66,934.64.

Consumers filed a putative class action complaint in December 2022, which was amended in March 2023. The amended complaint alleged that Collectors’ payment policies and practices were unfair and deceptive. Additionally, Consumers alleged that Collectors violated Maryland’s Consumer Debt Collection Act (“MCDCA”) and Consumer Protection Act (“MCPA”) by filing lawsuits against them with knowledge that the claimed debts were not owed.

Collectors moved to dismiss Consumers’ complaint, arguing (1) the common law litigation privilege absolutely immunized all Collectors from liability for filing suit; (2) Hammerman’s role as an attorney exempt him from liability under the MCPA’s professional services

exemption, and (3) the Complaint failed to state a claim against Tower Surgical Partners because there were no allegations that Tower Surgical Partners engaged in any collection activity.

After briefing and a hearing, the circuit court ruled in favor of Collectors on all three counts. The court dismissed the complaint with prejudice and Consumers appealed.

**Held:** Vacated and remanded.

First, the common law litigation privilege does not foreclose Consumers' MCDCA and MCPA claims against Collectors. The privilege has a limited scope, usually applying only to claims alleging reputational injury from disparaging statements made in litigation. The privilege only extends to other claims when immunity is reasonably necessary to ensure litigants may speak without concerns about being held civilly liable for their statements, and Consumers do not allege that type of claim. Even if the privilege did extend to Consumers' claim, the text of the MCDCA and MCPA forecloses application of the privilege in this case. Construing the MCDCA and MCPA to foreclose application of the privilege is also consistent with case law, in which no claims under those statutes were foreclosed by asserting the privilege as a complete defense. Despite this case law, the Maryland General Assembly has not amended either the MCDCA or MCPA to incorporate the privilege. Incorporating the privilege would undermine the remedial purpose of the statutes. Given the scope of the privilege, text of MCDCA and MCPA, case law, and consequences of applying the privilege in this context, the circuit court erred in dismissing Consumers' complaint because of the common law litigation privilege.

Second, the professional services exemption under the MCPA does not foreclose Consumers' MCPA and MCDCA claims against Hammerman for allegedly filing false affidavits describing the nature and amount of his legal services. This conduct by Hammerman does not fall within the ambit of his professional legal services and therefore exempt him from liability for such conduct under the MCPA. Rather, Hammerman's conduct falls within "[t]he commercial aspects" of his law practice, which the Maryland Supreme Court ruled are not exempt from the MCPA. Therefore, the circuit court erred in ruling that Hammerman is immune from liability under the MCPA professional services exemption.

Third, Consumers' complaint states MCDCA and MCPA claims against Tower Surgical Partners based on its pre-surgery statements to Consumers and the collection activities of its employees. For the purposes of reviewing the circuit court's dismissal of Consumers' complaint, this Court must assume the truth of Consumers' allegations that Tower Surgical Partners violated statutory prohibitions against unfair debt collection practices. The circuit court therefore erred in dismissing Consumers' MCDCA and MCPA claims against Tower Surgical Partners.

*Gina Augustine v. Steven Wolf*, No. 2322, September Term 2023, filed November 22, 2024. Opinion by Ripken, J.

<https://www.mdcourts.gov/data/opinions/cosa/2024/2322s23.pdf>

COLLATERAL ESTOPPEL – EFFECT OF DENIAL OF FINAL PROTECTIVE ORDER ON CUSTODY PROCEEDING

COLLATERAL ESTOPPEL – CUSTODY PROCEEDINGS

**Facts:**

Gina Augustine (“Mother”) and Steven Wolf (“Father”) were initially granted joint legal and physical custody of their child B. in 2018. Following allegations that B. had been sexually abused by Father, Mother was granted temporary custody of B. pursuant to a temporary protective order entered in January of 2021. The Department of Social Services (“DSS”) initiated an investigation which resulted in a finding of “indicated” sexual abuse. However, following a final protective order hearing in March of 2021, the circuit court denied the petition for a protective order, finding that Mother had not met her evidentiary burden. Following the hearing, the DSS amended its finding to ruled out.

Mother continued to allege to healthcare providers, educators, and government agencies that Father had abused B. In 2022 Mother filed a petition to modify child custody, arguing that Father’s alleged sexual abuse of B. constituted a material change in circumstances. A Best Interest Attorney (“BIA”) was appointed to represent B.

Father filed a motion *in limine* arguing that the court’s ruling in the 2021 protective order hearing should collaterally estop the parties from arguing, or the court from finding, that Father had abused B. prior to the 2021 hearing. Mother and the BIA opposed the motion. After a hearing, the circuit court accepted Father’s argument that Mother was collaterally estopped from relitigating the issue of whether Father sexually abused B. prior to the 2021 hearing and held that it would not admit evidence for that purpose. Mother sought to introduce evidence relating to the alleged abuse, including a video recording of a DSS forensic interview with B. which was unavailable at the protective order hearing, but was precluded from doing so. After a merits hearing, the circuit court modified custody, granting the parties joint physical custody and joint legal custody, and granted tiebreaking authority to Father. Mother appealed, arguing that the circuit court erred in holding that she was collaterally estopped from presenting evidence or raising the issue of whether Father sexually abused B. prior to the 2021 protective order hearing.

**Held:** Reversed.

The Appellate Court began by examining the distinctions between protective order hearings and custody modification proceedings. The Court noted that in cases of domestic violence, the Supreme Court of Maryland has emphasized the importance of evidence of past abuse as potentially predictive of future abusive behavior. Similarly, evaluation of a parent's past conduct is relevant to the extent it is predictive of future parental behavior and is thus significant to determining the child's best interest. The Court determined that a trial court's denial of a final protective order does not subsequently preclude evidence, argument, or judicial findings of abuse in subsequent custody proceedings.

The Appellate Court relied on a recent decision holding that where a petition for a protective order was denied, that denial does not collaterally estop courts in future protective order hearings from examining evidence of abuse alleged in previous hearings. The Court also discussed the unique character of the finality of child custody orders and explained that although custody orders are intended to be a durable dispensation effectuating the best interest of the child, a custody order does not hold the same degree of finality that accompanies other kinds of judgments. Thus, the Appellate Court held that to the extent estoppel by judgment applies in custody determinations, it does not preclude a court from examining facts and circumstances previously litigated.

Just as courts in custody modification proceedings are not precluded from considering evidence that was before a court in a previous custody hearing, and courts evaluating motions for protective orders are not precluded from evaluating evidence related to contentions first alleged in a previous protective order hearing, neither should courts be collaterally estopped from considering evidence related to an allegation in a prior protective order hearing in a subsequent custody hearing. The Appellate Court concluded that concerns related to principles of finality must give way to a child's right to have their best interests fully considered in a custody proceeding.

The Appellate Court also held that due to B. being independently represented in the custody hearing, but not at the prior protective order hearing, B. was not fully represented by Mother in the prior matter as is required to apply the doctrine of collateral estoppel. Children are not inherently in privity with their parents. B.'s counsel in the custody proceeding held the power to waive B.'s privilege, while Mother lacked that same ability in the first proceeding. Thus, the Court held that Mother was unable to fully represent B.'s position in the protective order hearing.

The Appellate Court therefore reversed the circuit court's judgment as to the collateral estoppel decision, vacated the custody order, and remanded for the circuit court to conduct a new custody modification proceeding.

# ATTORNEY DISCIPLINE

## DISBARMENTS/SUSPENSIONS/INACTIVE STATUS

By an Opinion and Order of the Supreme Court of Maryland dated November 22, 2024, the following attorney has been disbarred:

FRANCIS EDWARD YEATMAN

\*

By an Order of the Supreme Court of Maryland dated November 25, 2024, the following attorney has been disbarred:

EVAN STUART ELAN

\*



# JUDICIAL APPOINTMENTS

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On October 25, 2024, the Governor announced the appointment of **Thomas R. Thompsett, Jr.** to the Circuit Court for Baltimore County. Judge Thompsett was sworn in on November 15, 2024, and fills the vacancy created by the retirement of the Hon. John J. Nagle, III.

\*

On October 25, 2024, the Governor announced the appointment of **Laura J. Novello Fuggitti** to the District Court for Prince George's County. Judge Fuggitti was sworn in on November 15, 2024, and fills the vacancy created by the elevation of the Hon. Scott M. Carrington to the Circuit Court for Prince George's County.

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# RULES ORDERS

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A Rules Order pertaining to categories 8 through 13 of the 223<sup>rd</sup> Report of the Standing Committee on Rules of Practice and Procedure was filed on November 13, 2024.

<http://www.mdcourts.gov/sites/default/files/rules/order/ro223cats8to13.pdf>

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# UNREPORTED OPINIONS

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

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

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 \* September Term 2023  
 \*\* September Term 2022