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Lonaconing Trap Club, Inc. v. Maryland Department of the Environment, No. 139, September Term 2008, filed 26 August 26 2009. Opinion by Harrell, J.

<http://mdcourts.gov/opinions/coa/2009/139a08.pdf>

ADMINISTRATIVE LAW - ENVIRONMENT - § 3-4019(c)(6) OF THE ENVIRONMENT ARTICLE, ENACTED IN 2005, PROVIDES THAT THE MARYLAND DEPARTMENT OF THE ENVIRONMENT "MAY ADOPT" NOISE REGULATIONS PROHIBITING TRAPSHOOTING, SKEETSHOOTING, AND OTHER TARGET SHOOTING BY SPORTS SHOOTING CLUBS IN COUNTIES ENUMERATED IN THE STATUTE THAT THE DEPARTMENT DEEMS WERE NOT COMPLIANT WITH EXISTING DEPARTMENT REGULATIONS ON 1 JANUARY 2005 - 2005 STATUTE DOES NOT REQUIRE THE DEPARTMENT TO PROMULGATE NEW, PROSPECTIVE REGULATIONS IN ORDER TO ENFORCE THE STATUTE - PRE-EXISTING REGULATIONS CONTINUE TO APPLY TO CLUBS THAT THE DEPARTMENT DEEMS "NOT IN COMPLIANCE" WITH THOSE REGULATIONS.

CONSTITUTIONAL LAW - EQUAL PROTECTION - TERRITORIAL CLASSIFICATION IN STATUTE THAT ALLOWS THE MARYLAND DEPARTMENT OF THE ENVIRONMENT TO CONTINUE IMPOSING NOISE CONTROL REGULATIONS ON SHOOTING SPORTS CLUB (THAT THE DEPARTMENT DEEMS NOT COMPLIANT WITH EXISTING REGULATIONS) IN SOME COUNTIES, BUT NOT IN OTHERS, DOES NOT VIOLATE THE EQUAL PROTECTION GUARANTEES OF THE FEDERAL OR STATE CONSTITUTIONS.

CONSTITUTIONAL LAW - EQUAL PROTECTION - STATUTORY CLASSIFICATION THAT ALLOWS SHOOTING SPORTS CLUBS THAT HAVE NOT BEEN DEEMED NON-COMPLIANT WITH MARYLAND DEPARTMENT OF THE ENVIRONMENT REGULATIONS TO OPERATE FREE OF FURTHER NOISE CONTROL REGULATIONS, WHILE ALLOWING THE REGULATIONS TO CONTINUE TO APPLY TO CLUBS THAT THE DEPARTMENT DEEMS NON-COMPLIANT WITH THOSE REGULATIONS, DOES NOT VIOLATE THE EQUAL PROTECTION GUARANTEES OF THE FEDERAL OR STATE CONSTITUTIONS.

Facts: Maryland Code (2007 Repl. Vol.), Environment Article, § 3-401(c) limits the authority of the Maryland Department of the Environment ("MDE") to adopt noise control rules and regulations that regulate trapshooting, skeetshooting, or other target shooting between the hours of 9 a.m. and 10 p.m. in certain counties. In 2005, the General Assembly added paragraph (6) to § 3-401(c), exempting from such regulations shooting sports clubs in Allegany, Anne Arundel, Garrett, and Washington Counties, provided the clubs were chartered and in operation as of 1 January 2005. The Legislature, however, created an exclusion to the exemption, allowing MDE to continue enforcing noise control regulations as to clubs that the agency determines were not in compliance with existing MDE regulations as of 1 January 2005.

Petitioner, Lonaconing Trap Club, Inc. ("Lonaconing"), is a shooting sports club in Allegany County that has existed as such for over 40 years. An owner of an adjoining residential parcel complained to the MDE about the noise generated by Lonaconing's shooting activities in 2003. For approximately the next two years, MDE and Lonaconing attempted to resolve how Lonaconing would comply with applicable noise regulations, but were unable to do so. As of 1 January 2005, MDE determined that Lonaconing was not in compliance with existing MDE noise regulation prohibiting human-initiated activity that causes greater than 60 decibels to be heard on adjacent residential property during daylight hours. In April 2005, Lonaconing resumed its temporarily-suspended regular shooting activities. One month later, MDE conducted additional sound measurements. The results exceeded the permissible decibel level. That same day, MDE initiated against Lonaconing an action in the Circuit Court for Allegany County, seeking civil penalties and an injunction prohibiting Lonaconing from engaging in shooting activities on its property until it complied with the 60 decibel limitation established in the regulations.

On 27 January 2006, the Circuit Court fined Lonaconing \$1,000 for violations of the permissible decibel level and enjoined it from further shooting activities on its property until it became compliant with State sound level limits and noise control rules and regulations. The trial court found that Lonaconing exceeded permissible noise levels while conducting its shooting activities. The court also rejected Lonaconing's argument that § 3-401(c)(6)(ii) required MDE to promulgate new, prospective regulations after 1 January 2005 to govern sound levels produced by the club's shooting levels. The court ruled that a shooting sport club's compliance with existing regulations may be determined only by reference to pre-existing, continuing regulations. With respect to Lonaconing's equal protection challenge, the court held that the club failed to show that the distinctions complained of were arbitrary or irrational.

Lonaconing noted a timely appeal to the Court of Special Appeals, which affirmed the trial court judgment in an unreported opinion. The Court of Appeals granted Lonaconing's Petition for a Writ of Certiorari. *Lonaconing Trap Club, Inc. v. Md. Dep't of Env't*, 406 Md. 743, 962 A.2d 370 (2008).

Held: Affirmed. The Court of Appeals held that Lonaconing is subject to the 60 decibel sound limitation for residential property. A plain reading of § 3-401 makes clear that MDE did not need, after 1 January 2005, to promulgate new regulations for clubs, such as Lonaconing, to which § 3-401(c)(6)(i)'s general

exemption from noise regulations does not apply.

The Court also held that § 3-401(c)(6)(ii) does not violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution or Article 24 of the Maryland Declaration of Rights. The court applied rational basis review because the statute does not affect a suspect class or fundamental right and Lonaconing did not demonstrate that sport shooting qualifies as a liberty interest or vital benefit.

Under rational basis review, the challenger must prove that the statute is not related rationally to a legitimate governmental interest. Under this standard, a statutory classification enjoys a strong presumption of constitutionality. The statute will be upheld if there are any considerations relating to the public welfare by which it can be supported. It is not necessary for a reviewing court to identify the reasons that actually prompted the General Assembly to legislate as it did. The party attacking a statutory classification must show by clear and convincing evidence that it does not rest upon any rational basis, but is essentially arbitrary.

Lonaconing did not satisfy its burden to establish that the regulatory scheme is not related rationally to a legitimate government interest. The Court held that it was not irrational for the Legislature to distinguish between counties with respect to denying the general exemption (from noise control regulations) to clubs deemed non-compliant as of 1 January 2005 because territorial classifications are permissible under equal protection analysis. The Supreme Court has explained that a state legislature may determine matters related to the public welfare for each of its local subdivisions, having in mind the needs of each. Territorial uniformity is not a constitutional requisite.

The Court also held that the fact that the statute may be underinclusive does not violate equal protection. Lonaconing contended that denying the general exemptions to clubs deemed not in compliance with existing regulations creates an unconstitutional classification because other clubs in the county, which were not deemed non-compliant may now produce gunshot sounds that register, on neighboring residential properties, the same as or louder than sounds generated by Lonaconing's shooting activities, while Lonaconing must develop a means of reducing the sounds produced by its activities. The Court rejected this argument, finding the exemption for most existing clubs advances the legitimate government objective of promoting the reasonable expectations of clubs that were

complying with existing regulations as of 1 January 2005, by protecting those clubs from increased regulations. The Court thus concluded that the dichotomy created by § 3-401(c)(6) simply may reflect the Legislature's desire to protect the citizenry from undue noise, balanced against its interest in saving costs associated with continuing to regulate clubs that have not been found to be a source of undue noise in their respective communities.

Tackney v. United States Naval Academy Alumni Association, Inc., No. 108, September Term, 2008, filed May 14, 2009. Opinion by Greene, J.

<http://mdcourts.gov/opinions/coa/2009/108a08.pdf>

NON-INTERVENTION - ORDINARILY, MARYLAND COURTS WILL NOT INTERFERE IN THE INTERNAL AFFAIRS OF A VOLUNTARY MEMBERSHIP ORGANIZATION UNLESS THERE IS EVIDENCE OF FRAUD, IRREGULARITY, OR ARBITRARY ACTION.

Facts: The Naval Academy Alumni Association is a non-profit, voluntary membership organization that is incorporated under Maryland law and is managed by a Board of Trustees. This case arises out of the 2006 elections of the Board of Trustees. The Bylaws of the Board include term limits for certain positions and specific procedures that must be followed for the election process. Appellants claim three trustees were elected to their positions in violation these provisions. In addition, appellants claim that the proper procedures for the elections were not followed with regard to the appointment of the Nominating Committee and that committee deliberations were improperly closed to the public. After receiving a complaint from appellants, the Board sought legal advice from an attorney who informed the Board that appellants' position had no merit. Appellants then filed a complaint in the Circuit Court for Anne Arundel County, seeking to undo the election and declare later bylaw revisions invalid. The Circuit Court dismissed the complaint, applying the principle of non-intervention, holding that the facts as pled did not amount to fraud, irregularity or arbitrary action. The Court of Appeals granted certiorari, bypassing the Court of Special Appeals, to determine whether the actions of the Board were sufficiently arbitrary to warrant judicial intervention.

Held: Affirmed. The Court of Appeals upheld the Circuit Court's dismissal of the complaint on the grounds of non-intervention. The Court relied on *NAACP v. Golding*, 342 Md. 663 (1996), which held that "as a general rule, courts will not interfere in the internal affairs of a voluntary membership organization" unless the actions were fraudulent or arbitrary. The Court considered the Board's actions to have been pursued in good faith, in purported compliance with the Association's Bylaws. The language of the Bylaws was ambiguous as to the application of term limits to certain positions, but the Board's interpretation was reasonable and consistent with past practice. In addition, the Board sought legal advice when its actions were challenged, demonstrating good faith and due diligence. The Court also ruled that the Board acted reasonably and within its

best judgment with regard to the elections process. Given these circumstances, the Court ruled that the Board's actions were entitled to deference and were not susceptible to intervention by the courts.

Unnamed Attorney v. Attorney Grievance Commission, No. 57, September Term 2008, filed July 21, 2009, Opinion by Barbera, J.

<http://mdcourts.gov/opinions/coa/2009/57a08.pdf>

ATTORNEY GRIEVANCE COMMISSION—MOTION TO QUASH SUBPOENA

Facts: On July 31, 2007, Provident Bank, as required by statute, reported to the Attorney Grievance Commission that an overdraft of \$25.25 had occurred in Appellant's attorney trust account. The Commission then contacted Appellant requesting an explanation for the overdraft. Appellant sent a letter to the Commission explaining the overdraft. In support of his explanation, Appellant provided the Commission bank statements and canceled checks from his trust account for the period between May 1, 2007 and July 31, 2007, and ledger cards for those clients whose money Appellant said was in the trust account during the period of April 30, 2007 through July 31, 2007.

A paralegal for the Commission reviewed the documents provided by Appellant and found a discrepancy of over \$4,000 between the May 31, 2007 trust account bank statement and Appellant's ledger cards, suggesting that Appellant was not holding in trust the amount of money that the internal ledger cards indicated he should have been holding. It was concluded that the explanation Appellant gave in his letter for the overdraft did not explain the more than \$4,000.00 discrepancy.

Prompted by that discovery, Bar Counsel decided to investigate the matter and issued a subpoena directed to Appellant and Provident Bank. The subpoena sought "original documents," of all deposit slips, all deposited items, monthly statements, and all disbursed items and debit and credit memos for the escrow account "for the period of July 1, 2006 through the present." In response, Appellant filed a "Motion of Objection to Enforcement of Subpoena," seeking to quash the subpoena. Appellant requested a hearing on the motion. The Circuit Court denied the motion, without a hearing. Appellant appealed the order. While the case was pending in the Court of Special Appeals, the Court of Appeals granted a writ of certiorari to address whether the trial court abused its discretion in denying the Motion of Objection to Enforcement of Subpoena.

Held: Affirmed. The Circuit Court did not abuse its discretion by denying the motion because the subpoena was reasonable, and a hearing on the motion was not required.

First, the Court rejected the arguments of Respondent that the Commission's subpoena was relevant to the Commission's investigation. The Court applied the test for relevance set forth in *Unnamed Attorney v. Attorney Grievance Comm'n*, 313 Md. 257 (1988), which provides that "there must exist some factual basis to support the [Commission's] investigation and, furthermore, any subpoenaed testimony or documents must appear relevant and material to the inquiry." The subpoena satisfied that test for relevance.

The Court also rejected Respondent's closely related argument that the subpoena was overbroad. The Court adopted the test announced by the United States Supreme Court in *United States v. R. Enterprises, Inc.*, 498 U.S. 292, 297, 111 S. Ct. 722, 726, 112 L. Ed. 2d 795, 805 (1991), pertaining to motions to quash grand jury subpoenas. The Supreme Court held in *R. Enterprises* that a motion to quash a grand jury subpoena "must be denied unless the district court determines that there is no reasonable possibility that the category of materials the Government seeks will produce information relevant to the general subject of the grand jury's investigation." *Id.* at 301, 111 S. Ct. at 728, 112 L. Ed. 2d at 807-08. The Court concluded that the subpoena in the case *sub judice* easily satisfies that reasonableness standard because the request for bank documents spanning two years was relevant to the Commission's investigation.

Next, the Court concluded that the circuit court did not err by ruling on the motion to quash without a hearing. The Court examined Md. Rules 16-732 and 2-311, and concluded that the circuit court was not required to hold a hearing, notwithstanding that one was requested. Specifically, the Court addressed the requirement of Rule 2-311(f), which mandates a hearing on a motion "dispositive of a claim or defense." The Court concluded that an order denying a motion to quash a subpoena from the Commission is not a decision "intrinsic to the underlying action," and thus is not "dispositive of a claim or defense."

Questar Builders, Inc v. CB Flooring, LLC, No. 153, September Term, 2008, filed 25 August 2009. Opinion by Harrell, J.

<http://mdcourts.gov/opinions/coa/2009/153a08.pdf>

CONTRACTS - TERMINATION FOR CONVENIENCE CLAUSES - ALLOWING ONE PARTY TO TERMINATE THE CONTRACT FOR "CONVENIENCE" MAY BE ENFORCEABLE, SUBJECT TO THE IMPLIED OBLIGATION THAT THE TERMINATING PARTY EXERCISE ITS DISCRETION IN ACCORDANCE WITH THE IMPLIED OBLIGATIONS OF GOOD FAITH AND FAIR DEALING.

Facts: Questar Builders, Inc. ("Questar") is a general contractor hired to construct a luxury apartment and townhome complex, Greenwich Place. After receiving bids from three flooring subcontractors, Questar selected the plaintiff, CB Flooring, LLC ("CB Flooring") and entered into an agreement (the "Subcontract") pursuant to which CB Flooring agreed to install carpet and flooring throughout Greenwich Place. As a result of some design changes, CB Flooring submitted a change order requesting an upward adjustment of \$33, 566 to the Subcontract price. CB Flooring later adjusted the change order request to \$103, 371 above the original Subcontract price. Four days later, Questar sent an unexecuted subcontract to one of the previously unsuccessful flooring subcontractor bidders, Creative Touch Interiors ("CTI"), to install the floor coverings in lieu of CB Flooring. Questar subsequently terminated the contract with CB Flooring asserting that CB Flooring breached the Subcontract and, nevertheless, Questar enjoyed a right to terminate the Subcontract for any reason under a "Termination for Convenience" clause in the Subcontract. After terminating its agreement with CB Flooring, Questar entered into a formal subcontract with CTI.

Alleging that Questar terminated the Subcontract wrongfully, CB Flooring initiated a breach of contract action against Questar in the Circuit Court for Baltimore County in April 2006. The trial court found that CB Flooring did not breach the Subcontract. It further found that Questar did not enjoy a right to terminate the Subcontract for any reason. It rejected Questar's argument that its subjective loss of faith in CB Flooring's ability to perform satisfactorily (or for the agreed upon price) satisfied whatever implied limitations there might be as a predicate for the exercise of the termination for convenience clause. Accordingly, the trial judge concluded that Questar improperly terminated the Subcontract and awarded more than \$243,000 in expectation damages to CB Flooring.

Questar noted a timely appeal to the Court of Special Appeals. Before argument in that court, the Court of Appeals, on

its initiative, issued a writ of certiorari. *Questar Builders, Inc v. CB Flooring, LLC*, 406 Md. 744, 962 A.2d 370 (2008).

Held: Judgment vacated and case remanded to the Circuit Court for Baltimore County for further proceedings. The Court of Appeals reviewed the historical roots of "termination for convenience" clauses in the federal government contracting arena, beginning with the Civil War. In its modern form, the clause ordinarily provides that the government may terminate a procurement contract if the Contracting Officer determines that a termination is in the Government's interest. The Court concluded, however, that private parties do not have the near *carte-blanche* power to terminate that the courts recognized as enjoyed by the federal government under convenience termination clauses.

The Court applied the common law of contracts to the Subcontract. Under Maryland law, illusory contracts are unenforceable. Courts generally prefer a construction of a contract which will make the contract effective, however, rather than one which will make it illusory or unenforceable. To that end, the Court held that termination for convenience rights are subject to the implied limitation that they be exercised in good faith and in accordance with fair dealing.

The Court noted that the right to terminate a contract for convenience is a risk-allocating rule. Thus, Questar was permitted to terminate only if, in its discretion, it determined that continuing with the Subcontract would subject it to a meaningful financial loss or some other difficulty in completing the project successfully. Questar was required to act reasonably in ensuring that the Subcontract did not become inconvenient and was not permitted to create an inconvenience in order to terminate the Subcontract.

The Court remanded the case to determine whether Questar breached the Subcontract by not exercising in good faith its discretion to terminate the Subcontract for convenience.

Mitchell v. State, No. 11, September Term, 2008, filed April 16, 2009. Opinion by Greene, J.

<http://mdcourts.gov/opinions/coa/2009/11a08.pdf>

CRIMINAL LAW - CLOSING ARGUMENT - "OPENING THE DOOR" - SHIFTING THE BURDEN OF PROOF - A CRIMINAL DEFENDANT WHOSE TRIAL COUNSEL, DURING CLOSING ARGUMENT, CALLED ATTENTION TO POTENTIAL WITNESSES NOT CALLED BY THE STATE, AND STATED, GENERALLY, THAT THE JURY SHOULD HAVE BEEN ABLE TO HEAR FROM, BUT SPECIFICALLY SEE THOSE WITNESSES, "OPENED THE DOOR" TO THE PROSECUTOR'S RESPONSE. WHEN THE PROSECUTOR RESPONDED BY NOTING THE DEFENDANT'S POWER TO SUBPOENA WITNESSES, THUS ARGUING THAT THE DEFENDANT ALSO COULD HAVE BROUGHT THOSE WITNESSES INTO COURT, THE PROSECUTOR'S RESPONSE WAS "FAIR COMMENT" AND DID NOT NECESSARILY SHIFT THE BURDEN OF PROOF. IN THE INSTANT CASE, IN LIGHT OF THE PROSECUTOR'S TAILORED RESPONSE, THE REPEATED REFERENCES TO THE APPLICABLE BURDEN OF PROOF, AND THE COURT'S INSTRUCTION THAT CLOSING ARGUMENTS ARE NOT EVIDENCE, THE PROSECUTOR'S REMARKS CALLING ATTENTION TO THE DEFENDANT'S SUBPOENA POWER DID NOT SHIFT THE BURDEN OF PROOF.

Facts: Anthony Lloyd Mitchell was tried for attempted murder and other related offenses for his participation in an attack at a high school graduation party in Harford County. Before trial, the prosecution identified several potential witnesses who were ultimately not called to testify. During closing arguments, defense counsel called the jury's attention to the absence of these witnesses, arguing that the State had the burden to present all the evidence to the jury. In response, the prosecutor informed the jury that the defense has the same power to subpoena witnesses, stating that if these uncalled witnesses were so important, the defense should have called them. The defense objected to the prosecutor's statements, arguing that it improperly shifted the burden to the defendant to produce evidence. The trial court overruled the objection, stating that the defense opened the door to the prosecutor's statements. On appeal, the Court of Special Appeals held that the prosecutor's statement was a "satisfactorily tailored 'invited response'" to defense counsel's "attempt to exploit weaknesses in the State's case." The Court of Appeals granted certiorari to answer the following question: did the State's closing argument improperly shift the burden of proof?

Held: Affirmed. The Court of Appeals examined the case under two theories: the "invited response" doctrine and the "opened door" doctrine. The Court rejected the State's argument on the "invited response" claim, noting that in order for the

invited response doctrine to apply, the prosecutor's statements must be in response to *improper* statements by the defense. In this case, it was not improper for the defense to call the jury's attention to potential weaknesses in the State's case. The Court upheld the conviction under the opened door doctrine, holding that it was a matter of fundamental fairness to allow the prosecution to respond to the defense's criticism. The prosecution's comments were narrowly tailored to respond to the defense implication that the witnesses were intentionally kept away from the trial. Finally, the Court noted that the defense and the trial court both instructed the jury that the State bore the burden of proof beyond a reasonable doubt. The court also told the jury that closing statements are not to be considered as evidence in the trial. The prosecutor's statements about the defense's power to subpoena did not overshadow these instructions and shift the burden to the defendant.

Ray v. State of Maryland, No. 145, September Term 2008. Opinion filed August 27, 2009 by Battaglia, J.

<http://mdcourts.gov/opinions/coa/2009/145a08.pdf>

CRIMINAL LAW - DISMISSAL OF CHARGES AGAINST DEFENDANT ADJUDGED INCOMPETENT TO STAND TRIAL

Facts: John Wesley Ray was indicted on charges of attempted murder and assault, stemming from a confrontation with a girlfriend. In January of 2002, a judge concluded that Ray was not competent to stand trial, and Ray was committed to the Department of Health and Mental Hygiene, which ultimately placed him at Clifton T. Perkins Hospital in Jessup, Maryland. In October of 2006, an amendment to Section 3-107 of the Criminal Procedure Article, Maryland Code (2001, 2007 Supp.) became effective, requiring that charges against a defendant adjudged incompetent to stand trial be dismissed after a specified period, in Ray's case five years, absent "extraordinary cause." In January of 2007, Ray filed a motion to dismiss criminal charges pursuant to Section 3-107(a), in which he argued that the charges had to be dropped because of the passage of time. The State opposed the motion to dismiss, arguing that the charges needed to be extended, because Ray continued to be both incompetent and dangerous, but restorable—conditions allegedly constituting "extraordinary cause." The hearing judge denied Ray's motion to dismiss, determining that there was "extraordinary cause" because Ray was dangerous and his competency was restorable. The Court of Appeals granted certiorari prior to any proceedings in the Court of Special Appeals.

Held: The Court of Appeals reviewed the statutory history of Section 3-107 and held that dangerousness and restorability cannot form the bases of an "extraordinary cause" determination. The Court emphasized that amended Section 3-107(a) of the Criminal Procedure Article was designed to prevent defendants adjudged incompetent from languishing in psychiatric facilities and required, rather than permitted, a court to dismiss charges after the expiration of certain time periods. The Court also relied on the Supreme Court case of *Jackson v. Indiana*, 406 U.S. 715, 92 S. Ct. 1845, 32 L. Ed. 2d 435 (1972), in which the Supreme Court held that it violates the equal protection and due process clauses of the Fourteenth Amendment for a State to hold an individual adjudged incompetent indefinitely. In so holding, the Court noted that the State can re-institute charges against Ray, because the charges are dismissed without prejudice, or it can initiate civil commitment proceedings.

Marvie Edward Brye v. State of Maryland, No. 127, September Term, 2008, filed 18 September 2009. Opinion by Harrell, J.

<http://mdcourts.gov/opinions/coa/2009/127a08.pdf>

CRIMINAL LAW - PRETRIAL PROCEDURE - WAIVER OF COUNSEL - MARYLAND
RULE 4-215 - PRIOR TO ACCEPTING DEFENDANT'S WAIVER OF COUNSEL,
CIRCUIT COURT'S INCORRECT AND INCONSISTENT ADVISEMENTS TO
DEFENDANT OF ALLOWABLE PENALTIES FOR CERTAIN CHARGED CRIMES
WARRANTS REVERSAL

Facts: The State's evidence at trial indicated that on the afternoon of 27 March 2006, an argument developed between Petitioner Marvie Brye's cousin, Christopher Jones, Terri Lomax, and Craig Lane. At some point during the heated exchanges, Jones produced a handgun and threatened, and eventually assaulted, Lane. While holding Lane at gunpoint, Jones called Brye and demanded that he join the group at Lomax's home. Brye complied. Brye struck Lane. A general melee ensued between the three men, during which Lane managed to escape and call the police. The police responded and arrested Brye a couple of blocks from Lomax's residence.

On 28 March 2006, the day after the altercation, a statement of charges was filed against Brye in the District Court of Maryland, sitting in Baltimore County. Subsequently, the State's Attorney for Baltimore County filed a criminal information against Brye in the Circuit Court for Baltimore County, superseding the statement of charges filed in the District Court. The information charged Brye with first degree assault, use of a handgun in the commission of a crime of violence, use of a handgun in the commission of a felony, false imprisonment, and possession of marijuana.

On 24 May 2006, Brye (without counsel) appeared for arraignment in the Circuit Court. The arraigning judge informed Brye of the charges in the information and the penalties he faced if convicted. The arraigning judge overstated the potential penalty for use of a handgun in the commission of a crime of violence as twenty five years without parole. The actual maximum penalty for each of the handgun violations was twenty years with a mandatory minimum of five years without parole.

During the morning of 31 July 2006, the scheduled trial date, Brye's Public Defender requested a postponement from the administrative judge. Brye's objected to the request for postponement. The court informed Brye that he was facing ten years without the possibility of parole for first-degree assault, and that the State only notified his defense counsel "this past Friday"

about the enhanced penalty being sought. Brye responded that he was prepared for trial because he had been "incarcerated since March" and that if his attorney was not ready now, then he would "never be ready." The administrative judge explained that Brye would have to waive his right to an attorney if he wished to go to trial that day and that he "could get up to twenty-five years in this case." Brye responded that he wished to go to trial without an attorney.

That afternoon, at trial, a different judge correctly informed Brye of the penalties he faced for first-degree and second-degree assault (lesser included offense), but misstated the maximum possible penalties for the handgun violations as five years without the possibility of parole. Then, the trial judge reiterated to Brye, in detail, the advantages of having an attorney, and, asked Brye for a final time if he wished to proceed to trial representing himself. Brye responded in the affirmative and the trial judge accepted his waiver of counsel. Brye then moved for dismissal of all charges, and the court denied his motion. When Brye asked for a clarification of the charges against him, the trial judge misstated both handgun charges as having a maximum penalty of five years. At the close of the jury trial, Brye was convicted solely of one count of second-degree assault, and sentenced to ten years imprisonment.

Brye (now with counsel) filed an appeal to the Court of Special Appeals, arguing that the trial court erred by accepting his waiver of counsel after failing to advise him of the nature of the charges and the allowable penalties, as required by Maryland Rule 4-215(a)(3). The Court of Special Appeals affirmed in 181 Md. App. 105, A.2d 821 (2008). The intermediate appellate court concluded that any erroneous advisements Brye received concerning the penalty for the handgun charges did not warrant reversal because those erroneous or conflicting advisements related only to charges for which Brye was not convicted, and that Brye made a knowing and intelligent waiver of counsel as to the only charge for which he was convicted, second-degree assault, having been advised correctly pre-trial of the maximum possible penalty for that charge. The Court of Appeals granted Brye's petition for a writ of certiorari. 406 Md. 743, 962 A.2d 370 (2008).

Held: Reversed and remanded for new trial. Maryland Rule 4-215 provides judges with a roadmap of how to conduct a waiver inquiry that will safeguard the defendant's constitutional right to counsel and provide the defendant with the essential information necessary to make a decision concerning self-representation. Relying on Broadwater v. State, 401 Md. 175, 931 A.2d 1098 (2007), the Court of Appeals held that a court must comply strictly with

subsection (a)(3) of the Rule to ensure that a defendant is made aware of all pending charges and associated penalties before accepting either a defendant's waiver or discharge of counsel. The Court explained that Rule 4-215(a) advisements may be given properly to a defendant by different judges of the same court on a piecemeal basis; however, Broadwater did not relax, in any way, the mandatory nature of the required advisements of Rule 4-215 or the need that such advisements be accurate or consistent in substance; failure to comply strictly with Rule 4-215 constitutes reversible error.

After sifting through the litany of confusing and conflicting advisements in the present case, the Court expressed little confidence that Brye had a clear understanding of the nature of the charges, and their allowable penalties, when he waived his right to counsel. At his first appearance in the Circuit Court, Brye was advised that he faced twenty years for one of the handgun violations, and twenty-five years for the other. At his next appearance, he was advised that he faced up to twenty-five years "in this case." Finally, immediately before his trial commenced, Brye was advised by the trial judge that the maximum sentence he faced for a handgun violation was five years. While a layperson may be expected to comprehend accurate advisements given cumulatively at separate appearances, the line is drawn at expecting a layperson to be able to discern which is the correct advisement from a series of conflicting and often incorrect advisements from different judges.

Relying on *Moten v. State*, 339 Md. 407, 411, 663 A.2d 593, 596 (1995) and *Parren v. State*, 309 Md. 260, 523 A.2d 597, 608 (1987), the Court explained that a trial court's failure to provide the 4-215(a)(3) advisement renders a defendant's "waiver[] of counsel ineffective" and requires reversal. Incorrect advisements commingled with correct ones, rendered by a series of judges, cannot be ignored simply because a defendant is not convicted of the implicated charge or charges. The analytical focus of a Rule 4-215 argument is at the point in the proceeding when the waiver is accepted (and relevant events leading up to that acceptance), not what happened at the trial.

Simms v. State, No. 97, September Term 2008, filed July 24, 2009, Opinion by Barbera, J.

<http://mdcourts.gov/opinions/coa/2009/97a08.pdf>

CRIMINAL PROCEDURE - POSTCONVICTION DNA TESTING

Facts: Appellant, Joseph Earnest Simms, was convicted in 1998 of two counts of first degree murder. On January 7, 2008, pursuant to Maryland's Postconviction DNA statute, codified at Maryland Code (2001, 2008 Repl. Vol), § 8-201 of the Criminal Procedure Article, Appellant, representing himself, filed a "Motion for New Trial and Release of Evidence for DNA Testing" ("the petition") in the Circuit Court for Baltimore City.

The petition sought DNA testing of certain material collected by the police during its investigation of the murders. In the petition, Appellant alleged that the State's case was based on "circumstantial evidence," and results from STR (short tandem repeats) DNA testing of evidence gathered by police pertaining to the case will prove that he was not the killer. Appellant requested a hearing on the petition. The Circuit Court, without holding a hearing and without requiring the State to answer the petition, issued an order denying the petition. Appellant, represented by the Public Defender's Office, noted an appeal to the Court of Appeals, seeking reversal of the Circuit Court's order and a remand to that court for a hearing on the petition.

Held: Order vacated and case remanded to the Circuit Court for further proceedings consistent with the opinion.

The Court reviewed § 8-201, particularly focusing on subsections (c)(1) and (2), which provide that "a court shall order DNA testing" if the court determines that "a reasonable probability exists that the DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing" and "the requested DNA test employs a method of testing generally accepted within the relevant scientific community." Relying on *Gregg v. State*, 409 Md. 698, 976 A.2d 999 (2009), the Court concluded that, if a petition meets the requirements set forth in § 8-201(c), then the petition has made out a *prima facie* case of entitlement to the testing sought and a court has no discretion to deny the petition summarily.

The Court reviewed Appellant's petition to determine whether it met the requirements. The Court initially recognized that it was reviewing a petition filed by an unrepresented inmate and therefore adopted the practice of the federal courts to construe liberally

court filings that are prepared by *pro se* prisoners. See *Hughes v. Rowe*, 449 U.S. 5, 10 n.7, 101 S. Ct. 173, 176 n.7, 66 L. Ed. 163, 170 n.7 (1980). Applying a "liberal construction" to Appellant's petition, the Court concluded that the petition easily alleged sufficient facts to meet the threshold requirements of § 8-201(c) so as to survive summary denial. First, the petition is sufficient to meet the requirements of § 8-201(c)(1), which provides that "a reasonable probability exists that the DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing," because the petition alleges that the testing of epithelial cells on the evidence gathered by the State would establish that someone else, not Appellant, was the killer. Second, the requirements of § 8-201(c)(2) are met because Appellant requested STR DNA testing of the evidence, which is a method of DNA testing that is "generally accepted within the relevant scientific community."

The Court ultimately concluded, however, that establishing a *prima facie* case did not necessarily mean that Appellant should receive the DNA testing he requested. Unlike in *Gregg, supra*, the State had not yet answered the petition, and, arguably, there may exist reasons why it should not be granted. The Court therefore remanded the case to the Circuit Court with instructions to order the State to answer the petition. Appellant, represented by the Public Defender, should in turn respond to the State's answer. The Court further instructed the lower court that if any disputes arise from the parties' submissions that are material to the disposition of the petition, then the court must hold a hearing to resolve the disputes and make any necessary findings of fact, before ruling on the petition.

Donte William Gregg v. State of Maryland, No. 21, September Term 2008, filed July 24, 2009, Opinion by Barbera, J.

<http://mdcourts.gov/opinions/coa/2009/21a08.pdf>

CRIMINAL PROCEDURE-POSTCONVICTION DNA TESTING

Facts: Appellant was convicted of first degree murder in 2003. During the investigation, the police collected epithelial cells from the trigger of the gun used as the murder weapon. Neither the police nor the appellant performed a DNA analysis on the cells. During trial, Appellant insisted that another man was the shooter. The police presented contradictory circumstantial evidence linking Appellant as the shooter. A jury convicted appellant of murder and sentencing followed.

Shortly after his conviction, Appellant petitioned for post-conviction DNA testing of the epithelial cells found on the trigger of the gun pursuant to Md Code (2001) § 8-201(c) of the Criminal Procedure Article. The State responded in opposition to the petition. The State argued that Appellant had not carried his burden of showing entitlement to the DNA testing of the evidence, under the then-extant version of § 8-201(c). That version of the statute required a petitioner to establish, among other facts, that the lack of prior DNA testing was "for reasons beyond the control of the petitioner." The State asserted that it had disclosed to the defense well before trial that swabbings of the trigger area of the murder weapon "were positive for the presence of epithelial cells and same were examined." The Circuit Court did not rule on the merits of the September 2003 petition. Instead, the court, at the behest of Appellant, dismissed the petition without prejudice in November 2005.

Also in November 2005, Appellant filed, through counsel, a "Motion for New Trial and for Release of Evidence for Forensic Testing." Appellant served a copy of the petition on the State.

Appellant relied in the petition on § 8-201(c), which had undergone significant amendment since the filing of the original petition in September 2003, in seeking a court order directing the State to release the epithelial cell evidence for DNA testing. Appellant also relied on Maryland Rule 4-331, which provides for the relief of a new trial on the basis of newly discovered evidence, in seeking an order for DNA testing of the epithelial cells. The State did not answer the petition.

The petition was directed to the Circuit Court judge who presided over Appellant's trial. The court did not direct the

State to respond to the petition, nor did the court hold a hearing. In an order docketed on April 17, 2006, the court denied Appellant's request for DNA testing and for a new trial. Appellant did not timely receive notice of the court's order.

Upon learning of the order, Appellant filed, on May 2, 2006, a motion for reconsideration of the order and requested a hearing. On the same day, Appellant filed a notice of appeal from the denial of the petition, pursuant to § 8-201(j)(6). The Court of Special Appeals subsequently dismissed the appeal as untimely.

Meanwhile, the State answered in opposition to the motion for reconsideration. The Circuit Court did not hold a hearing on the motion; instead, it issued an order denying the motion for reconsideration.

Appellant thereafter filed a petition for postconviction seeking the relief of the right to file a belated appeal from the court's denial of the petition. The court granted that relief by order dated March 20, 2008. This appeal timely followed.

Appellant presented the following question: "Did the trial court err in ruling without affording Appellant a hearing and err in denying Appellant's request for DNA testing?"

Held: Reversed. The trial court erred in not granting the petition for DNA testing.

The Court first dispensed with the motion for a new trial under Md. Rule 4-331 and decided it was not properly before the Court, on direct appeal. The Court limited its review to whether the Circuit Court properly denied the petition seeking relief under § 8-201.

The Court then reviewed the history of and subsequent amendments to § 8-201. The Court held that the changes to the statute effective October 1, 2003, were to be given retrospective application, and therefore Appellant's petition should be evaluated under the language that became effective October 1, 2003.

Under the version of the statute effective on October 1, 2003, the Court evaluated whether Appellant was entitled to DNA testing. If Appellant had satisfied the requirements of the statute, the Circuit Court had no discretion in ordering the DNA testing. The statute required that Appellant show "a reasonable probability exists that the DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing;" and second, that "the requested DNA test

employs a method of testing generally accepted within the relevant scientific community. See § 8-201(c)(1), (2).

The Court determined that Appellant's 2005 petition alleged sufficient facts to satisfy the requirement of § 8-201(c)(1) that "a reasonable probability exists that the DNA testing [of the epithelial cells] has the scientific potential to produce exculpatory or mitigating evidence relevant to [Appellant's] claim of wrongful conviction[.]" The petition laid out most of the evidence that was presented at trial; asserted that the epithelial cells were amenable for DNA testing, but had not been tested; and argued that DNA evidence had the potential to corroborate Appellant's version of what occurred during the murder and establish that another person handled the murder weapon and pulled the trigger.

The Court reasoned that Appellant was not required to show that the outcome of his case necessarily would have been different, had the jury been presented with the evidence he sought to obtain through the requested DNA testing. The Court noted that the State had several opportunities to argue to the Circuit Court why Appellant was not entitled to DNA testing, but at no time did the State even hint at a potential factual dispute that necessitated resolution at an evidentiary hearing. Further, all of the legal arguments the State made in opposition to the court's granting Appellant the relief he sought either were no longer relevant or were rejected by the Court. Finally, there was no indication in the record of any other impediment to the grant of the petition.

The Court therefore remanded the case for the Circuit Court to enter an order directing that the epithelial cells collected from the trigger area of the murder weapon be released to the Appellant for testing, in accordance with the dictates of § 8-201.

Cecil Laroy Robinson v. State of Maryland, No. 109, September Term 2008, filed July 28, 2009, Opinion by Barbera, J.

<http://mdcourts.gov/opinions/coa/2009/109a08.pdf>

CRIMINAL LAW-SIXTH AMENDMENT-RIGHT TO PUBLIC TRIAL- PRESERVATION OF CLAIM

Facts: Appellant was tried before a jury in the Circuit Court for Caroline County, on charges of attempted robbery and related offenses. During *voir dire*, one potential juror claimed that he could not decide the case impartially after overhearing a group of four or five persons discussing the case in the hallway. The prospective juror did not elaborate on what he had heard, but he observed that the persons he overheard discussing the case might have been witnesses at trial. The court dismissed the juror for cause, *voir dire* continued, and eventually a jury was selected and sworn. The court then addressed the spectators in the courtroom and specifically told them not to discuss the case. The court further ordered the spectators to stay in the courtroom except during specified break times.

At the outset of trial, the court learned that members of Appellant's family might have been attempting to intimidate witnesses. After discussing the matter in the presence of the prosecutor, defense counsel, and Appellant, the court ordered the members of Appellant's family and at least two other persons to leave the courtroom. Neither party objected to the court's action. The jury ultimately found Appellant guilty of two counts of attempted robbery and other offenses. Sentencing followed in due course.

Petitioner appealed to the Court of Special Appeals arguing that the trial court violated his constitutional right to a public trial by excluding his family and other spectators from the courtroom during the trial. The Court of Appeals granted a writ of certiorari on its own motion, prior to decision in the Court of Special Appeals, to address petitioner's question.

Held: Affirmed. The Court held that petitioner waived his right to a public trial when he failed to object to the ejection of his family and other spectators from the courtroom.

The Court observed at the outset that the trial court, before ordering the spectators out of the courtroom, did not comply with the standard for closing a courtroom to the public, set forth in *Waller v. Georgia*, 467 U.S. 39, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984), and its Maryland progeny. *Waller* requires that, before the

courtroom can be closed to the public, four factors must be present: (1) the "party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced"; (2) "the closure must be no broader than necessary to protect that interest"; (3) "the trial court must consider reasonable alternatives to closing the proceeding"; and (4) the trial court "must make findings adequate to support the closure."

The Court, though recognizing that the right to a public trial is a fundamental constitutional right, concluded that the right can be waived at trial by a failure to object to closure of the courtroom. The Court concluded that Appellant, by not objecting to the exclusion of his family and at least two other spectators, failed to preserve for appellate review, under Md. Rule 8-131(a), his challenge to the trial court's non-compliance with requirements of *Waller*. The Court rejected the proposition that Appellant was entitled to review of the court's closure order simply because the deprivation of the right to a public trial is a "structural error," not subject to review for harmless error. The Court then reviewed case law from other jurisdictions and found that a majority of those jurisdictions recognize that the defendant's failure to object to courtroom closure waives the right to complain about an alleged violation of the right to a public trial.

The Court further noted that it was loath to exercise its discretion to address the unpreserved error given the possibility that Appellant's lack of objection may have been the product of design, and the fact that the very analysis Appellant complained was not done by the trial court likely would have been done had he brought the matter to the court's attention.

M'Hamed Kortobi v. Brian L. Kass, Personal Representative of the Estate of Carver James Leach, Jr., et al., No. 140, September Term 2008, filed 24 August 2009. Opinion by Harrell, J.

<http://mdcourts.gov/opinions/coa/2009/140a08.pdf>

ESTATES & TRUSTS - FOREIGN PERSONAL REPRESENTATIVE - PERSONAL JURISDICTION - PERSONAL JURISDICTION DOES NOT LIE IN MARYLAND OVER FOREIGN PERSONAL REPRESENTATIVE, DESPITE REPRESENTATIVE'S MARYLAND RESIDENCY AND SERVICE OF PROCESS AT HIS RESIDENCE, WHEN NEITHER DECEDENT NOR REPRESENTATIVE HAD OTHER CONTACTS WITH MARYLAND.

Facts: A vehicle operated by Carver James Leach, Jr. struck a car driven by M'Hamed Kortobi in Washington, D.C. in 2003. At the time, Leach was a resident of the District of Columbia. Approximately one year later, Leach died from causes unrelated to the 2003 accident. An estate was opened in the Probate Division of the Superior Court of the District of Columbia because Leach was a resident of D.C. and his assets were located exclusively in D.C. The probate court appointed Brian L. Kass, Esquire, as the personal representative of Leach's estate. Although he is a resident of Maryland, Kass conducted all of the business related to the Leach estate from his D.C. law office (the only law office maintained by his firm). He did not conduct any business related to the Leach estate in Maryland.

Kortobi initially filed a motor tort action against the Leach estate in the Superior Court of the District of Columbia. After the appointment of Kass, Kortobi dismissed the action in the Superior Court, and filed the instant suit in the Circuit Court for Prince George's County. After amending the complaint to sue Kass as the personal representative, Kortobi served Kass, in his capacity as the personal representative of the Leach Estate, at Kass' residence in Howard County, Maryland.

Kass filed a motion to dismiss based on lack of personal jurisdiction. The Circuit Court granted the motion, concluding that there was insufficient contact with the State of Maryland to sustain the exercise of personal jurisdiction.

Kortobi noted a timely appeal to the Court of Special Appeals, which affirmed the trial court's judgment, opining that Maryland does not have personal jurisdiction over a foreign estate based solely on the Maryland residence of the estate's personal representative. *Kortobi v. Kass*, 182 Md. App. 424, 442-43, 957 A.2d 1128, 1138 (2008). The Court of Appeals granted Kortobi's petition for a writ of certiorari. *Kortobi v. Kass*,

406 Md. 743, 962 A.2d 370 (2008).

Held: Affirmed. The Court first reviewed Md. Code (2001 Repl. Vol.), Estates and Trusts Article, § 5-502(a), the statute governing the powers of foreign personal representatives. Section 5-502(a) provides that a foreign personal representative may sue or be sued in Maryland in his capacity as the personal representative of the estate subject to any statute or rule relating to nonresidents. Concluding that the statute was ambiguous on the facts of the present case, the Court turned to the legislative history of the statute. The Court interpreted the statute to mean that the foreign personal representative's powers are determined according to the laws of the appointing jurisdiction, taking no consideration of the personal representative's residence.

Under D.C. law, a personal representative stands in the shoes of the decedent. Therefore, the Court turned to Md. Code (2006 Repl. Vol. & Supp. 2008), Courts and Judicial Proceedings Article § § 6-102 and 6-103 to determine whether Kortobi could have sued Leach for the alleged motor tort, prior to his death, in Maryland. The Court, thus, dismissed Kortobi's argument that Kass' Maryland residency confers personal jurisdiction over him in Maryland, in his representative capacity, under § 6-102 or under the theory of general jurisdiction. For an estate probated in a foreign jurisdiction to establish the type of continuous and systematic contact necessary for general jurisdiction, the personal representative must have made those contacts in her representative capacity, on behalf of the estate.

The Court also held that the statutory language, "subject to any statute or rule relating to nonresidents," includes the Maryland Long Arm Statute, § 6-103; however, the Court held that there were insufficient contacts here to maintain jurisdiction under § 6-103. Neither Leach nor Kass, in his representative capacity, established minimum contacts with Maryland nor purposefully availed themselves of its laws. Kass' personal residence and service of process in this matter in Maryland did not satisfy § 6-103 or comport with the due process requirements of the Fourteenth Amendment.

Robert Scrimgeour v. Fox Harbor, LLC, No. 150, September Term 2008. Opinion filed August 25, 2009 by Battaglia, J.

<http://mdcourts.gov/opinions/coa/2009/150a08.pdf>

REAL PROPERTY = LAND USE AND ZONING - RETROSPECTIVE APPLICATION OF STATUTORY AMENDMENTS

Facts: Before the Talbot County Board of Appeals, Robert Scrimgeour challenged the issuance of a zoning permit to one of his neighbors arguing primarily that the size of a structure to house horses on his neighbor's property was too large to be "accessory to" a residential or agricultural use of the property. After a three-day hearing in March and April of 2007, the Talbot County Board of Appeals upheld the issuance of the building permit, as either a permissible accessory residential or accessory agricultural structure under the then existing local zoning ordinance. Scrimgeour sought judicial review in the Circuit Court for Talbot County, which affirmed the Talbot County Board of Appeals' decision. Scrimgeour then noted an appeal to the Court of Special Appeals, and the Court of Appeals granted certiorari prior to any proceedings before the intermediate appellate court. After certiorari had been granted, but before oral argument, the Talbot County Zoning Code was amended to include new zoning districts, revised definitions of "accessory structure," "accessory use," and "stable," and a revised Table of Uses, specifically, the contents under the heading "Agricultural Uses and Structures, Accessory." The amended code was to become effective five days after oral argument.

Held: The Court of Appeals held that *Layton v. Howard County Board of Appeals*, 399 Md. 36, 922 A.2d 576 (2007), was controlling regarding the retrospective effect of substantive changes in relevant statutory law that took place during the course of litigation in this land use and zoning matter. In *Layton*, the Court reaffirmed the principal conclusion of *Yorkdale Corporation v. Powell*, 237 Md. 121, 205 A.2d 269 (1964), that "legislated change of pertinent law, which occurs during the ongoing litigation of a land use or zoning case, generally, shall be retrospectively applied." *Layton*, 399 Md. at 38, 922 A.2d at 577. The Court noted that the Talbot County Board of Appeals made its findings and conclusions based on the ordinance prior to its amendment, and the administrative body should have an opportunity to consider and apply the local ordinance, in the exercise of its presumed expertise in such matters. The Court elected not to address the substantive question regarding the structure raised in the case and instead remanded the case to the Talbot County Board of Appeals for consideration and

determination of the effect of the new code on the dispute.

COURT OF SPECIAL APPEALS

In Re: Lorenzo C., No. 2593, September Term, 2007, decided August 27, 2009. Opinion by Davis, J.

<http://mdcourts.gov/opinions/cosa/2009/2593s07.pdf>

CRIMINAL LAW - REASONABLE BELIEF THAT A CRIME IS BEING OR ABOUT TO BE COMMITTED - The Fourth Amendment of the United States Constitution; *Terry v. Ohio*, 392 U.S. 1, 20 (1968)(Holding that, if an officer has an articulable basis for a reasonable belief that crime is being or is about to be committed, a police officer may make a brief stop of a suspect in order to investigate); *Collins v. State*, 376 Md. 359 (2003); *Stokes v. State*, 362 Md. 407 (2001) and *Cartnail v. State*, 359 Md. 272 (2000); circumstances that justify effectuating a *Terry* stop, *i.e.*, the "reasonable suspicion" factors, are: (1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender's flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation. 4 *Wayne R. LaFave, Search and Seizure* § 9.4(g), at 195 (3d ed. 1996 & 2000 Supp.); *Weedon v. State*, 82 Md. App. 692, 696 (1990). (Holding that, if the officer also has "an articulable basis for a reasonable belief that the suspect may be armed, the officer may 'frisk' him [or her] by conducting a pat-down of the exterior of the suspect's clothing to insure that he [or she] is not armed.")

Facts: District of Columbia officer and his partner received police radio broadcast of a robbery that had been committed at 1:00 a.m. by "several suspects, one of whom was on a bicycle, wearing dark clothing" in the 6100 block of Eastern Avenue, Northeast, in the District of Columbia, approximately four blocks from where the officer was located. When he arrived at the 5700 block of Eastern Avenue, the officer testified that he and his partner saw "a group of subjects, about four of them, including a gentleman on a bike at the corner, standing at the corner of the 5700 block." As the officers approached the suspects, the individual who was on the bicycle fled and was pursued by his partner, as the officer accosted the three remaining suspects. When the officer sought to question

appellant, he observed that appellant was moving his hand inside his jacket pocket and twice ordered him to "let me see his hands." When appellant refused to comply, the officer forcibly removed appellant's hand from his pocket and a pat-down revealed that he had a revolver in his pocket.

Held: The circuit court, finding that the officer had reasonable articulable suspicion to stop appellant and reasonable articulable suspicion to believe that appellant may be armed, properly denied appellant's motion to suppress.

George Matthews v. State - No. 3035, September Term 2007, filed August 28, 2009. Opinion by Zarnoch, J.

<http://mdcourts.gov/opinions/cosa/2009/3035s07.pdf>

CRIMINAL LAW & PROCEDURE - POST-CONVICTION PROCEEDINGS - MOTION FOR NEW TRIAL - RIGHT TO A HEARING

Facts: Appellant pled guilty to second degree murder and use of a handgun in commission of a crime of violence on December 5, 2000. Appellant was sentenced on January 11, 2001. Appellant filed a petition for post-conviction relief on October 15, 2004. The circuit court denied the petition on April 5, 2004. This Court denied appellant's application for leave to appeal on February 8, 2006. Appellant filed a motion entitled "Motion for Exercise of Revisory Power Over an Enrolled Judgment Citing Mistake, Irregularity in the Proceedings in the Circuit Court." The circuit court denied the motion on October 2, 2006. Appellant appealed that denial to this Court. We dismissed appellant's appeal on September 11, 2007, and issued the mandate on October 11, 2007. The Court of Appeals denied appellant's petition for writ of certiorari on December 17, 2007. Two days later, on December 19, 2007, Appellant filed in the circuit court a "Motion for Appropriate Relief/New Trial," and requested a hearing. The circuit court denied the motion on January 31, 2008 without conducting a hearing. Appellant challenged this denial on appeal.

Held: The Court of Special Appeals vacated the circuit court's denial of appellant's motion, and remanded the case for a hearing. Before doing so, the Court denied the State's motion to dismiss the appeal. The Court explained that the rule governing dismissal of appeals was discretionary, and the Court's holding is limited to appellant's right to a hearing. The Court then explained that appellant sought relief under Md. Rule 4-331(c), which allows the court to grant a new trial if there is newly discovered evidence. The State argued that appellant did not seek relief in a timely manner. The Court stated that appellant may have sought relief in a timely manner under Maryland Rule 4-331(c)(1), which provides that the court may grant a new trial on the ground of newly discovered evidence when the motion is "filed within one year after . . . the date it received a mandate issued by the . . . Court of Special Appeals." However, the court declined to address that issue, instead analyzing the case under Rule 4-331(e). In doing so, the Court first recognized *Jackson v. State*, where the Court of Appeals held that, under Rule 4-331(e), a court may only deny a hearing on a motion for a new trial based on newly discovered evidence on the basis that the motion was late and did not comply with the requirements of subsection (d) of the Rule. The Court

then examined the history of Rule 4-331(e), and concluded that the Rules Committee was concerned with addressing automatic, *i.e.* "unrequested" hearings; dealing with unnecessary hearings through the "more stringent requirements of subsection (d); preferentially treating motions for a new trial based on newly discovered evidence; and acting consistently with *Jackson*. The Court then noted that subsection (e) explicitly requires a hearing for a procedurally compliant "motion filed under Section (c)," and interpreted it, in light of *Jackson* and the minutes of the Rules Committee, as applying to both timely and untimely motions. After doing so, the Court held that the circuit court must afford a hearing on a motion for a new trial when the motion is based on newly discovered evidence and filed after the one year deadline if the motion complies with subsection (d). In this case, the motion complied with subsection (d). Thus, the circuit court erred when it failed to afford appellant a proper hearing on this motion.

Johnson v. State, No. 2987, September Term, 2007. Opinion filed on August 27, 2009 by Matricciani, J.

<http://mdcourts.gov/opinions/cosa/2009/2987s07.pdf>

CRIMINAL LAW - RIGHT TO COUNSEL FOR SENTENCE REVIEW

Criminal Procedure Article § 8-103. Under CP § 8-103 a party seeking a sentence review is entitled to representation.

Facts: In the instant case, appellant filed a *pro se* application for a sentence review. The court responded by sending letters to the Office of the Public Defender, the Office of the State's Attorney, and the appellant, requesting the submission of additional information within 15 days. Appellant responded to the court's letter by asking the court to defer its decision until he could consult with counsel. The Office of the Public Defender did not respond to the letter and never entered its appearance on behalf of appellant. Despite appellant's request, the three-judge panel proceeded to make its decision. The panel declined to change appellant's sentence.

Held: Appellant had a statutory right to counsel during the sentence review process. Appellant did not waive his right to counsel under Maryland Rule 4-215. Therefore, appellant's right to counsel was violated and the decision of the sentence review panel is vacated and we remand for a new hearing.

Mi Bong Hong v. Chong Chin Cha, No. 0507, September Term 2008, Filed August 31, 2009. Opinion by Kehoe, J.

<http://mdcourts.gov/opinions/cosa/2009/507s08.pdf>

CONTRACT - CONFIDENTIAL RELATIONSHIP

Facts: Chong Chin Cha was a member of a "gye", or money club, operated by Mi Bong Hong. The club operated as follows: members paid monthly dues into a collective pot. Each month, a member, by turn, was entitled to collect the pot. If a member chose to purchase multiple shares, he or she paid the monthly dues for each share, and was entitled to collect the pot once for each share. Ms. Cha alleged that she had purchased two shares of the money club, but had only been permitted to collect the pot once. Ms. Hong asserted that Ms. Cha had only purchased one share, and that no further monies were due to her. Ms. Hong, as organizer of the club, collected the dues and was in charge of the monthly lottery to determine the winner. Ms. Hong kept no record of payments made or winnings disbursed. Ms. Cha sued Ms. Hong for breach of express and implied contract, an accounting, and breach of fiduciary duty. The circuit court found that no express contract existed, and that, if an implied contract existed, Ms. Cha's incomplete and untimely payments constituted a material breach. However, the circuit court also found that Ms. Cha had made payments to Ms. Hong on a second share totaling \$84,000, and that Ms. Hong had a confidential relationship to Ms. Cha. Based on the existence of this relationship, the trial court determined that Ms. Cha was entitled to restitution of the amount paid for the second share and entered judgment in that amount, together with prejudgment interest. Ms. Hong appealed the circuit court's decision. In an unreported opinion, "*Cha I*," a panel of this Court affirmed in part and vacated in part, remanding the case to the trial court to resolve inconsistencies between its findings on the breach of contract claims and the accounting claim. After a remand hearing, the circuit court found that no contract, express or implied, existed between the parties, but that, based on the confidential relationship between the parties, and the evidence of Ms. Cha's payments, Ms. Cha was entitled to an accounting. Accordingly, the circuit court ordered Ms. Hong to provide an accounting to Ms. Cha of the \$84,000, plus prejudgment interest in the amount of \$20,795.26.

Held: Affirmed. There was substantial evidence to support the trial court's finding that Ms. Cha made \$84,000 payments on a second share of the club. An accounting for those payments was properly predicated on the trial court's finding, affirmed by the panel in *Cha I*, that a confidential relationship existed between

the parties.

Hartford Underwriters v. Phoebus, No. 758, Sept. Term 2008. Opinion by Eyler, Deborah S., J., filed August 31, 2009.

<http://mdcourts.gov/opinions/cosa/2009/758s08.pdf>

CONTRACTS - INTERPRETATION OF CONSTRUCTION CONTRACT - AMBIGUITY - TEMPORAL SCOPE OF WAIVERS OF SUBROGATION CLAUSE.

Facts: K.B.K., Inc. ("Owner") entered into a standard form contract (American Institute of Architects number A107-1997) with John L. Mattingly Construction Co., Inc. ("Contractor"), for the construction of an Arby's Restaurant in Dunkirk, Calvert County. Mattingly hired various subcontractors, including Wilma Phoebus Electric Co. ("Subcontractor"), to perform various tasks as part of the overall construction project. The contract between Mattingly and K.B.K. included a "waivers of subrogation" clause by which the parties agreed that, when the Owner had applicable insurance, the parties would look to the insurance and not to each other, in the event of certain losses, including fire.

Nearly two years after the restaurant was built, and after it had been opened for business, it was damaged by a fire. The Owner filed a claim with its property insurer, Hartford Underwriters, which paid the claim. Hartford, as subrogee of the Owner, then filed suit in the Circuit Court for Calvert County against the Contractor and certain subcontractors, including Phoebus, alleging negligence, breach of contract, and breach of warranties.

Mattingly and Phoebus moved for summary judgment, arguing that the "waivers of subrogation" clause precluded Hartford from bringing suit. In their view, the "waivers of subrogation" clause and the contractual term "Work" were clear and unambiguous, and their effect was to extend the temporal duration of the "waivers of subrogation" clause indefinitely. Hartford opposed the motions and filed its own cross-motion for partial summary judgment, contending the "waivers of subrogation" clause had a more limited temporal scope, and was inapplicable after the restaurant was completed and paid for. The circuit court granted Mattingly's and Phoebus's motions and denied Hartford's. Hartford then appealed to the Court of Special Appeals.

Held: This Court reversed, holding that the lower court erred by granting the Contractor's and Subcontractor's motions, and denying Hartford's. We held that the "waivers of subrogation" clause and the definition of "Work" in the AIA contract were ambiguous. Unlike the majority of cases on point, in this case there was no "completed project insurance" clause to give meaning to the temporal scope of the "waivers of subrogation" clause.

Furthermore, "Work" as defined in the AIA contract could be interpreted narrowly, to refer to the steps required to complete the construction and delivery of the building, or expansively, to refer to the finished restaurant itself, even after completion of its construction and occupancy by the Owner. Because waiver is the intentional relinquishment of a known right, the we concluded that it was unreasonable to interpret the AIA contract as a waiver by the Owner of its liability rights for insurable loss beyond the time period when the building was being constructed.

Moreover, the appellate court explained that its holding comported with an important public policy consideration, namely, that "waivers of subrogation" clauses in construction contracts are intended to eliminate the disruption in construction that would result from litigation during the construction process itself. Because this purpose expires when the construction is completed, there is no reason to extend the temporal scope of "waivers of subrogation" clauses beyond the time when construction takes place.

Maryland Department of Transportation v. Maddalone, No. 328, Sept. Term 2008. Opinion by Eyler, Deborah S., J., filed August 31, 2009.

<http://mdcourts.gov/opinions/cosa/2009/328s08.pdf>

CONSTITUTIONAL LAW - FIRST AMENDMENT - FIRING OF GOVERNMENT EMPLOYEE ALLEGEDLY FOR POLITICAL REASON - ELROD-BRANTI SOLE MOTIVE TEST - ADMINISTRATIVE AGENCY LAW.

Facts: Gregory Maddalone was a patronage employee hired during the administration of Governor Robert Ehrlich, the first Republican governor elected in Maryland in decades. During the Ehrlich Administration, Maddalone was involved in an ongoing dispute between the Administration and members of the General Assembly over whether the Administration had illegally fired State employees for political reasons. Eventually the legislature formed a special committee to investigate the allegations, and Maddalone was compelled to testify. The dispute and the committee proceedings received extensive coverage in the news media.

In November 2006, Governor Ehrlich was defeated in his re-election bid by Baltimore City Mayor Martin O'Malley, a Democrat. Governor O'Malley appointed a new Secretary of Transportation, John Porcari. Shortly after assuming office, Secretary Porcari undertook a reorganization of emergency management. At the time, Maddalone worked in the Office of Engineering, Procurement and Emergency Services, part of the Department of Transportation ("MDOT"). From the beginning of his tenure in the Ehrlich Administration, Maddalone had been hired and promoted to a series of positions without advertisement or competition. Despite his lack of any experience or credentials, Maddalone was working as an emergency response manager with a salary of approximately \$79,000 per year.

In January 2007, Secretary Porcari fired Maddalone. Maddalone lodged an administrative appeal pursuant to Code, section 2-103.4(d)(6)(iii) of the Transportation Article, and COMAR section 11.02.08.07. He alleged his firing violated the First and Fourteenth Amendments to the U.S. Constitution, because it was solely for political reasons.

An administrative law judge ("ALJ") presided over a contested case hearing between Maddalone and the MDOT. Maddalone moved into evidence 20 articles from newspaper websites, written contemporaneously with the controversy over the allegedly illegal firings by the Ehrlich Administration. Those articles contained

information about Maddalone's background as a professional ice dancer and his lack of any other experience, credentials, or education.

The ALJ issued an order and memorandum opinion finding that Maddalone had been fired solely for political reasons, and ordered that MDOT reinstate him and give him back pay. MDOT filed a motion for reconsideration, which the ALJ denied, issuing a memorandum opinion further explaining her rationale. MDOT filed in the Circuit Court for Anne Arundel County an action for judicial review. The circuit court affirmed the decision of the ALJ, and MDOT appealed to the Court of Special Appeals. MDOT maintained that the ALJ erred in concluding that Maddalone had been fired unconstitutionally, and that the ALJ further erred in awarding reinstatement and back pay, because Maddalone was neither ready nor willing to return to work.

Held: The appellate court reversed and remanded, with instructions that the circuit court remand to the ALJ and order her to affirm the MDOT's discharge of Maddalone. The appellate court held that the record lacked substantial evidence to support the ALJ's finding that MDOT's *sole* motive in firing Maddalone was political. Under the test enunciated by the U.S. Supreme Court in *Elrod v. Burns*, 427 U.S. 347 (1976), as refined in *Branti v. Finkel*, 445 U.S. 507 (1980), Maddalone bore the burden of proving that MDOT fired him solely because of political motives. The evidence adduced at the hearing, however, showed only that, at most, MDOT fired Maddalone *both* because of his political affiliation *and* because he was unqualified for the emergency response manager position, especially as envisioned in Secretary Porcari's reorganization plan.

Herbert Livingstone, et al. v. Greater Washington Anesthesiology & Pain Consultants, P.C., et al., No. 2079, Sept. Term, 2007, filed August 27, 2009. Opinion by Graeff, J.

<http://mdcourts.gov/opinions/cosa/2009/2079s07.pdf>

MEDICAL MALPRACTICE - NEGLIGENCE - SPECIAL VERDICT SHEET - CAUSATION - PRESERVATION - SCHEDULING ORDER - IDENTIFICATION OF EXPERT WITNESSES - JURY DELIBERATIONS.

Facts: On November 6, 2002, Dr. Tracy Orr was admitted to Shady Grove Adventist Hospital. Dr. Orr was 43 years old and approximately 27 weeks pregnant with twins. She had preeclampsia and gestational diabetes, and she was experiencing pre-term labor. On November 9, 2002, her membranes ruptured (her "water broke"). Upon the recommendation of her physicians, Dr. Orr consented to and underwent a Cesarean section attended by, among others, Dr. Richard S. Margolis, an obstetrician, and Dr. Stephen D. Martin, an anesthesiologist. The delivery of the first twin occurred at approximately 6:54 p.m., and the second twin was delivered at about 6:56 p.m. Very soon after the second twin's delivery, it was noted that Dr. Orr was unresponsive and subsequently in cardiac arrest. A "code" was called by the nurses present, and resuscitative measures were undertaken. Tragically, Dr. Orr suffered brain injury. On November 11, 2002, life support was withdrawn, and, on November 12, 2002, Dr. Orr died. The twins survived.

Plaintiffs filed suit in the Circuit Court for Montgomery County, and the complaint alleged medical negligence by appellees Dr. Margolis and Dr. Martin in their care and treatment of Dr. Orr in the days just prior to and during the delivery of the twins. Appellees presented expert testimony that Dr. Orr died from an amniotic fluid embolism, an unpredictable "obstetrical catastrophe" befalling a pregnant woman.

A jury sitting in Montgomery County returned a verdict in favor of appellees. The jury found that neither Dr. Margolis nor Dr. Martin committed a breach of the standard of care when providing treatment to Dr. Orr. Accordingly, the circuit court entered judgment in favor of appellees.

Held: Judgment affirmed. In this medical malpractice claim, the plaintiffs alleged that the defendants violated the standard of care and that this violation caused the death of their patient. Plaintiffs' appellate contention that the trial court erred in its instruction on causation fails because they cannot show prejudice. Pursuant to a special verdict sheet, the jury found that the

defendants did not breach the standard of care. In accordance with the instructions on the special verdict sheet, and the closing argument of the parties, the jury did not reach the issue of causation. Accordingly, the plaintiffs were not prejudiced by the court's failure to give their requested jury instruction on causation.

In order for a party to preserve a ruling on a motion *in limine* that seeks to exclude the admission of evidence at trial, the party challenging the admission must object at the time the evidence is actually offered.

The trial court properly exercised its discretion in striking an errata sheet filed by the plaintiffs' expert witness less than two weeks before trial, which purported to "clarify" the expert's deposition testimony, but in actuality alleged a new theory of negligence. The court also properly exercised its discretion in granting defendants' motion *in limine* to preclude evidence relating to this new claim.

The trial court did not abuse its discretion in denying plaintiffs' request to designate an additional expert witness after the deadline set forth in the scheduling order when plaintiffs failed to offer good cause for the untimely designation of the additional expert witness.

The trial court did not abuse its discretion in allowing the jury to begin deliberations on a Friday evening at 7:00 p.m. The record provides no support for the plaintiffs' contention that the jury was rushed in the deliberations or that the jury was not faithful in its oath to consider all of the evidence.

Montgomery County, Maryland v. Valerie J. Willis, No. 3081, September Term, 2007, filed August 28, 2009. Opinion by Hollander, J.

<http://mdcourts.gov/opinions/cosa/2009/3081s07.pdf>

WORKERS' COMPENSATION ACT; INSURANCE FRAUD DIVISION OF THE MARYLAND INSURANCE ADMINISTRATION; SECTIONS 9-310 AND 9-737 OF THE LABOR AND EMPLOYMENT ARTICLE; JUDICIAL REVIEW; STATUTORY INTERPRETATION.

Facts: Valerie Willis, appellee, a former Montgomery County Police Officer, obtained compensation benefits for a work related injury sustained in July 2001. Montgomery County, appellant, claimed that after the work-related event, but before benefits were awarded, the employee sustained a non-work related injury that she failed to disclose. On that basis, pursuant to Md. Code (2008 Repl. Vol.), § 9-310.2 of the Labor and Employment Article ("L.E."), the County filed a "Request for a Hearing for Referral to the Maryland Insurance Fraud Division." After an evidentiary hearing, the Commission determined there was insufficient evidence of fraud, and declined to refer the matter to the Division. Thereafter, the County sought judicial review in the Circuit Court for Montgomery County. The claimant moved to dismiss, arguing, *inter alia*, that the Commission's Order was not appealable. The circuit court agreed and dismissed the appeal.

Held: Reversed and remanded. Pursuant to § 9-310.2 of the Labor and Employment Article of the Maryland Code, the General Assembly conferred a statutory right upon the Workers' Compensation Commission to refer fraud cases to the Insurance Fraud Division of the Maryland Insurance Administration. The Commission's denial of an employer's request for a referral to the Division, based on alleged fraud, fully and finally resolved the question of whether the employer showed, by a preponderance of evidence, that the employee "knowingly affected or knowingly attempted to affect the payment of compensation, fees, or expenses . . . by means of a fraudulent representation...." L.E. § 9-737, which provides for judicial review, is not limited, by its terms, to review of cases that grant or deny compensation "benefits." When the Legislature enacted L.E. § 9-310, it did not signal an intent to preclude judicial review of a decision rendered by the Commission denying a request for referral to the Division. Therefore, the employer was entitled to judicial review of the Commission's Order denying its request for referral of appellee's compensation claim to the Division.

Larry Holmes, Sr., et ux. v. Wal Mart Stores, Inc., et al., No. 0036, September Term 2008, filed September 2, 2009, Opinion by Kehoe, J.

<http://mdcourts.gov/opinions/cosa/2009/36s08.pdf>

WORKERS' COMPENSATION - PERMANENT TOTAL DISABILITY SURVIVORSHIP BENEFITS - MD. CODE ANN. LAB. & EMPL. § 9-632(d)

Facts: On November 3, 1999, Mrs. Holmes suffered an injury in the course of her employment with Wal Mart Stores, Inc. She filed a claim with the Worker's Compensation Commission (the "Commission") and was awarded benefits for temporary partial disability. She died on December 4, 2006 from causes not related to her injuries and was survived by her husband, Larry Holmes, Sr. Mrs. Holmes' attorney filed a post-mortem issue seeking permanent disability benefits. MD. CODE ANN. LAB. & EMPL. § 9-632 (1991, 2008 Repl. Vol.) provides for the survival of permanent disability benefits to

(c) *Surviving dependents.* -- If there are surviving dependents of the covered employee, the right to compensation survives to the surviving dependents as the Commission may determine.

(d) *No surviving dependents; obligation to support surviving spouse.* -- If there are no surviving dependents of the covered employee and, on the date of death, the covered employee had a legal obligation to support a surviving spouse, the right to compensation survives jointly to:

(1) the surviving spouse of the covered employee;
and

(2) the surviving minor children of the covered employee.

(e) *No surviving dependents or obligation to support surviving spouse.* -- If there are no surviving dependents and, on the date of death, the covered employee did not have a legal obligation to support a surviving spouse, the right to compensation survives only to the surviving minor children of the covered employee.

At the hearing before the Commission, the parties stipulated that Mr. Holmes was not Mrs. Holmes' dependant on the date of her work-related injury and that she had no minor children at the time

of her death. The issue before the Commission was, therefore, whether Mrs. Holmes had a legal obligation to support Mr. Holmes at the time of her death. Mr. Holmes argued that Mrs. Holmes had a legal obligation to support him at the time of her death based upon Maryland's criminal non-support statute, MD. CODE ANN. FAM. LAW § 10-201 (1984, 2006 Repl. Vol.). Wal Mart asserted that the term "legal obligation to support . . ." was intended by the legislature to be limited to court-ordered alimony or support payable pursuant to a separation agreement or other contract. The Commission determined that any right to further benefits did not survive Mrs. Holmes' death, stating that "insufficient evidence was presented to establish that the claimant [i.e. Mrs. Holmes] had a legal obligation to support her surviving spouse. . . ." Mr. Holmes filed a timely petition to the Circuit Court for Baltimore City. The parties filed cross-motions for summary judgment. Both parties' arguments before the trial court were elaborations of their previous arguments before the Commission. The trial court concluded that, based on §9-632(d) and *Mullan Construction Co. v. Day*, 218 Md. 581, 589 (1959), Mrs. Holmes did not have a duty to support Mr. Holmes on the date of her death. Mr. Holmes filed a timely appeal to the Court of Special Appeals.

Held: Reversed and remanded. MD. CODE ANN. LAB. & EMPL. § 9-632(d) (1991, 2008 Repl. Vol.) provides that a deceased worker's right to permanent partial disability benefits survives to his or her spouse unless the surviving spouse has agreed to or has been adjudicated to have given up his or her right of support.

ATTORNEY DISCIPLINE

By an Order of this Court of Appeals of Maryland dated September 1, 2009, the following attorney has been disbarred by consent from the further practice of law in this State:

STEPHEN JOHN HOLMES

*

By an Order of the Court of Appeals of Maryland dated September 1, 2009, the following attorney has been disbarred by consent from the further practice of law in this State:

HAROLD JOSEPH TULLEY

*

By a Per Curiam Order of the Court of Appeals of Maryland dated September 3, 2009, the following attorney has been disbarred, effective immediately, from the further practice of law in this State:

MINA BAHGAT

*

By an Order of the Court of Appeals of Maryland dated September 15, 2009, the following attorney has been disbarred by consent from the further practice of law in the State:

FRANK PLOWDEN JENKINS

*

By an Order of the Court of Appeals of Maryland dated September 21, 2009, the following attorney has been indefinitely suspended by consent from the further practice of law in this State:

PAUL RUSSELL CVACH

*