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# COURT OF APPEALS

*Washington Home Remodelers, Inc. v. State of Maryland, Office of the Attorney General, Consumer Protection Division*, No. 82, September Term 2011, filed May 22, 2012. Opinion by Davis, J.

<http://mdcourts.gov/opinions/coa/2012/82a11.pdf>

ADMINISTRATIVE LAW – AGENCY INVESTIGATIVE AUTHORITY TO ISSUE  
ADMINISTRATIVE SUBPOENAS

CONSUMER PROTECTION ACT, Maryland Code Annotated, Commercial Law Article (Com. Law), (1975, 2005 Repl. Vol., 2011 Supp.), § 13-405.

## **Facts:**

Based on complaints by three former employees that appellant had misrepresented the licensing status of its sales people and consumers' complaints that appellant accessed their credit histories without their knowledge and consent before entering into any business relationship, the Consumer Protection Division of the Office of the Attorney General (the Division) issued a subpoena to appellant to obtain documents and information to determine whether appellant's actions constituted violations of unfair and deceptive trade practices prohibited by the Consumer Protection Act (CPA). Appellant contended that the Division has no legal authority to investigate and enforce the access and use of consumer credit reports because that authority is specifically vested only in the Commissioner of Financial Regulation of the Department of Labor, Licensing, and Regulation pursuant to Md. Code Ann., State Gov. § 14-1201, *et seq.* Appellant also contended that the Division has no legal authority to investigate and enforce the licensing status of appellant's sales people because that authority is specifically vested in the Maryland Home Improvement Commission pursuant to Md. Code Ann., Bus. Reg. § 8-101, *et seq.*

## **Held:**

The Consumer Protection Division of the Office of the Attorney General is vested with broad and extensive investigative authority pursuant to the subpoena provision of the CPA. The Division may initiate an investigation either to determine whether the activities of the party under investigation violate the CPA or to determine that the activities in question are *not covered* by the CPA. At the initial investigative stage, the Division is not required to make a preliminary showing that the party under investigation has in fact violated the CPA before issuing a

subpoena. Although the Division may only enforce violations of the CPA, an *investigative* subpoena issued pursuant to Com. Law § 13-405 is not rendered without legal authority simply because the activity may be a violation of a statute outside of the Division's enforcement jurisdiction.

*Nancy S. Forster v. State of Maryland, Office of the Public Defender*, No. 92, September Term 2011, filed May 22, 2012. Opinion by Harrell, J.

Battaglia and Adkins, JJ., concur and dissent.

<http://mdcourts.gov/opinions/coa/2012/92a11.pdf>

## ADMINISTRATIVE LAW – EXHAUSTION OF ADMINISTRATIVE REMEDIES

### **Facts:**

Appellant, Nancy Forster, was terminated from the position of Maryland State Public Defender on 21 August 2009 after a year-long dispute with the Board of Trustees of the Office of the Public Defender (the Office) over management of the Office. The dispute culminated with a letter sent from the Board to Forster demanding a suite of management and personnel changes, along with a warning that if the changes were not implemented within 60 days, Forster would be terminated. Forster refused the Board's demands and was terminated. Forster did not file an administrative appeal provided by the State Personnel and Pensions Article. Instead, Forster filed a wrongful discharge complaint in the Circuit Court for Baltimore City.

The State moved to dismiss Forster's complaint for failure to state a claim upon which relief may be granted and failure to exhaust her available administrative remedy. The Circuit Court did not reach the issue of administrative exhaustion, but concluded that Forster's complaint failed to state a viable claim for wrongful discharge and dismissed the complaint. Forster filed timely an appeal to the Court of Special Appeals, but the Court of Appeals issued a writ of certiorari on its initiative to consider Forster's questions as to whether the Circuit Court erred in granting the motion to dismiss for failure to state a claim upon which relief may be granted where Forster alleged in her complaint that she was terminated for refusing the Board's ultra vires orders and that the Board's orders were against public policy. The Court considered also the State's question as to whether Forster's claim was barred because she failed to exhaust a primary administrative remedy.

### **Held:** Affirmed

The Court of Appeals upheld the grant of the State's motion to dismiss on a different ground than relied upon by the Circuit Court; addressing first the threshold issue of whether jurisdiction was proper under the administrative exhaustion doctrine. Relying on the reasoning in *Smack v. Department of Health and Mental Hygiene*, 378 Md. 298, 835 A.2d 1175 (2003), and the rule of statutory construction that when two statutory provisions appear to conflict, that the more specific statute serves as an exception to the more general one, the Court concluded that Maryland Code (1957, 2009 Repl. Vol), State Pers. & Pens. Art., § 11-305 applies to all terminations of at-will State employees, whether for misconduct or for no reason at all.

Maryland Code (1957, 2009 Repl. Vol), State Pers. & Pens. Art., § 11-106 applies to at-will State employee misconduct where the disciplinary action taken is other than termination. Because § 11-305 does not require the appointing authority to provide any notice to an at-will State employee of the administrative appeal rights, and Forster failed to appeal administratively her termination, the Court concluded, as a matter of law, that Forster's complaint was barred by the doctrine of administrative exhaustion.

*Attorney Grievance Commission of Maryland v. Louis Peter Tanko*, AG No. 70, September Term 2010, filed May 23, 2012. Opinion by Barbera, J.

<http://mdcourts.gov/opinions/coa/2012/70a10ag.pdf>

## ATTORNEY DISCIPLINE – SANCTIONS – INDEFINITE SUSPENSION

### **Facts:**

Petitioner, the Attorney Grievance Commission, acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action against attorney Louis P. Tanko, Respondent. Petitioner alleged violations of the Maryland Lawyers' Rules of Professional Conduct (MRPC) based on Respondent's conduct in two separate client matters (a federal habeas corpus matter for Mr. Howard Brown and an unpaid wages/employment dispute matter for Ms. Jan'e Colahar) as well as his practicing law after having been suspended and without petitioning for reinstatement.

The Court of Appeals assigned the matter for a hearing to the Honorable William C. Mulford, II of the Circuit Court for Anne Arundel County. Based on the evidence presented at that hearing, the judge found the following facts:

Respondent had been suspended from the practice of law for sixty days on April 17, 2009, but he never applied for reinstatement before he resumed practicing law. Once Respondent was made aware that he was not authorized to practice, he withdrew from his cases.

With respect to the Brown matter, Respondent had entered into a retainer agreement with Brown's mother, Mrs. Sharon Gosnell, in September 2008 for the purpose of, on behalf of Brown, "prepar[ing] and fil[ing] a writ of habeas corpus in federal court until ruled on." Pursuant to the retainer, Gosnell paid \$5000 for 50 hours of work. None of that money was placed into a client trust account. Instead, Respondent included a provision in the retainer agreement that stated, "Client consents to the deposit of any funds paid hereunder into the personal account of the Attorney, rather than a Client Trust Account, pursuant to Rule 1.15 . . . and Client acknowledges his/her familiarity with said rule." Respondent never explained the requirements of MRPC 1.15 or provided a copy of the rule. Respondent never filed a writ habeas corpus in federal court, or any other motion/request, on behalf of Brown. Respondent met with Brown and Gosnell on several occasions, but he was also difficult to reach and rarely returned messages. At no point during the representation did Respondent inform Brown or Gosnell that he had been suspended from practice in April 2009. Moreover, after receiving the complaint regarding the handling of Brown's case, the Commission sought to recover Brown's file from Respondent. Respondent, however, refused to deliver the file until the hearing before the Circuit Court.

With respect to the Colahar matter, Respondent entered into a retainer agreement in July or August 2009 to represent Colahar against her former employer for the purpose of collecting

monies owed, including unpaid salary and unused sick and vacation leave. The retainer agreement contained a provision similar to the provision in the Brown/Gosnell retainer agreement. Although Respondent asserted that Colahar signed the retainer, the hearing judge found otherwise. Moreover, Respondent never explained the requirements of MRPC 1.15 or provided a copy of that rule to Colahar. Respondent did not communicate adequately with or explain his handling of the case to Colahar (including his decision not to file discovery requests). Nor did he inform Colahar in a timely manner of requested documents, or inform Colahar that he had been suspended in April 2009.

Based on these findings, the hearing judge concluded that Respondent had violated MRPC 1.1 (Competence), 1.2 (a) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.4 (Communication), 1.15 (a) and (c) (Safekeeping Property), and 8.1(b) (Bar Admission and Disciplinary Matters) with respect to the Brown matter, MRPC 1.1, 1.2(a), 1.4, 1.15, with respect to the Colahar matter, and MRPC 5.5(a)-(b) (Unauthorized Practice of Law) and 8.4(a)-(d) (Misconduct) based on his conduct in both matters.

With respect to mitigation, the hearing judge found that Respondent exercised “good faith efforts to ensure he was in good standing,” and he had a “good faith belief he was still licensed.” Moreover, the hearing judge found that Respondent “did not intend to misrepresent his clients or the court(s), or deceive clients into believing he was authorized to practice law when in fact he had not been reinstated.”

**Held:**

Respondent violated MRPC 1.1, 1.4, 1.15, 5.5, 8.1, and 8.4(a), (b) and (d).

Petitioner filed exceptions to the hearing judge’s findings with respect to his failure to find violations of MRPC 5.5 and 8.4(c) based on Respondent’s conduct during the 60-day period of suspension. Petitioner also excepted to the findings of mitigation. Respondent excepted to each and every finding of fact and conclusion of law. The Court of Appeals conducted an independent review of the record, giving deference to the hearing judge’s findings of fact when supported by clear and convincing evidence. The Court overruled certain of Petitioner’s and Respondent’s exceptions, and sustained others.

The Court further concluded that indefinite suspension was the appropriate sanction for Respondent’s conduct. Respondent demonstrated a pattern of failure to comply with ethical obligations and had been sanctioned previously by the Court. Respondent was familiar with the Maryland Rules regarding reinstatement and was charged with knowledge of his ethical duties. He, therefore, lacked an objective “good faith” belief he was authorized to practice. Respondent, however, did not act with a selfish motive or an intent to deceive. Considering all the appropriate mitigating and aggravating factors, indefinite suspension was the proper sanction.

*Attorney Grievance Commission of Maryland v. Anthony Ignatius Butler, Jr.*, AG No. 14, September Term 2011, filed May 21, 2012. Opinion by McDonald, J.

Harrell and Battaglia, JJ., dissent

<http://mdcourts.gov/opinions/coa/2012/14a11ag.pdf>

## ATTORNEY DISCIPLINE – APPROPRIATE SANCTIONS – SUSPENSION

### **Facts:**

The Attorney Grievance Commission charged Anthony I. Butler with violating several provisions of the Maryland Lawyers’ Rules of Professional Conduct (“MLRPC”), including MLRPC 1.1 (competence), 1.2 (scope of representation and allocation of authority between the lawyer and client); 1.3 (diligence); 1.4 (communication); 1.8(h) (conflict of interest); 3.4(c) (knowing violation of obligation under rule of tribunal); 4.2 (communication with person represented by counsel); 8.1 (false statement of material fact in disciplinary proceeding); and 8.4 (misconduct).

Mr. Butler was admitted to practice law in Maryland in 2003. Since joining the Bar, he has received two reprimands and a 30-day suspension for various MLRPC violations, including, in each instance, MLRPC 1.3 and 1.4. As a solo practitioner in 2009, he represented a towing company and its owners (“the clients”) in litigation arising from an automobile accident involving an employee. The day before trial in their case, Mr. Butler represented a criminal defendant before the District Court of Maryland in Baltimore County, where he pled a jury trial. As was customary in that court, trial was set for the following day in the Circuit Court for Baltimore County. Therefore, Mr. Butler was scheduled to conduct two trials on the same morning in November 2009, one in the Baltimore County circuit court and one in the District Court in Baltimore City.

Mr. Butler attempted to be present at both trials. He had the Baltimore City trial placed at the end of the morning docket, planning to leave Baltimore County with sufficient time to arrive at the District Court before the case was called. However, because the criminal proceedings took longer than he hoped, and the District Court’s morning docket was completed earlier than expected, his plan was unsuccessful, and the clients’ case was postponed.

Mr. Butler did not receive notice from the District Court about the new trial date in February 2010, and was unaware of it until a few days beforehand. He had committed to attend an American Bar Association conference in Orlando on the rescheduled trial date. The clients were opposed to another postponement, so Mr. Butler attempted to secure substitute counsel for the trial. He contacted two attorneys, one of whom could not later recall whether he had agreed to serve as substitute counsel. Neither, however, confirmed to Mr. Butler that he would represent

the clients at the trial. Mr. Butler nonetheless left for the conference. No attorney appeared in the case, and a default judgment was entered against the clients.

The clients thereafter terminated Mr. Butler, who had them sign a settlement agreement and release. That document waived the clients' potential malpractice claims against him in exchange for his forgoing collection on outstanding legal bills. The document did not advise the clients that they should seek advice from another attorney before signing the agreement, nor did Mr. Butler provide them with any other written notice to that effect.

Pursuant to Maryland Rule 16-752, the case was referred to Judge Stephen J. Sfekas of the Circuit Court for Baltimore City to conduct an evidentiary hearing and make findings of fact and conclusions of law. Judge Sfekas found violations of MLRPC 1.1, 1.3, 1.4, 1.8(h), and 8.4(a) and (d), primarily with respect to the February 2010 trial date. The Commission filed several exceptions to Judge Sfekas' conclusions of law, arguing that Mr. Butler voluntarily ignored his clients' court dates, thus failing to abide by his clients' objectives and knowingly disobeying his obligations to be in court. The Commission also took exception to several mitigating circumstances found by Judge Sfekas, including that previous disciplinary action against Mr. Butler for a prior use of his faulty release form had effectively already punished him for that form, which he had since abandoned.

**Held:**

Mr. Butler violated MLRPC 1.1, 1.3, 1.4, 1.8(h), and 8.4(a) and (d) by failing to appear or provide substitute counsel for a trial, failing to inform his clients about the status of their trial and his efforts to secure substitute representation, and settling malpractice claims without advising his clients in writing to seek independent counsel. The appropriate sanction was a 60-day suspension.

The Court accepted Judge Sfekas' findings of fact and agreed with all but one of his conclusions of law, agreeing with the Commission that Mr. Butler's prior discipline for violation of MLRPC 1.8(h) with respect to the release form was an aggravating, rather than mitigating, factor. An attorney who fails to appear at scheduled court dates, fails to adequately communicate with clients, and has uncounseled clients waive potential malpractice claims against him has committed MLRPC violations. The Court explained that while failure to appear at a court proceeding may, as an attorney's first and only offense, merely warrant reprimand, an attorney with prior MLRPC violations for the same misconduct requires a stronger deterrent. A 60-day suspension was therefore the appropriate sanction.

*Robert S. Cochran, Jr., et al., v. Griffith Energy Services, Inc., et al.*, No. 87, September Term 2011, filed May 1, 2012. Opinion by Adkins, J.

<http://mdcourts.gov/opinions/coa/2012/87a11.pdf>

## CIVIL PROCEDURE – RES JUDICATA

### **Facts:**

In 2002, a fuel oil spilled in the Cochran household. The Cochran Parents sued Griffith Energy Services for the spill, including claims for negligence and breach of contract. Griffith had the home tested in May 2006, and the results showed a more than 300 percent increase in benzene levels in the home. Griffith did not disclose this information to the Cochran Parents until late 2006, at which point the Parents amended their lawsuit to include fraudulent concealment claims. The Circuit Court for Washington County granted summary judgment on the fraud claim, but the negligence and breach of contract claims went to trial and the Parents prevailed.

The Parents' Adult Children, the Petitioners, sued Griffith for fraud and negligent supervision in May 2009. The Circuit Court dismissed the suit, ruling that Petitioners' claims were barred by *res judicata*; that Griffith owed no duty to Petitioners to disclose the test results; and that the Petitioners did not allege any legally cognizable damages. Petitioners appealed to the Court of Special Appeals, which affirmed, holding that the motion was proper as a motion to dismiss even though it relied on matters outside the pleadings, and holding that the Petitioners' claims were likewise barred under *res judicata*.

**Held:** Affirmed.

The Court held that the three elements of *res judicata* were present: (1) Petitioners' claim raised the same issues as their parents'; (2) Petitioners were in privity with their parents; and (3) the first lawsuit was finally adjudicated on the merits. Furthermore, the Court held that the Petitioners, based on their pre-existing interest in redressing their exposure to the benzene in the family home, were indeed so far represented by their parents that their interests received actual and efficient protection in the prior lawsuit.

Other factors supported a holding barring the Petitioners, under *res judicata*, from filing suit. First, they could have intervened, had they chosen to do so, but not having intervened, they could not relitigate the same question. Also supporting *res judicata* is the family relationship between Petitioners and their parents; the common interest in the property; and the appearance of the same lawyer in both actions. Although pretrial statements in the first lawsuit indicated that the first suit expressly did not include damages to the Petitioners, this exclusion did not destroy privity.

*Shailendra Kumar, M.D., P.A. v. Anand M. Dhanda, M.D.*, No. 47, September Term 2011, filed May 1, 2012. Opinion by Greene, J.

<http://mdcourts.gov/opinions/coa/2012/47a11.pdf>

STATUTE OF LIMITATIONS – ACCRUAL OF CAUSE OF ACTION – NON-BINDING ARBITRATION

**Facts:**

Shailendra Kumar, MD., P.A. (“Petitioner”) sued Anand M. Dhanda, M.D. (“Respondent”) in the Circuit Court for Montgomery County alleging breach of contract and the breach of a covenant not to compete. The contract at issue provided for disputes to be initially addressed through mandatory, non-binding arbitration. Respondent filed a motion to dismiss, asserting that the suit was time-barred because the causes of action had accrued more than three years prior to filing. Petitioner opposed dismissal, arguing that the complaint was timely because his causes of action had either not “accrued” or that limitations was tolled until the completion of arbitration. The trial court dismissed the action as time-barred and the Court of Special Appeals affirmed.

**Held:** Affirmed

While non-binding arbitration may have been a condition precedent to litigation, it neither affected the accrual of the underlying breach of contract claims, nor otherwise tolled the statute of limitations applicable to maintaining an action in court. Therefore, when Petitioner filed his complaint nearly six years after the termination of the contract, and more than three years after the expiration of the non-compete provision, his action was time-barred, as a matter of law. It was more than feasible that arbitration could have been completed before the expiration of the three-year statute of limitations, and nothing prevented Petitioner from filing his claims and requesting a stay if timely arbitration was in doubt.

*Daniel Genies v. State of Maryland*, No. 11, September Term 2011, filed May 1, 2012. Opinion by Battaglia, J.

Bell, C.J., and Greene, J., dissent.

<http://mdcourts.gov/opinions/coa/2012/87a11.pdf>

CORRECTIONAL SERVICES – SECTION 8-803 – INDECENT EXPOSURE BY AN INMATE IN THE PRESENCE OF A CORRECTIONAL OFFICER – COMMON LAW INDECENT EXPOSURE NOT PREEMPTED

**Facts:**

While incarcerated at the Montgomery County Correctional Facility in 2008, Daniel Genies, Petitioner, masturbated in sight of a female correctional officer, while smiling and making eye contact with her, in spite of her orders to stop. Genies was subsequently charged with committing the common law offense of indecent exposure, as well as with violating Section 8-803 of the Correctional Services Article, Maryland Code (1999, 2008 Repl. Vol.), which prohibits “[a]n inmate . . . with intent to annoy, abuse, torment, harass, or embarrass a correctional officer or authorized personnel [from] lewdly, lasciviously, and indecently expos[ing] private parts of the inmate’s body in the presence of the correctional officer or authorized personnel.” Prior to trial in the Circuit Court for Montgomery County, Genies moved to dismiss the common law charge, arguing that Section 8-803 was preemptive. The motion was denied by the Circuit Court and the jury subsequently acquitted Genies of the statutory offense but convicted him of the common law offense. Genies, thereafter, filed a motion for new trial, in which he alleged juror intimidation during deliberations, but the Circuit Court Judge denied the motion without a hearing and ultimately sentenced Genies to three years’ imprisonment. The Court of Special Appeals affirmed.

**Held:** Affirmed.

The Court initially determined that the express language of Section 8-803 did not abrogate the common law offense; preemption by implication, therefore, was the issue. The Court addressed whether the statutory offense covered the entire subject matter, known as field preemption, or supplanted the common law to the extent of inconsistency, known as conflict preemption. As to Genies’s field preemption argument, the Court concluded that the statutory offense did not cover the entire subject matter of indecent exposure by an inmate because it provided that correctional officers and “authorized personnel” could be the only victims of the statutory offense, rather than the multitude of others present in the correctional facility. As to conflict preemption, the Court reviewed the legislative history of Section 8-803, including a discussion of its unique purpose to address harassment against correctional officers, to conclude that the statute was a discrete

offense, separate from the common law. Thus, the common law offense of indecent exposure was not preempted.

As to Genies's second question presented, regarding the Circuit Court Judge's denial of Genies's motion for new trial based on juror intimidation, the Court determined that a hearing under Rule 4-331 for Genies's motion for new trial was discretionary, juror intimidation could not be substantiated during a hearing, as Rule 5-606(b) forbids a juror from impeaching his or her verdict, and therefore the Circuit Court Judge acted well-within his discretion by denying the motion for new trial without a hearing.

*McKenzie A. Nicolas v. State of Maryland*, No. 88, September Term 2011, filed May 8, 2012. Opinion by Greene, J.

Bell, C.J., concurs and dissents.

<http://mdcourts.gov/opinions/coa/2012/88a11.pdf>

CRIMINAL PROCEDURE – JURY NOTES

CRIMINAL PROCEDURE – DOUBLE JEOPARDY – MERGER OF OFFENSES

**Facts:**

On December 12, 2009, three police officers from the Montgomery County Police Department responded to a 911 call. Their investigation led them to question Petitioner at his home. As a result of the events that occurred during the course of the encounter, Petitioner was charged with, *inter alia*, three counts of resisting arrest and three counts of second degree assault. The State offered evidence at Petitioner's jury trial regarding the events surrounding the alleged assaults committed by Petitioner against the officers and Petitioner's resistance of his arrest. Petitioner also testified in his own defense, offering a version of the events vastly different from the officers' testimony. At the conclusion of all of the evidence, the jury convicted Petitioner of one count of resisting arrest and two counts of second degree assault.

After the jury had rendered its verdict and had been discharged, four relevant notes were discovered in the court file. Three of the jury notes contained a date and time, the trial judge's apparent signature, and a handwritten response. The trial transcript reflected discussions on the record between the trial judge and trial counsel pertaining to responses to each of those three notes. The Fourth note, the note at issue, asked whether assault covered a situation where physical contact was made in self-defense. The Fourth note contained no date or time-stamp and no response. In addition, there was no mention in the trial transcript of the Fourth note or its contents. In response to an inquiry by Petitioner's appellate counsel regarding the Note at issue, trial counsel and the trial judge indicated that they had no recollection of the Note. The trial judge indicated that his usual practice when receiving a communication from the jury is to provide counsel with a copy of the note, to convene with counsel on the record regarding possible responses, and to supply a response to the jury on the note itself.

Petitioner noted an appeal to the Court of Special Appeals, which affirmed his convictions and sentence. The intermediate appellate court concluded that the trial judge did not err in declining to merge Petitioner's convictions for second degree assault with his conviction for resisting arrest, and that the Fourth note had not been received by the trial court within the meaning of Maryland Rule 4-326(d).

**Held:** Affirmed in part and reversed in part

Under Maryland law, the appropriate test for determining whether two offenses merge for double jeopardy purposes is the required evidence test. Merger follows as a matter of course when only one offense requires proof of an additional fact, so that all elements of one offense are present in the other, and where both offenses are based on the same act or acts. Where there is a factual ambiguity regarding the underlying basis for a conviction or convictions, that ambiguity is resolved in favor of the defendant. The offenses of resisting arrest and second degree assault, of the battery variety, merge under the required evidence test. Based on the record, it is ambiguous whether the jury found Petitioner guilty of both counts of second degree assault based on events that were an integral part of the resisting arrest conviction, or whether the underlying factual bases for the second degree assault convictions were separate and distinct from the events leading to Petitioner's conviction for resisting arrest. Thus, we resolve the ambiguity in Petitioner's favor, and we hold that the trial court should have merged the second degree assault convictions into the conviction for resisting arrest.

Maryland Rule 4-326(d), which governs communications between the trial court and the jury, is triggered upon receipt by the court of a communication from the jury pertaining to the action at a time before the verdict is rendered. Receipt by the court, as contemplated by the Rule, encompasses receipt by the trial judge or any member of the court staff. There is a rebuttable presumption of regularity in trial court proceedings. The petitioner or appellant has the burden of producing a sufficient record on appeal to rebut the presumption of regularity. An unexplained and unmarked jury note found in the record after the jury has rendered its verdict and has been excused raises a presumption that the note was not received by the court. In this case, Petitioner needed to show that the Fourth note was actually received by the trial court prior to the jury rendering its verdict. Petitioner failed to produce a sufficient record on appeal to rebut the presumption of regularity.

*Daniel A. McNeal v. State of Maryland*, No. 94, September Term 2011, filed May 21, 2012. Opinion by Harrell, J.

<http://mdcourts.gov/opinions/coa/2012/94a11.pdf>

## CRIMINAL LAW – FACTUALLY INCONSISTENT VERDICTS

### **Facts:**

Petitioner, Daniel A. McNeal, was approached by police and asked whether “he had anything he shouldn’t have.” McNeal responded affirmatively, produced a handgun from his pocket that he said he found recently in a nearby grassy area. He claimed that he was planning on turning the gun in for reward money and to keep children or others from finding it. After fleeing the police, he was captured and arrested. He was convicted by a jury of possessing a handgun after conviction of a disqualifying crime but, in the same jury trial in the Circuit Court for Baltimore City, acquitted of wearing, carrying, or transporting a handgun. McNeal challenged these assertedly inconsistent verdicts, claiming that *Price v. State*, 405 Md. 10, 949 A.2d 619 (2008), prohibited juries from rendering any inconsistent verdicts. The trial court disagreed with McNeal because the verdicts in his trial were, at most, factually inconsistent, but not legally inconsistent. McNeal appealed timely to the Court of Special Appeals, which upheld the factually inconsistent jury verdicts. *McNeal v. State*, 200 Md. App. 510, 28 A.3d 88 (2011). He filed timely a petition for a writ of certiorari, which the Court granted, *McNeal v. State*, 424 Md. 55, 33 A.3d 981 (2011), to consider the question:

Should this Court’s decision in *Price v. State*, 405 Md. 10, 949 A.2d 619 (2008), holding that inconsistent verdicts are no longer allowed in Maryland, apply to verdicts which are factually inconsistent as well as those which are legally inconsistent?

### **Held:** Affirmed

The Court of Appeals concluded that its holding in *Price* did not apply to factually inconsistent, or illogical, jury verdicts. The Court explained that legally inconsistent verdicts, which are prohibited under *Price*, are those where the jury acts contrary to the instructions of the trial judge with regard to the proper application of the law. Factually inconsistent verdicts, on the other hand, are those where the charges have common facts, but distinct legal elements, and a jury acquits a defendant of one charge, but convicts him or her on another charge.

The Court based its conclusion on the historic role of the jury as the sole fact-finding body in a criminal jury trial and the fact that it is difficult, if not impossible, for a reviewing court to determine whether a factually inconsistent verdict is the product of juror lenity, compromise, or mistake. The verdicts rendered by the jury did not mis-apply facially the elements of the counts

against McNeal. McNeal was convicted of possession of a regulated firearm after prior conviction of a disqualifying crime, but acquitted of wearing, carrying, or transporting a handgun. The charge of possession of a handgun contains legal elements that are distinct from the elements in a wearing, carrying, or transporting a handgun charge. There was no lesser included offense or predicate crime involved in McNeal's inconsistent verdicts.

*Ocie L. Black, Jr. v. State of Maryland*, No. 73, September Term 2011, filed May 3, 2012. Opinion by Greene, J.

<http://mdcourts.gov/opinions/coa/2012/73a11.pdf>

Bell, C.J., dissents.

## CRIMINAL PROCEDURE – JURY NOTES

### **Facts:**

Following a jury trial in the Circuit Court for Howard County, Petitioner was convicted of one count of child sexual abuse, two counts of second degree sex offense, and two counts of third degree sex offense. After the jury rendered its verdict and had been discharged, five relevant notes were discovered in the court file. Three of the jury notes appear to have been received by the court and responded to by the trial judge. Those notes include dates and time-stamps, as well as handwritten responses; there is also evidence in the trial transcript of discussions on the record between the trial judge and trial counsel pertaining to the responses to each of the notes. Note four, the note at issue, was written on loose-leaf style, lined paper and purported to seek advice about the deliberation process for the charges against Petitioner: “We agree on 2 out of the 5, but have not come to an agreement on the other 3 . . . do you have suggestions on how to proceed?” The Note was signed by juror number one, but it did not contain a date or time-stamp, nor did it contain any response by the trial court. There was also no evidence in the trial transcript of an oral response to the jury or a meeting on the record between the trial judge and trial counsel to discuss a possible response. Petitioner’s appellate counsel obtained affidavits from trial counsel and the trial judge in an effort to discover the origins of Note four. Trial counsel indicated that they had no recollection of Note four, and the trial judge affirmatively stated that he was not in receipt of, nor had he been made aware of, Note four. Furthermore, the trial judge indicated that his usual practice with regard to jury communications was to write on the note the date and time it was received, to convene with counsel on the record to discuss a possible response, and to write an answer to the jury on the note itself. The trial judge asserted that, had he received Note four, he would have followed his usual practice.

Petitioner noted an appeal to the Court of Special Appeals, claiming, *inter alia*, that the trial court had erred in failing to disclose Note four to him and his trial counsel in violation of Maryland Rule 4-326(d). In an unreported opinion, the intermediate appellate court affirmed the judgment of the trial court.

**Held:** Affirmed

Maryland Rule 4-326(d), which governs communications between the trial court and the jury, is triggered upon receipt by the court of a communication from the jury pertaining to the action at a

time before the verdict is rendered. Receipt by the court, as contemplated by the Rule, encompasses receipt by the trial judge or any member of the court staff. There is a rebuttable presumption of regularity in trial court proceedings. The petitioner or appellant has the burden of producing a sufficient record on appeal to rebut the presumption of regularity. An unexplained and unmarked jury note found in the record after the jury has rendered its verdict and has been excused raises a presumption that the note was not received by the court. In this case, Petitioner needed to show that Note four was actually received by the trial court prior to the jury rendering its verdict. Petitioner failed to produce a sufficient record on appeal to rebut the presumption of regularity.

*Tyrone Davis v. State of Maryland*, No. 59, September Term 2011, filed May 2, 2012. Opinion by Harrell, J.

Bell, C.J., and Greene, J., dissent.

<http://mdcourts.gov/opinions/coa/2012/59a11.pdf>

CRIMINAL LAW – MARYLAND WIRETAP ACT – JURISDICTION – INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS – SUPPRESSION OF EVIDENCE

**Facts:**

Pursuant to a wiretap order issued by the Circuit Court for Montgomery County, Montgomery County police detectives, located at a covert “listening post” in Montgomery County, intercepted communication from Tyrone Davis’s Virginia-registered mobile phone, initiated from Virginia, to a recipient located in Virginia. The intercepted contents of the communication provided detectives information that confirmed their belief that Davis was transporting controlled dangerous substances into Maryland. Under the guise of searching for a robbery suspect who matched assertedly Davis’s description, police approached Davis as he returned to his Montgomery County, Maryland residence and, requested to search Davis, his car, and a suitcase, in the trunk of his car. The police found over nine pounds of marijuana in the suitcase but did not arrest Davis, purportedly to avoid interrupting its ongoing investigation into a large-scale drug distribution ring in Montgomery County.

Over three years later, Davis was indicted by a grand jury for intent to distribute controlled dangerous substances. Davis moved to suppress the marijuana evidence, but the request was denied by the Circuit Court. Davis proceeded to trial and was convicted and sentenced to five years in prison. Davis appealed and the Court of Special Appeals affirmed. The Court of Appeals granted Davis’s petition for writ of certiorari to consider the following question:

Did the Court of Special Appeals err in affirming the trial court's decision denying Mr. Davis's motion to suppress derivative evidence seized by Montgomery County police after the police intercepted Mr. Davis's phone call from his Virginia phone, placed while he was in Virginia, to a Virginia phone line when the call's recipient was also in Virginia, in violation of the Maryland Wiretapping and Electronic Surveillance Act, Md. Code Ann. Cts. & Jud. Proc. § 10-401, et seq.?

**Held:** Affirmed

The Court of Appeals concluded that interception of a wire, oral, or electronic communication, for the purposes of the Maryland wiretap statute (Maryland Code (1957, 2006 Repl. Vol.) Courts & Judicial Proceedings Article, § 10-408(c)(3)), occurs where law enforcement officers capture or redirect first the contents of the communication overheard by the wiretap and where they heard originally the communication. Therefore, as long as the "listening post" was located within the territorial jurisdiction of the court issuing the ex parte wiretap order, neither the physical location of the mobile phone at the time the call was placed and during the communication or the recipient of the call are material.

*Curtis Windell Alston v. State of Maryland*, No. 121, September Term 2009, filed March 23, 2012. Opinion by Eldridge, J.

<http://mdcourts.gov/opinions/coa/2012/121a09.pdf>

## POSTCONVICTION PROCEDURE – PETITION TO REOPEN POSTCONVICTION PROCEEDING

### **Facts:**

In an action under the Postconviction Procedure Act, the petitioner, who had been convicted of first degree murder and other offenses, had his convictions and sentences vacated and was granted a new trial. The State did not file an application for leave to appeal. Forty-four days after the entry of final judgment in the postconviction case, the State filed a motion for reconsideration of the postconviction relief. The postconviction trial court granted the State's motion and, upon reconsideration, re-imposed the petitioner's original convictions and sentences. The Court of Special Appeals affirmed, and the Court of Appeals granted Alston's petition for a writ of certiorari.

### **Held:** Reversed

The Court of Appeals held that the re-imposition of the petitioner's convictions and sentences constituted an illegal sentence under Maryland Rule 4-345(a). The Court ordered the postconviction trial court to grant the relief initially granted, namely vacation of the convictions and sentences and the grant of a new trial.

When the postconviction trial court rendered and entered on the docket an opinion and an order granting petitioner's motion for postconviction relief, the court's order effectively vacated the convictions and sentences and awarded the petitioner a new trial. This was a final judgment under Maryland Rule 4-407(d), subject only to the State's right, within 30 days, to apply to the Court of Special Appeals for leave to appeal.

The postconviction trial court relied upon § 7-104 of the Postconviction Procedure Act, which allows a court to "reopen a postconviction proceeding...if the court determines that the action is in the interest of justice." The statutory language and legislative history of § 7-104, however, makes it clear that only a "convicted person" may bring a petition to reopen a postconviction proceeding. There was no support for the State's claim that the State is permitted to reopen a proceeding under § 7-104.

When the State decided not to seek leave to appeal, the postconviction trial court's order became fully effective and the petitioner had no convictions and no sentences. He could still face trial under the charges in the original indictment if the State decided to re-try him. When the

postconviction trial court unlawfully reopened the prior postconviction proceeding and re-imposed the sentences, the effect of the trial court's action was to impose, illegally, convictions and sentences upon a person whose convictions and sentences had been vacated, an action that is somewhat similar to imposing convictions and sentences on a defendant who has been acquitted.

*Chaz Kinichi Bazzle v. State of Maryland*, No. 89, September Term 2011, filed May 21, 2012, Opinion by Adkins, J.

Harrell, Barbera, and McDonald, JJ., dissent.

<http://mdcourts.gov/opinions/coa/2012/89a11.pdf>

#### CRIMINAL LAW – VOLUNTARY INTOXICATION

A defendant is not entitled to an instruction on voluntary intoxication unless he can point to some evidence that would allow a jury to rationally conclude that his intoxication made him incapable of forming the intent necessary to constitute the crime. The trial court did not abuse its discretion in declining to grant such an instruction under the facts of this case.

#### EVIDENCE – PRESERVATION OF OBJECTIONS FOR APPEAL

When the trial court offers to hear grounds for an objection and says that without grounds, the objection will be overruled, the objection is not preserved for appeal, under Maryland Rules 5-103(a) and 4-323, unless grounds are provided.

#### **Facts:**

Petitioner Chaz K. Bazzle, according to his testimony, was stabbed and consumed at least three 40-ounce containers of beer and other alcohol on the same night he was alleged to have attacked and stabbed Kohlya Eggleston in a gas station. Eggleston testified at trial that he was “very certain” that Petitioner had been his attacker. The trial court refused to instruct the jury on voluntary intoxication, and Petitioner was convicted of attempted second-degree murder, attempted armed carjacking, and first-degree assault. Petitioner appealed, arguing that the trial court had committed reversible error by (1) failing to instruct the jury on voluntary intoxication and (2) allowing a witness to testify as to the certainty of his eyewitness identification. The Court of Special Appeals affirmed, and he petitioned for *certiorari*.

#### **Held:** Affirmed

The Court of Appeals affirmed the judgment of the Court of Special Appeals, holding that (1) the evidence did not generate an instruction on voluntary intoxication because it was insufficient to allow a jury to rationally conclude that Petitioner was so intoxicated that he was unable to form the intent necessary to constitute his crimes; and (2) Petitioner failed to preserve his objection to the witness’s testimony because the trial court, by stating that it would overrule the objection unless grounds were provided, triggered the requirement, under Maryland Rules 5-103(a) and 4-323, that Petitioner provide grounds or lose the opportunity to raise the objection on appeal; Petitioner never provided grounds.

*Maryland State Board of Elections v. Libertarian Party, et al.*, No. 79, September Term 2011, filed May 21, 2012. Opinion by Greene, J.

<http://mdcourts.gov/opinions/coa/2012/79a11.pdf>

ELECTION LAW – MANDATORY REQUIREMENTS OF § 6-203(a)

ELECTION LAW – DUPLICATE SIGNATURES NOT VALIDATED

**Facts:**

The Libertarian Party and the Green Party (collectively, Appellees) qualified as new political parties and had ballot access privileges from January 2007 until December 2010. After December 2010, Appellees did not satisfy the statutory requirements to retain their statuses as political parties. Appellees then each undertook to circulate a petition to obtain the signatures of 10,000 registered Maryland voters in an effort to regain their political party statuses. Appellees each submitted to the Maryland State Board of Elections (Appellant) petitions that purported to contain in excess of 10,000 signatures. Appellant reviewed the petitions for compliance with statutory validation and verification requirements. After completion of its review of the submitted petitions, and the signatures contained therein, Appellant determined that Appellees did not satisfy the statutory requirements to regain their statuses as political parties. Specifically, Appellant determined that many of the submitted petition signatures were invalid under Md. Code (2002, 2010 Repl. Vol.), § 6-203(a) of the Election Law Article, as interpreted by the Court of Appeals in *Montgomery Cnty. Volunteer Fire-Rescue Ass’n v. Montgomery Cnty. Bd. of Elections*, 418 Md. 463, 15 A.3d 798 (2011) [hereinafter *Fire-Rescue*].

Appellees filed a Complaint in the Circuit Court for Anne Arundel County seeking a declaratory judgment that Appellant had incorrectly applied the law regarding validation of petition signatures and that the applicable law was whether there was “sufficient cumulative information,” a phrase appearing in *Fire-Rescue*, from which Appellant could identify a signatory as a registered voter. The trial court granted summary judgment in favor of Appellees, adopting Appellees’ suggested “sufficient cumulative information” standard and declaring that: the “sufficient cumulative information” standard forbids invalidating a petition entry merely because a signer omits an unused first or middle name; the “sufficient cumulative information” standard forbids invalidating a petition entry for name-related defects if, through other information contained in the entry, the signer’s identity can be corroborated; and no petition signature should be considered a duplicate unless a signature from the same voter has been previously validated.

**Held:** Vacated and remanded

The Court's interpretation in *Doe v. Montgomery Cnty. Bd. of Elections*, 406 Md. 697, 962 A.2d 342 (2008), of the mandatory signature requirements of § 6-203(a) was affirmed in *Fire-Rescue*. The "sufficient cumulative information" language from *Fire-Rescue* was taken out of context by Appellees and the trial judge. *Fire-Rescue* did not establish a new standard for the State Board of Elections to employ when validating petition signatures. Rather, the Court in *Fire-Rescue* merely held that an illegible signature, alone, does not preclude a State or local board of elections from validating a signature contained in an entry that satisfies the mandatory requirements of § 6-203(a). In addition, the plain and unambiguous language of § 6-203(b) indicates that when the State Board of Elections evaluates a petition entry by an individual, and determines whether to validate or invalidate the entry, any additional signature by the same person on the same petition is appropriately invalidated as a duplicate.

*Amy Mulligan v. William Corbett*, No. 43, September Term 2011, filed May 23, 2012. Opinion by Rodowsky, J.

Barbera and Raker (Retired, Specially Assigned), JJ., dissent

<http://mdcourts.gov/opinions/coa/2012/43a11.pdf>

PATERNITY – CHILD CONCEIVED DURING MARRIAGE BUT BORN AFTER DIVORCE  
– WEDLOCK – FAMILY LAW ARTICLE § 1002(c) – ESTATES AND TRUSTS ARTICLE §  
1-206(a) – BLOOD TESTING – BEST INTERESTS OF CHILD – PUTATIVE FATHER –  
PRESUMPTION OF LEGITIMACY

**Facts:**

Respondent Corbett asserted that he was the father of a child conceived during the Petitioner, Mulligan's, marriage to her husband. Corbett claimed that he was entitled to blood testing to prove standing for court ordered visitation and child support pursuant to § 5-1002(c) of the Family Law Article (FL).

The circuit court found that blood testing was not in the child's best interests and denied Corbett leave to conduct blood testing.

The Court of Special Appeals reversed, finding that Corbett was a putative father, entitled to blood testing, because the child was born after the mother's divorce, hence "out of wedlock." The Court granted certiorari to address the following question:

Should the paternity of a child conceived during a marriage but born after divorce be determined under the Estates and Trusts Article or the Family Law Article?

**Held:** Reversed

The Court first addressed the statutory scheme underlying the Paternity subtitle of the Family Law Article. The Court noted that it is rooted in the former criminal Bastardy laws, which were first revised in 1963 and became civil paternity laws. The current Paternity subtitle, FL § 5-1027(c)(1), creates a rebuttable presumption that a child is the legitimate child of the man to whom its mother was married at the time of conception. The current subtitle also outlines the procedures through which the State can establish paternity and hold alleged fathers responsible for parental duties. Once a complaint is filed, the court can order blood testing of the mother, the child, and the alleged father to determine if the alleged father can be excluded as being the father of the child.

The Court then compared and contrasted the paternity determination mechanism under the Estates and Trusts Article (ET), whose purpose is to simplify the administration of estates, reduce the expenses thereof, and to clarify the law governing the estates of decedents. There are four methods by which to establish the father-child relationship pursuant to the Estates and Trusts Article: (1) a judicial determination under the statutes relating to paternity proceedings; (2) if the father acknowledges himself as the father in writing; (3) if the father has openly and notoriously recognized the child to be his child; or (4) if the father has subsequently married the mother and has acknowledged himself, orally or in writing, to be the father. To rebut the presumption of fatherhood under ET § 1-206(a), the alleged father may request blood testing and must show good cause before such testing will be ordered. The Court noted that, of import, under good cause, a court will only order blood testing if it is in the best interests of the child.

The Court noted that there is an interrelationship between the Estates and Trusts Article and the Family Law Paternity subtitle, whereby they reference each other.

The Court stated that *Turner v. Whisted*, 327 Md. 106, 607 A.2d 935 (1992), has been the touchstone for decisions in this area. In *Turner*, the Court noted that both the Estates and Trusts Article and the Family Law Article provide a course of action by which to establish paternity. The Court held that when a child is presumed legitimate and two men each acknowledge paternity thereof, an action to establish paternity is more properly brought under the Estates and Trusts Article because it is less traumatic when a child is born during a marriage. The Court further noted that *Turner* required consideration of the child's best interests before granting blood testing to establish paternity.

The Court then turned its attention to *Evans v. Wilson*, 382 Md. 614, 856 A.2d 679 (2004). In *Evans*, a man claimed to be the biological father of a child who was conceived and born while the mother was married to another man and sought blood testing under the FL Paternity subtitle. The *Evans* Court held the recently expanded rights of putative fathers to challenge paternity declarations were not applicable to a man in Evans's position because he was not a putative father. The child in *Evans* was born in wedlock and therefore *Turner* remained the controlling precedent for situations where two men acknowledge paternity of a child born during a marriage.

Turning to the case *sub judice*, the Court discussed the analysis of the Court of Special Appeals, which ultimately concluded that the child was not born during a marriage (and thus was born out of wedlock and not entitled to the presumption of legitimacy) because even though she was conceived while the Mulligans were married, she was born after they were divorced. Because of this, the Court of Special Appeals concluded that the Family Law Article was the proper provision to determine the child's paternity.

The Court stated that this analysis was in error because the phrase "out of wedlock" is a euphemism for an illegitimate child or a bastard. The Court stated that the child here was born in wedlock because her parents were married at the time of her conception. The presumption of legitimacy was therefore still applicable.

The Court then discussed the difference between using the paternity statutes as a shield versus as a sword. The Court noted that prior to 1997, a woman who mothered a child, and who was unmarried both at conception and birth, could require blood testing as a sword to prove the paternity of the putative father. Likewise, the putative father could require blood testing as a shield to determine if he could be genetically excluded from being the father. The Court noted that in this scenario, there was no presumption of legitimacy because the mother was unwed at all pertinent times and therefore there was no best interests analysis before ordering the blood tests. After 1997, FL § 1002(c) furnished putative fathers with a sword, allowing them to require blood testing under FL § 5-1029(b) in order to establish paternity of a child born out of wedlock. The Court also noted that, under *Evans*, this sword does not extend to a self-proclaimed biological father of a child born in wedlock.

Thus, the Court concluded that where a third party to a marriage relationship seeks to use blood testing as a sword to prove his paternity of a child conceived during the marriage of the mother to her husband, the presumption of legitimacy is not overcome by a mere claiming of such paternity. So long as the presumption of legitimacy stands, the request for blood testing under the circumstances must be analyzed under the best interests standard. Here, the Court stated, the child was presumptively legitimate because she was conceived during the Mulligans' marriage. Thus, the best interests of the child must be raised before blood testing is ordered.

*Jessica Port v. Virginia Anne Cowan*, No. 69, September Term 2011, filed May 18, 2012. Opinion by Harrell, J.

<http://mdcourts.gov/opinions/coa/2012/69a11.pdf>

FAMILY LAW – DIVORCE – RECOGNITION OF VALID FOREIGN SAME-SEX MARRIAGE – DOCTRINE OF COMITY

**Facts:**

Jessica Port, Appellant, and Virginia Anne Cowan, Appellee, were wed validly in California on 10 October 2008. Approximately eight months later, the parties agreed to end their marriage and separated. On 12 July 2010, after the requisite period of separation, Port, a resident of Prince George’s County, filed in the Circuit Court for Prince George’s County a complaint for an absolute divorce. Cowan filed timely a “no contest” answer. In its 22 October 2010 dispositive order, the Circuit Court, although noting that the parties met the requirements for a divorce, denied Port’s divorce request. The trial judge reasoned that the parties’ foreign same-sex marriage was not valid pursuant to Maryland law, stating that the alleged marriage was contrary to the public policy of Maryland. Port and Cowan filed appeals to the Court of Special Appeals, each arguing that their California marriage should be recognized in Maryland for purposes of divorce. Prior to the intermediate appellate court deciding the appeal, the Court of Appeals issued a writ of certiorari on its initiative.

**Held:** Reversed.

The Court noted from the outset that resolution of the appeal did not implicate directly Maryland’s domestic marriage laws (particularly § 2-201 of the Family Law Article of the Maryland Code, defining marriage as between a man and a woman only) or *Conaway v. Deane*, 401 Md. 219, 932 A.2d 571 (2007) (upholding § 2-201 as constitutional).

Rather, courts deciding if a foreign marriage will be recognized in this State, for purposes of divorce or otherwise, employ the common law doctrine of comity. Under that doctrine, Maryland courts will honor foreign marriages as long as the marriage was valid in the state where performed. There are two exceptions to this rule: the foreign marriage may not be “repugnant” to Maryland public policy and may not be prohibited expressly by the General Assembly.

Maryland recognizes liberally foreign marriages, even those marriages that may be prohibited from being formed if conducted in this State. For example, foreign common law marriages, which are prohibited domestically, have been recognized in the State. In another example, a Rhode Island uncle-niece marriage, which would have been a misdemeanor and punishable with a fine if conducted in Maryland, was recognized in Maryland.

Applying the doctrine of comity, the Court concluded that the parties' California same-sex marriage was neither prohibited expressly by statute nor "repugnant" to Maryland public policy. Regarding the former exception, Family Law Article § 2-201 does not prohibit expressly valid foreign same-sex marriages, only performing such marriages within the State. Further, several attempts to amend § 2-201 to accomplish that objective have failed. Regarding the latter exception, the Court noted that it would be legally inconsistent and illogical to recognize foreign common law and uncle-niece marriages, but not recognize foreign same-sex marriages. The Court pointed out also that several statutes, published court opinions, and gubernatorial executive orders protect and support persons in same-sex relationships and marriages. Therefore, recognizing a valid foreign same-sex marriage for purposes of divorce does not contravene the public policy of the State.

*Michael T. McCloud v. Department of State Police, Handgun Permit Review Board*, No. 101, September Term 2011, filed May 21, 2012. Opinion by Adkins, J.

<http://mdcourts.gov/opinions/coa/2012/101a11.pdf>

## PUBLIC SAFETY – STATUTORY INTERPRETATION

### **Facts:**

Petitioner Michael T. McCloud submitted an application to the Maryland State Police (“MSP”) in July 2008 to renew his permit to carry a concealed weapon. The MSP denied the application after discovering he had been convicted in the District of Columbia in 2006 of attempting to carry a pistol without a license. The MSP, relying on 91 Op. Att’y. Gen. 68, determined that the conviction disqualified him under Maryland law from possessing a concealed weapon.

Petitioner appealed the denial to MSP’s Handgun Permit Review Board (“Board”), which reversed the denial and directed the MSP to issue the permit. The MSP then sought review in the Circuit Court for Baltimore County, which reversed the Board and held that Petitioner was prohibited from obtaining the permit. Petitioner appealed to the Court of Special Appeals, which affirmed.

### **Held:** Affirmed

The Public Safety Article prohibits a person from possessing a regulated firearm if he has been previously convicted of a “disqualifying crime,” which includes “a violation classified as a misdemeanor in the State that carries a statutory penalty of more than 2 years.” In a written opinion, the Attorney General believed that this was intended to include out-of-State convictions, and the Court agreed. The Court also held that the relevant penalty in determining whether the two-year floor was reached is the penalty in Maryland for the equivalent offense, not the penalty in the jurisdiction where the crime was committed. The Court also held that the Board’s decision, being premised on an incorrect conclusion of law, was not entitled to any deference or weight.

*Cordish PowerPlant Limited Partnership, et al. v. Supervisor of Assessments for Baltimore City*, No. 114, September Term 2011, filed May 23, 2012. Opinion by Battaglia, J.

McDonald, J., concurs.

<http://mdcourts.gov/opinions/coa/2012/114a11.pdf>

TAX-PROPERTY ARTICLE – VALUATION OF LEASEHOLD INTEREST UNDER SECTION 8-113 AS IF THE LESSEE WERE THE OWNER OF THE PROPERTY – CONSIDERATION OF GROUND LEASE RESTRICTIONS ONLY WHERE DEMONSTRATED TO NEGATIVELY AFFECT THE USE OF THE PROPERTY

**Facts:**

Appellants Cordish Power Plant Limited Partnership and Cordish Power Plant Number Two, LLC (collectively “Cordish”) lease from the City of Baltimore two adjoining pieces of real estate on East Pratt Street in Baltimore City known as the Power Plant Building and the Pier IV Office Building. After the two properties were valued together at \$38,138,600 for real property tax purposes, Cordish challenged the valuations and, before the Tax Court, introduced appraisals and testimony that valued the properties at \$29,900,000 collectively, based in part on the existence of ground leases owned by the City of Baltimore. Cordish’s appraiser concluded that the ground leases per se offset the marketability of the properties. The ground leases, themselves, were not introduced into evidence during the proceedings. The Supervisor of Assessments for Baltimore City, Appellee, also submitted appraisals and testimony supporting its original valuations and argued that consideration of the ground leases was contrary to Section 8-113 of the Tax-Property Article, Maryland Code (1985, 2007 Repl. Vol.), which requires that interests subject to property tax under Section 6-102 of that Article be valued as though the lessee were the owner. The Tax Court affirmed the \$38,138,600 valuation for the two properties collectively, concluding that the Cordish appraisals were not reliable.

On judicial review, the Circuit Court for Baltimore City affirmed. Cordish appealed and the Court of Appeals, prior to proceedings in the Court of Special Appeals, granted certiorari on its own motion.

**Held:** Affirmed

The Court of Appeals affirmed, holding that the Tax Court did not err in disregarding the effect of the ground leases because Cordish did not establish that the leases in issue restricted its use of the properties. Initially, the Court addressed the Supervisor of Assessments’s contention that the ground leases may not be considered in valuing the two properties because Sections 6-102(e) and

8-113 of the Tax-Property Article required Cordish as the lessee to be treated as the owner. The Court concluded that this language attributed hypothetical ownership to the lessee for the purpose of identifying the lessee as the taxpayer rather than to determine value. The Court then addressed Cordish's challenge that all ground leases per se adversely affect the value of the income producing real property. Cordish, however, conceded during oral argument that a ground lease is not per se restrictive. The Court determined that restrictions on the use of the property may be considered in its valuation for tax purposes when demonstrated by the evidence. The Court held that Cordish had not met its burden of proof because the ground leases were not admitted into evidence before the Tax Court nor were the alleged restrictions proven.

*120 West Fayette, LLLP v. Mayor & City Council of Baltimore*, No. 81, September Term 2011, filed April 27, 2012. Opinion by Barbera, J.

Bell, C.J., Harrell and Cathell (Retired, Specially Assigned), JJ., dissent.

<http://mdcourts.gov/opinions/coa/2012/81a11.pdf>

## MOTION TO DISMISS – NON JUSTICIABLE CONTROVERSY – STANDING

### Facts:

In January 2001, the City of Baltimore and Maryland Historical Trust entered into an agreement on minimizing the adverse effects that development of the City’s “Superblock” would have on historic properties. Among other things, the agreement stipulated that the Trust would review and approve any Superblock development plans before those plans were put into effect. The Director of the Trust, J. Rodney Little, exercised this stipulated authority to reject development plans on a number of occasions, finally granting conditional approval to a set of plans in December 2010. The approved set of plans called for the complete demolition of nine historic buildings and partial demolition of five historic buildings within the Superblock.

The Trustees of the Trust learned of Director Little’s conditional approval and requested that he rescind it. When Director Little declined the request, the Trustees transmitted a letter to the Mayor of Baltimore expressing their reservations with the approved plans. The Trustees, however, took no legal action in the matter. Instead, in April 2011, 120 West Fayette Street, LLLP, a private corporation that owned property adjacent to the Superblock, filed a complaint in the Circuit Court for Baltimore City, naming as defendants, among others, the City and the Trust. The complaint challenged Director Little’s approval of the development plans as *ultra vires* and illegal under the terms of the Memorandum of Agreement (MOA) that memorialized the January 2001 agreement between the City and Trust. Specifically, the complaint alleged that Director Little “abdicat[ed] . . . the MOA’s contractual preservation mandate” by approving plans that called for demolition of historic buildings. For relief, the complaint prayed for an interpretation of the terms of the MOA and a declaration that Director Little’s actions were *ultra vires* and illegal.

Upon motions and after a hearing, the Circuit Court dismissed the complaint for failure to state a claim upon which relief could be granted. The court reasoned that 120 West Fayette was neither a party to the MOA, nor an intended beneficiary of the MOA; therefore, 120 West Fayette had sued to enforce a private agreement to which it was not a party. 120 West Fayette noted an appeal of the Circuit Court’s judgment to the Court of Special Appeals, but the City successfully petitioned for a writ of certiorari in the Court of Appeals before the case could be heard in the intermediate appellate court.

**Held:** Affirmed

The Court of Appeals held that 120 West Fayette did not possess standing to bring a claim for declaratory relief that interpreted the terms of the MOA. The Court reasoned that 120 West Fayette could not rely on prior decisions establishing tax payer or adjoining landowner standing. 120 West Fayette did not allege a violation of law, so tax payer standing was unavailable. Moreover, the MOA at issue was not a “land use decision” as that term is commonly understood, so 120 West Fayette could not utilize principles of law that grant standing to an adjoining landowner challenging a land use decision.

According to the Court, 120 West Fayette could only challenge the MOA under principles of contract law. Standing to challenge or enforce the terms of a contract is possessed only by the parties to a contract, or an intended beneficiary of a contract. The Court noted that because 120 West Fayette could not claim to be either, it could not file a suit requesting declaratory judgment that interpreted the terms of an agreement to which it had no part. The Court held that the Circuit Court was legally correct to dismiss the complaint.

# COURT OF SPECIAL APPEALS

*Salvatore Rivieri v. Baltimore Police Department*, No. 35, September Term 2011, filed April 27, 2012. Opinion by Eyler, James R., J.

<http://mdcourts.gov/opinions/cosa/2012/0035s11.pdf>

ADMINISTRATIVE LAW – LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS

## **Facts:**

Appellant, a police officer with the Baltimore City Police Department, was terminated from employment by the Commissioner, after a hearing board found him guilty of failure to write a miscellaneous incident report and failure to issue a contact receipt, stemming from an incident which occurred at the Inner Harbor in the summer of 2007. The hearing board found appellant not guilty of charges relating to his use of force, language, and demeanor. The hearing board recommended a reprimand, a six day suspension, and loss of six days of accrued leave. On judicial review, the Circuit Court for Baltimore City affirmed the Commissioner's determination.

On appeal, appellant argued that the Commissioner improperly increased the severity of the sanction that had been recommended by the hearing board.

## **Held:** Affirmed

The Commissioner lawfully increased the recommended sanction based upon substantial evidence. There was no evidence that the Commissioner was improperly motivated by media coverage. The Commissioner's statements prior to the board's hearing did not violate the appellant's due process rights, and the Commissioner did not retaliate against appellant for exercising his right to a hearing.

*Helen C. Griggs, et al. v. Luke Evans, et al.*, No. 2596, September Term 2009, filed May 2, 2012. Opinion by Krauser, C.J.

<http://mdcourts.gov/opinions/cosa/2012/2596s09.pdf>

## CONTRACT LAW – ARBITRATION RIDER

### **Facts:**

Helen C. Griggs and her husband, Victor G. Griggs, refinanced the mortgage on their home with Beneficial Mortgage Company of Maryland. One of the mortgage instruments the Griggses executed contained a broadly-worded arbitration rider, providing that disputes “arising from or relating” to their agreement with Beneficial Mortgage, “shall be resolved, upon the election of [either party] by binding arbitration.” At the same time, they also purchased a mortgage life insurance policy from Household Life Insurance Company. The mortgage life insurance policy included an integration clause, providing that “[t]he Group Policy, the attached application for it, and application for insurance, if any, are the entire contract of insurance.”

Thereafter, Victor Griggs died, and Helen Griggs filed an insurance claim under that policy. When Household Life rejected that claim, on the ground that, in filling out the insurance application, Victor Griggs had made material omissions regarding his medical condition, Helen Griggs, on behalf of herself and her late husband’s estate, brought an action against Household, alleging breach of contract and intentional infliction of emotional distress.

After considerable discovery, Mrs. Griggs filed successive amended complaints, adding a claim of insurance fraud and, as defendants, the individuals who had participated in the meeting, at which she and her late husband had executed both the refinancing documents and the credit life insurance application. None of the defendants was a signatory to the mortgage lending agreement, with its arbitration rider. Nonetheless, two of those defendants, Luke Evans and Andreas Teddy Dailey, Jr., filed a motion to compel arbitration. The circuit court granted that request “on all issues” and stayed the proceedings pending arbitration. Mrs. Griggs appealed to the Court of Special Appeals.

**Held:** Vacated and remanded for further proceedings

The Court of Special Appeals first determined that Household Life, having drafted the integration clause, whereby it disclaimed any suggestion that any other contract, including the Mortgage Agreement and its arbitration rider, was incorporated by reference into the credit life insurance contract, could not, on appeal, claim the benefit of the arbitration rider.

As to the remaining defendants, they, too, were not entitled to enforce the arbitration rider. Although a broadly-worded arbitration clause triggers the “significant relationship test,” which

sweeps within the reach of such an arbitration clause not only disputes arising under the governing contract, but also those disputes arising under a related agreement, the Court determined that the “significant relationship test” was inapplicable to this case. Here, the allegations in the complaint were not “significantly related” to the Mortgage Agreement and its arbitration rider because they relied, instead, solely on the terms of the credit life insurance policy and the circumstances surrounding the formation of that contract. The mere fact that the Mortgage Agreement and the credit life insurance contract were transactionally related, without more, was insufficient to satisfy the “significant relationship test.”

Second, none of the defendants, all of whom were non-signatories, was entitled to enforce the arbitration rider under a theory of equitable estoppel. Under that theory, a non-signatory may enforce an arbitration agreement against a signatory under either of two circumstances: (1) when a signatory must rely on the terms of the written agreement, containing the arbitration clause, in asserting its claims and seeks to claim the benefit of such an agreement, while simultaneously attempting to avoid the terms of an arbitration provision contained therein; or (2) when the issues the non-signatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed. Here, neither of these circumstances applied: the claims did not depend in any way on the Mortgage Agreement or seek to enforce its terms; there was no allegation that the Mortgage Agreement had been breached; and all of the counts in the complaint were based on either the Griggses’ rights under the credit life insurance policy or on alleged torts committed in procuring their agreement to purchase that policy.

Finally, none of the defendants was entitled to enforce the arbitration rider under a theory of agency. The mere fact that several of those defendants were agents of both Beneficial Mortgage and Household Life, without more, was insufficient. Here, none of the claims were related to the agents’ actions on behalf of the principal, Beneficial Mortgage. Rather, all of the claims were related only to their actions on behalf of either themselves or a non-signatory, Household Life.

*Shawn Donte Allen v. State of Maryland*, No. 606, September Term 2011, filed April 27, 2012. Opinion by Eyler, James R., J.

<http://mdcourts.gov/opinions/cosa/2012/0606s11.pdf>

CRIMINAL LAW – JURY INSTRUCTIONS – “ANTI-CSI” INSTRUCTION – PRESERVATION AND RETROSPECTIVE APPLICATION

**Facts:**

Appellant was tried for drug offenses. The State requested, and the court granted over appellant’s objection, an “Anti-CSI” effect jury instruction. The instruction told the jury that the State was not required to adduce any specific scientific evidence or employ any particular investigative technique. Appellant was convicted. The trial occurred before the Court of Appeals, in *Atkins v. State*, 421 Md. 434 (2011) and *Stabb v. State*, 423 Md. 454 (2011), disapproved of such a jury instruction under the circumstances of this case. On appeal, the question primarily was whether those holdings were to be applied retroactively to cases, like appellant’s, tried before those cases but appealed after them.

**Held:** Reversed.

The holdings in *Atkins* and *Stabb* were constitutionally based and thus retroactive application was required. The constitutional principles announced in *Atkins* and *Stabb* apply retrospectively to all cases pending on direct review where the issue is preserved.

*Jose F. Lopez v. State of Maryland*, No. 2916, September Term 2008, filed May 10, 2012. Opinion by Sharer, J.

<http://mdcourts.gov/opinions/cosa/2012/2916s08.pdf>

## CRIMINAL LAW – POST-CONVICTION – LACHES

### **Facts:**

In February 1986, appellant, represented by counsel, was tried by a jury and convicted of the attempted first degree rape and related counts of Cecilia R. Thereafter, in March 1986, approximately a week after appellant's conviction in the case involving Cecilia R., the State and appellant, still represented by counsel, entered into a plea agreement concerning similar offenses against four different victims, some of whom were between seventy and eighty-years-old at the time of the offenses. On May 14, 1986, appellant was sentenced to two consecutive life terms for attempted first degree rape and first degree rape in two different cases. He received concurrent terms of life plus 155 years for the remaining offenses.

On April 15, 1997, appellant filed a petition for post conviction relief in all of the aforementioned cases, but withdrew this petition without prejudice on February 26, 1998. On October 3, 2005, appellant, unrepresented by counsel, filed identical petitions for post-conviction relief in the above cases, alleging ineffective assistance of trial and appellate counsel. Appellant would subsequently file a motion to amend his petition and a supplement to his petition for postconviction relief. The State responded to appellant's petition and motions by arguing that the petition was barred under the doctrine of laches.

At the hearing on the post conviction relief, the State proffered that the State's Attorney no longer had a file on any of the cases, and that, considering the age of many of the victims, there would be a "serious hardship" imposed on the State if appellant was granted a new trial. In response, appellant's post-conviction counsel primarily relied on *Creighton v. State*, 87 Md. App. 736 (1991), where the Court of Special Appeals previously held laches did not apply under the then existing post conviction statute.

The post conviction court, while declining to take any testimony, referred to portions of the 1986 plea and sentencing hearings and found that appellant knowingly and voluntarily waived his right to a jury trial and that there was a sufficient factual basis for the pleas agreement. The court then held that laches barred appellant's petition for post conviction relief.

### **Held:**

After noting that Maryland's Uniform Postconviction Procedure Act, Maryland Code (2001, 2008 Repl. Vol.), §§ 7-101 to 7-301 of the Criminal Procedure Article ("C.P."), was amended in

1995 following the Court's decision in *Creighton, supra*, the Court of Special Appeals held that, in cases where sentence was imposed *after* October 1, 1995, C.P. Section 7-103 provides for the filing of only one petition within ten years of sentencing. In cases where a sentence was imposed *prior to* October 1, 1995, laches is available as an affirmative defense to bar post-conviction relief. In assessing whether a petition is barred by laches, it is the State's burden to show by a preponderance of the evidence that: (1) there was an unreasonable or impermissible delay in asserting a particular claim; and, (2) that the delay prejudiced the State. Because the record in this case was insufficient to conclude that appellant's claim was barred by laches, the Court of Special Appeals vacated the judgment and remanded for further proceedings consistent with the opinion.

*Kevin Mark Warren v. State of Maryland*, Case No. 1996, September Term 2009, filed May 2, 2012. Opinion by Watts, J.

<http://mdcourts.gov/opinions/cosa/2012/1996s09.pdf>

CRIMINAL LAW & PROCEDURE – INTERROGATION – MIRANDA RIGHTS – NOTICE & WARNING – WAIVER OF MIRANDA RIGHTS – EVIDENCE – HEARSAY – IMPEACHMENT – CONSTITUTIONAL LAW – SELF-INCRIMINATION PRIVILEGE – TRIALS – CLOSING ARGUMENTS

**Facts:**

A jury sitting in the Circuit Court for Charles County convicted Kevin Mark Warren, appellant, of one count of first-degree murder (felony murder), two counts of attempted first-degree murder, three counts of first-degree assault, three counts of attempted robbery with a dangerous weapon, three counts of use of a handgun in the commission of a crime, and one count of wearing, carrying, or transporting a handgun. On September 28, 2009, the circuit court sentenced appellant to life imprisonment for first-degree murder, two life sentences consecutive for attempted first-degree murder, and twenty years' imprisonment concurrent for use of a handgun in a crime of violence.

Prior to trial, appellant moved to suppress statements he made to Detective John Elliott at the Charles County Police Headquarters Building on July 6, 2007. The circuit court denied the motion finding that appellant voluntarily, knowingly, and intelligently waived his *Miranda*<sup>1</sup> rights before speaking to law enforcement officers.

At trial, the State put forth evidence that appellant was involved in a robbery and shooting that occurred at Robinson Place in Waldorf, Maryland, that resulted in the death of Briona Porter, a thirteen-year-old girl. At trial, the victim's mother testified that she recognized appellant prior to appellant's first trial, however, both parties agreed that the witness was confused and the court later read a stipulation to the jury that it was not until the day after the jury trial started in the first trial of this matter, that the witness for the first time said that she would be able to identify the individual responsible for the alleged robbery and shooting involving her ice cream truck on June 29<sup>th</sup>, 2007. At trial, the State cross-examined appellant about prior statements to other people.

On appeal appellant contended that the circuit court erred in denying his motion to suppress statements he made after his arrest. Appellant argued that the circuit court erred in permitting the prosecutor to question him about statements he made to others, arguing that this was inadmissible testimonial hearsay. Appellant contended on appeal that he was deprived the right

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<sup>1</sup>*Miranda v. Arizona*, 348 U.S. 436, 86 S. Ct. 1602, 16 L. Ed.2d 694 (1966).

to a fair trial by permitting incorrect testimony which was later corrected by a stipulation; allowing the prosecutor to cross-examine appellant regarding the invocation of the right to remain silent; and in allowing the prosecutor to make alleged improper remarks during closing and rebuttal argument.

**Held:** Affirmed

The trial court's determination regarding whether a confession was made voluntarily is a mixed question of law and fact. As such, we undertake a *de novo* review of the trial judge's ultimate determination on the issue of voluntariness. Our review of the Circuit Court's denial of the defendant's motion to suppress is limited to the record of the suppression hearing.

In undertaking to prove a waiver of *Miranda* rights, the government must demonstrate by a preponderance of the evidence that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. The determination of whether the waiver of an accused has been made knowingly and voluntarily is by a review of the totality of the circumstances. Where the prosecution shows that a *Miranda* warning was given and that it was understood by the accused, the accused's uncoerced statement, made immediately following the warning, establishes an implied waiver of the right to remain silent.

We review hearsay rulings *de novo*. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Md. Rule 5-803(a)(1) provides: "The following [is] not excluded by the hearsay rule, even though the declarant is available as a witness: Statement by party-opponent. A statement that is offered against a party and is: The party's own statement, in either an individual or representative capacity[.]" The admission of the statements made by a witness, which were admitted as tacit admissions by the defendant, did not violate the defendant's right to confrontation.

Md. Rule 5-616(a)(1) provides: "The credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at [p]roving under Rule 5-613 that the witness has made statements that are inconsistent with the witness's present testimony[.]" Where the credibility of a defendant in a criminal case is attacked by use of questions of the defendant pursuant to Md. Rule 5-616(a)(1) directed at proving that the defendant made prior inconsistent statements to a third party prior to trial, the State is not required to call the third party as a witness at trial. Witnesses may not be cross-examined concerning prior inconsistent statements of others, but may be cross-examined as to their own alleged prior inconsistent statements.

Where a witness testifies inconsistently with previously given testimony, and the trial judge immediately provides the jury with a stipulation entered into by both parties correcting the

testimony, a defendant's claim that the State obtained a conviction through the use of false evidence is meritless.

The federal constitutional right against compelled self-incrimination prohibits prosecutorial comment on the accused's silence or failure to testify. A prosecutor's questions do not constitute an impermissible reference to appellant's right to remain silent, where the defendant fails to establish that the questions: (1) occurred after the defendant's request for an attorney, or (2) that in response to the questions, the defendant invoked the right to remain silent.

The regulation of argument rests within the sound discretion of the trial court. As a general rule, it is within the range of permissible argument for counsel to state and discuss the evidence and all reasonable and legitimate inferences which may be drawn from the facts in evidence; and such comment or argument is afforded a wide range. When assessing whether reversible error occurs where improper statements are made during closing argument, a reviewing court may consider several factors, including the severity of the remarks, the measures taken to cure any potential prejudice, and the weight of the evidence against the accused. The prejudicial effect of the State's remarks may be diminished by the instructions given by the circuit court prior to closing argument, the number of witnesses, and the overall weight of the evidence against appellant.

*Joan J. Stickley v. State Farm Fire & Casualty Company*, No. 307, September Term 2011, filed April 27, 2012. Opinion by Eyler, James R., J.

<http://mdcourts.gov/opinions/cosa/2012/0307s11.pdf>

#### INSURANCE LAW – UMBRELLA POLICY – COVERAGE OF A FAMILY MEMBER

##### **Facts:**

Appellant was a passenger in a motor vehicle operated by her husband when the vehicle collided with another vehicle. Appellant sustained significant injuries. At the time of the incident, appellant and her husband were insured under a motor vehicle liability policy and personal liability umbrella policy. The umbrella policy provided greater limits of coverage than the limits under the motor vehicle policy. The umbrella carrier denied coverage on the ground that the policy contained a household exclusion.

Appellant sought a declaratory judgment in the Circuit Court for Montgomery County, holding that Maryland Code, (2005 Supp.), § 19-504.1 of the Insurance Article (“Ins.”) applied to the umbrella policy. Ins. § 19-504.1 required that an insurer offer “under a policy. . . of private passenger motor vehicle liability insurance liability coverage for claims made by a family member in the same amount as the liability coverage for claims made by a nonfamily member under the policy. . . .” The circuit court entered summary judgment in favor of the carrier.

##### **Held:** Affirmed

Based on the language of the statute and relevant legislative history, an umbrella policy is not covered by the statute, and a household exclusion in an umbrella policy is a valid contractual term.

# ATTORNEY DISCIPLINE

By an Opinion and Order of the Court of Appeals dated May 1, 2012, the following attorney has been disbarred:

BRUCE EDWARD GOODMAN

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By an Order of the Court of Appeals dated May 8, 2012, the following attorney has been disbarred:

DENESE DOMINGUEZ

\*

By an Order of the Court of Appeals dated May 9, 2012, the following attorney has been disbarred by consent:

DAVID AGATSTEIN

\*

By an Order of the Court of Appeals dated May 9, 2012, the following attorney has been disbarred by consent:

JESSE H. INGRAM

\*

By an Order of the Court of Appeals dated May 9, 2012, the following attorney has been reprimanded by consent:

CHARLENE SUKARI HARDNETT

\*

By an Order of the Court of Appeals dated May 18, 2012, the following attorney has been disbarred by consent:

CHRISTOPHER M. UHL

\*

By an Opinion and Order of the Court of Appeals dated May 21, 2012, the following attorney  
has been suspended for sixty days:

ANTHONY IGNATIUS BUTLER, JR.

\*

By an Opinion and Order of the Court of Appeals dated May 23, 2012, the following attorney  
has been indefinitely suspended:

LOUIS P. TANKO, JR.

\*

# JUDICIAL APPOINTMENTS

On April 13, 2012, the Governor announced the appointment of **JENNIFER ETHERIDGE** to the Baltimore City District Court. Judge Etheridge was sworn in on May 1, 2012 and fills the vacancy created by the retirement of the Honorable Theodore B. Oshrine.

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On April 13, 2012, the Governor announced the appointment of **MELISSA KAYE COPELAND** to the Baltimore City District Court. Judge Copeland was sworn in on May 4, 2012 and fills the vacancy created by the elevation of the Honorable Jeannie J. Hong.

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On April 13, 2012, the Governor announced the appointment of **JOSEPH LEROY WRIGHT** to the Prince George's County District Court. Judge Wright was sworn in on May 8, 2012 and fills the vacancy created by the elevation of the Honorable Krystal Q. Alves.

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On April 13, 2012, the Governor announced the appointment of **RACHEL ELIZABETH COGEN** to the Baltimore City District Court. Judge Cogen was sworn in on May 9, 2012 and fills the vacancy created by the retirement of the Honorable Nancy B. Shuger.

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On April 13, 2012, the Governor announced the appointment of **ROBIN DANA GILL BRIGHT** to the Prince George's County District Court. Judge Bright was sworn in on May 10, 2012 and fills the vacancy created by the elevation of the Honorable DaNeeka LaVarner Cotton.

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On April 13, 2012, the Governor announced the appointment of **JEFFREY MICHAEL GELLER** to the Baltimore City District Court. Judge Geller was sworn in on May 18, 2012 and fills the vacancy created by the elevation of the Honorable Stuart R. Berger.

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