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Table of Contents

COURT OF APPEALS

COURT OF SPECIAL APPEALS

COURT OF APPEALS

Attorney Grievance Commission of Maryland v. Joseph Lee Friedman, Misc. Docket AG No. 49, September Term 2012, filed March 24, 2014. Opinion by Barbera, C.J.

http://www.mdcourts.gov/opinions/coa/2014/49a12ag.pdf

ATTORNEY MISCONDUCT – DISCIPLINE – DISBARMENT

Facts:

Petitioner, the Attorney Grievance Commission of Maryland ("Commission"), acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action ("Petition") against Respondent, Joseph Lee Friedman. The Petition alleged violations of the Maryland Lawyers' Rules of Professional Conduct ("MLRPC") and the Maryland Rules in connection with Respondent's depositing personal funds into an attorney escrow account in order to shield those funds from garnishment by the United States Internal Revenue Service ("IRS").

The Court of Appeals assigned the matter to the Honorable Patrick Cavanaugh of the Circuit Court for Baltimore County ("the hearing judge"). After an evidentiary hearing, at which only Bar Counsel appeared, the hearing judge found the following facts: Petitioner served as general counsel for his father's company, Crown Service, Inc., and also maintained a separate practice. When Respondent's father passed away, he and his brother assumed ownership of Crown Service. Several years later, Respondent and his brother entered into an agreement by which Respondent assigned to his brother his ownership interest in Crown Service and, in return, his brother promised to pay the company's outstanding tax liability, which, at the time, included over $70,000 in federal taxes. Respondent understood that, notwithstanding the agreement, he remained personally liable for the company's tax liability. Shortly after entering into the agreement with his brother, he opened an attorney escrow account. Rather than using the account to hold client funds, he deposited personal funds into the account in order to shield those funds from garnishment by the IRS.

Based upon these factual findings, the hearing judge concluded, by a clear and convincing evidence standard of proof, that Respondent had violated MLRPC 1.15(b) (safekeeping of property), MLRPC 8.4 (c) and (d) (misconduct), and Maryland Rule 16-607 (commingling funds). The hearing judge found no mitigating factors.

Return to ToC

Held:

Because neither Respondent nor Bar Counsel filed exceptions to the hearing judge's findings of fact, the Court treated those findings as established for the purpose of determining the appropriate sanction. The Court conducted a *de novo* review of the record and held that Respondent violated MLRPC 1.15(b), MLRPC 8.4 (c) and (d), and Maryland Rule 16-607, for the reasons stated in the hearing judge's conclusions of law. Noting that the Court's cases firmly establish that the act of intentionally thwarting collection efforts by a creditor is grounds for disbarment, it held that disbarment is the appropriate sanction for Respondent's misconduct.

Attorney Grievance Commission v. Lee Elliott Landau, Misc. Docket AG No. 84, September Term 2012, filed April 21, 2014. Opinion by Barbera, C.J.

http://mdcourts.gov/opinions/coa/2014/84a12ag.pdf

ATTORNEY MISCONDUCT – DISCIPLINE – DISBARMENT

Facts:

Petitioner, the Attorney Grievance Commission, acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action against Respondent Lee Elliott Landau. The petition alleged that Respondent committed professional misconduct in his representation of a company, The Merchandiser, in its efforts to collect on unpaid accounts receivable. The Court of Appeals referred the matter to the Honorable Nelson W. Rupp, Jr. of the Circuit Court for Montgomery County ("the hearing judge") to hold a hearing and make findings of fact and conclusions of law.

After an evidentiary hearing, at which only Bar Counsel appeared, the hearing judge found that Respondent had failed to remit to The Merchandiser its portion of over $78,000 in judgments and settlements he had collected on the company's behalf, pursuant to a contingency fee agreement. Based on his factual findings, the hearing judge concluded, by a clear and convincing standard of proof, that Respondent violated Maryland Lawyers' Rules of Professional Conduct ("MLRPC") 1.3 (diligence); 1.4 (communication); 1.15(a) (safekeeping property); 1.16(d) (declining or terminating representation); 8.1(b) (bar admission and disciplinary matters); 8.4(a), (b), (c), and (d) (misconduct); Maryland Rule 16-609 (prohibited transactions); and Maryland Code (1989, 2010 Repl. Vol.), § 10-306 of the Business Occupations and Professions Article ("BOP") (misuse of trust money). The hearing judge found no mitigating factors.

Held:

With neither party filing exceptions, the Court of Appeals found the hearing judge's findings of fact, with a single exception, to be supported by clear and convincing evidence. The Court conducted a *de novo* review of the record and held that Respondent violated MLRPC 1.3, 1.4., 1.15(a), 1.16(d), 8.1(b), and 8.4(a), (b), (c), and (d), Maryland Rule 16-609, and BOP § 10-306, for the reasons stated in the hearing judge's conclusions of law. In the absence of any compelling extenuating circumstances to explain Respondent's misconduct, the Court concluded that disbarment was the appropriate sanction for Respondent's misappropriation of client funds, an act infected with dishonesty and deceit.

State Center, LLC, et al. v. Lexington Charles Limited Partnership, et al., No. 12, September Term 2013, filed March 27, 2014. Opinion by Harrell, J.

Battaglia, J., joins in judgment only

http://www.mdcourts.gov/opinions/coa/2014/12a13.pdf

JUDICIAL REVIEW – MARYLAND RULE 8-602 – MOTION TO DISMISS APPEAL

ADMINISTRATIVE AGENCY – EXHAUSTION OF ADMINISTRATIVE REMEDIES

REAL PROPERTY – GOVERNMENT REDEVELOPMENT PROJECT – PROPERTY OWNER STANDING

JUDICIAL REVIEW – TAXPAYER STANDING

EQUITY – AFFIRMATIVE DEFENSE – DOCTRINE OF LACHES

Facts:

The State Center Project (the "Project") is a $1.5 billion, multi-phase redevelopment project intended to replace aged and obsolete State office buildings with new facilities for State use and to revitalize an approximately 25-acre property owned by the State of Maryland in midtown Baltimore ("City"), without burdening unduly the State's capital budget. To these ends, in 2005, the State issued a public Request for Qualifications ("RFQ") to solicit a "Master Developer" who would be granted the exclusive right to negotiate with the State to execute the entire project, which included the reconstruction of older deteriorating buildings currently on the site of the project, as well as the receipt of a 75-90 year leasehold interest. The State Center, LLC ("Developer"), was chosen as the Master Developer in early 2006, which decision was announced publicly. The Maryland Department of General Services ("DGS"), the Maryland Department of Transportation ("MDOT") (collectively, hereinafter, "State Agencies") and the Developer negotiated for the Project, entering into a series of agreements between 2007 and 2010 for the purpose of completing the Project in a timely manner. These agreements, thus far, are: (1) the Master Development Agreement ("MDA"); (2) the First Amendment to the MDA ("First Amendment"); (3) two Phase I ground leases; and, (4) four approved Phase I occupancy leases. The approval or execution of each agreement was announced publicly.

In 2010, fifteen plaintiffs, property owners in downtown Baltimore (many with available office space for rent) and taxpayers of the State, filed suit in the Circuit Court for Baltimore City against the State Agencies and the Developer and its subsidiaries, seeking a declaratory judgment that the formative contracts for the Project were void as procured in violation of the competitive bidding requirements of the State Procurement Law and an injunction to halt the Project. The State Agencies and the Developer moved to dismiss the Complaint (and the Amended Complaint) on multiple grounds. The Circuit Court denied the Motions to Dismiss, finding that,

inter alia, (1) the Plaintiffs' Amended Complaint stated sufficient facts to establish taxpayer standing; (2) the Plaintiffs were not required to exhaust administrative remedies; and (3) the Plaintiffs' claims were not barred by laches. Nearly two years of discovery followed. In 2012, the State Agencies and Developers moved collectively for summary judgment, which the Circuit Court granted in part and denied in part. The result of the suit in the trial court on the remaining counts was the voiding of the formative contracts of the Project on the grounds that they violated the State Procurement Law.

The State Agencies and the Developers (now Appellants) appealed timely to the Court of Special Appeals, but also petitioned contemporaneously this Court for a writ of certiorari and sought expedited review of three questions. The Appellees filed a Conditional Cross-Petition for Writ of Certiorari, seeking review of a fourth question regarding the Project's "Transit-Oriented Development" ("TOD") designation. The Court of Appeals granted a Writ of Certiorari to consider the following questions: (1) Whether the trial court erred in concluding that the State Center Project violates the State Procurement Law?; (2) Whether the Circuit Court lacked jurisdiction to address Appellees' procurement law claim because such claims fall within the primary or exclusive jurisdiction of the Maryland State Board of Contract Appeals?; (3) Whether Appellees lack standing, under the taxpayer standing theory, to challenge the project; and (4) Whether the trial court erred in declining to review the belated and defective designation of the Project as a TOD?

Held:

The Court of Appeals vacated the Circuit Court's judgment and remanded the case to the Circuit Court, with directions to dismiss Appellees' Amended Complaint, with prejudice.

The Court of Appeals denied the Appellees' Motion to Dismiss the appeal. The Court's discretion to dismiss an appeal is limited to certain statutory grounds by Maryland Rule 8-602(a). The alleged shortcomings (that certain arguments by Appellants were unpreserved and/or not presented properly in the Petition for Writ of Certiorari) are not proper grounds for the dismissal of an appeal. Instead, the points advanced in the Motion to Dismiss are addressed by Maryland Rule 8-131, which provides the proper context for our appellate review and governs the manner in which the Court deals with alleged arguments that are unpreserved and not presented properly in the grant of the Writ of Certiorari. The Court held that the proper scope of our appellate review under Rule 8-131 is not co-extensive with the grounds, as provided in Rule 8-602, for granting a motion to dismiss and, thus, denied the motion.

In addressing the exhaustion of administrative remedies argument, the Court of Appeals recognized the well-settled principle that, where an administrative agency has primary or exclusive jurisdiction over a controversy, the parties ordinarily must await a final administrative decision prior to resorting to the courts for resolution of the controversy. A claimant is not required, however, to exhaust administrative remedies that the claimant is not eligible to pursue. In this case, the Court concluded that the Maryland State Board of Contract Appeals ("Appeals

Board"), the pertinent agency, did not have jurisdiction over the Plaintiffs'/Appellees' claims because none of the Appellees were permitted under the State Finance and Procurement Article to appeal the final action of the State Agencies in the present case. Because the Appeals Board lacked jurisdiction over the controversy, the Court held that the Appellees were not required to exhaust any administrative remedies in this case and the propriety of the Circuit Court's consideration of their claims depended solely upon whether the court had jurisdiction otherwise.

For purposes of judicial standing, the Court stated that the claimant alone is responsible for raising the grounds for which his right to access to the judiciary system exists. Because Appellees insisted that an implied private right of action (based on the State Procurement Law) was not the basis for their standing, the Court of Appeals refused to address further the argument of whether the Procurement Law provided an implied private right of action.

Next, the Court analyzed whether Appellees had standing either as property owners or taxpayers (different bases for standing, separate from the private right of action). These two doctrines are similar in that they recognize that, without special damage, a private citizen has no standing to champion the rights of the public. The doctrines, however, must be analyzed separately to avoid confusion because they otherwise have different requirements.

The property owner standing doctrine recognizes that owners of real property may be "specially harmed" by a governmental decision or action (usually related to land use) in a manner different from the general public. Traditionally, the principles governing who qualifies as a "person aggrieved" for purposes of property owner standing were limited to judicial review of the decisions of zoning bodies. The Court of Appeals held preliminarily that the MDA and the First Amendment are "land use decisions" or actions susceptible to being challenged under the property owner doctrine, but the occupancy and ground leases (present and future) are not. Despite the fact that the principles governing property owner standing apply to Appellees' challenges to the MDA and the First Amendment, the Court held that, when applying those relevant principles to scrutinize what Appellees alleged to support such standing, Appellees' allegations failed to allege sufficient facts to qualify as specially aggrieved, primarily due to the lack of proximity (as measured in physical distance) of their properties to the Project.

Common law taxpayer standing permits taxpayers to seek the aid of courts, exercising equity powers, to enjoin illegal and ultra vires acts of public officials where those acts are reasonably likely to result in pecuniary loss to the taxpayer. The Court pointed out that, under this doctrine, a complainant has standing if he/she/it meets the requirements for the doctrine; no private right of action is required additionally. To establish standing in Maryland, a taxpayer need only allege: (1) that he is a taxpayer; (2) an action by a municipal corporation or public official that is illegal or *ultra vires*; and (3) that such action may result reasonably in a pecuniary loss to the taxpayer or an increase in taxes. Appellees met these requirements in their Complaint challenging the State's actions of entering into the formative contracts for the subject Project as illegal under the Procurement Code, but failed in their challenge to the TOD designation.

Lastly, the Court, finding that the delay in bringing the lawsuit was unreasonable and caused great prejudice to the State Agencies and Developers, concluded that the doctrine of laches (identified by the Court as the "fatal flaw") barred Appellees' remaining claims.

The Court did not reach, therefore, the contention that the State Procurement Law had been violated by Appellants in entering the challenged agreements.

David E. Fuster v. State of Maryland, No. 41, September Term 2013, filed April 22, 2014. Opinion by Watts, J.

http://www.mdcourts.gov/opinions/coa/2014/41a13.pdf

MARYLAND RULE 4-707(b) – COUNSEL FOR PURPOSES OF PETITION UNDER MD. CODE ANN., CRIM PROC. § 8-201 – STANDARD FOR RULING ON PETITION UNDER MD. CODE ANN., CRIM PROC. § 8-201 – PRESERVATION FOR APPELLATE REVIEW

Facts:

The State, Appellee, charged David E. Fuster ("Fuster"), Appellant, with various sexual crimes. In the Circuit Court for Montgomery County ("the circuit court"), a jury tried Fuster. At trial, as a witness for the State, W.K. testified that Fuster rubbed her vagina. The jury convicted Fuster of second-degree rape, child abuse, third-degree sexual offense, and second-degree assault. Fuster appealed, and the Court of Special Appeals affirmed. Fuster petitioned for a writ of *certiorari*, which the Court of Appeals denied.

In the circuit court, while self-represented, Fuster filed a "Petition for DNA Testing - Post Conviction Review" ("the Petition"), in which Fuster requested testing of articles of W.K.'s clothing, socks, and shoes. The circuit court conducted a hearing, at which the circuit court advised Fuster that he was not entitled to counsel at the hearing. At the State proffered that the "collecting officer" would testify that the State had never collected W.K.'s socks and shoes. The circuit court ruled that the State had conducted a reasonable search for the items and ultimately denied the Petition. Fuster appealed the circuit court's denial of the Petition.

Held: Affirmed.

The Court of Appeals held that Rule 4-707(b) does not entitle an indigent petitioner to counsel for purposes of a petition under Md. Code Ann., Crim. Proc. (2001, 2008 Repl. Vol., 2013 Supp.) ("CP") § 8-201. Rule 4-707(b)'s plain language (which includes the word "**shall**") is not clearly consistent with Rule 4-707(b)'s apparent purpose, which was to implement *Simms v. State*, 409 Md. 722, 726 n.5, 976 A.2d 1012, 1015 n.5 (2009), under which a trial "court **may** appoint counsel to represent a petitioner when the [trial] court believes [that] counsel would be necessary to further the interest of justice." (Emphasis added) (citation and internal quotation marks omitted). The Standing Committee on Rules of Practice and Procedure's ("the Rules Committee's") only discussion of Rule 4-707(b)'s use of the word "shall" indicates that the Rules Committee intended that, under Rule 4-707(b), a trial court would have the "discretion" to appoint counsel for an indigent petitioner for purposes of a petition under CP § 8-201. Such a result ensures that Rule 4-707(b) and the precedent of the Court of Appeals operate together as a consistent and harmonious body of law, as the Court of Appeals has never stated that there is any

circumstance under which a trial court must appoint counsel for an indigent petitioner for purposes of a petition under CP § 8-201. Thus, Fuster was not entitled to counsel at the hearing on the Petition, and the circuit court was correct in informing Fuster accordingly at the hearing on the Petition.

The Court of Appeals held that the circuit court did not abuse its discretion in not considering whether to appoint counsel for Fuster for purposes of the Petition, as, in the Petition, Fuster did not request appointment of counsel.

The Court of Appeals held that the circuit court used the correct standard in ruling on the Petition, as the record established that the circuit court was well aware of where to use CP § 8-201(c)'s "substantial possibility" standard and where to use CP § 8-201(d)(1)(i)'s "reasonable possibility" standard.

The Court of Appeals held that Fuster failed to preserve for appellate review the issue of whether the circuit court clearly erred in concluding that the State conducted a reasonable search for W.K.'s socks and shoes, as Fuster not only failed to dispute the State's proffer that the State had never collected W.K.'s socks and shoes, but also, on multiple occasions, conceded that the State had never collected W.K.'s socks and shoes.

Devon Edward Morgan v. State of Maryland, Case No. 71, September Term 2013, filed April 23, 2014. Opinion by Adkins, J.

Watts, J., joins in judgment only.

http://www.mdcourts.gov/opinions/coa/2014/71a13.pdf

WAIVER OF RIGHT TO A JURY TRIAL – MARYLAND RULE 4-246(b) – DETERMINATION AND ANNOUNCEMENT REQUIREMENT

Facts:

Petitioner, Devon Edward Morgan, was charged with two counts of possession of cocaine and two counts of distribution of cocaine, stemming from two separate incidents. On the day of trial, Petitioner first waived his right to a jury, thus electing to proceed with a bench trial. Then, defense counsel requested that the court "set this aside for a few moments" to see if Petitioner wished to accept a plea offer. A short while later, Petitioner entered a not guilty statement of facts as to one of the distribution charges. After a plea colloquy, the trial court found this plea to be "knowing and voluntary." The State then recited the facts leading to Petitioner's arrest. The trial court found Petitioner guilty of distribution of cocaine. The trial court sentenced Petitioner to ten years' incarceration without the possibility of parole. The State then entered a nol pros as to the remaining counts.

Petitioner appealed to the Court of Special Appeals, contesting the validity of the court's acceptance of his jury trial waiver. The intermediate appellate court affirmed the trial court, holding that Petitioner had not preserved the question of the validity of the waiver of his right to a jury trial. In the alternative, the court held that the waiver colloquy was sufficient, even if it did not conform with the boilerplate language of such waivers. The Court granted Morgan's Petition for Certiorari on the question of whether the trial court erred in accepting Petitioner's waiver of jury trial.

Held: Affirmed.

The trial court did not err when it accepted Petitioner's jury trial waiver, despite not immediately announcing on the record that it found the waiver knowing and voluntary. The purpose of the Court's strict requirement in *Valonis & Tyler v. State*, 431 Md. 551, 66 A.3d 661 (2013) is to ensure that two goals are met. The first goal is that the trial court meaningfully investigate and analyze the disposition and appearance of defendants as they are in the process of waiving essential liberties. The second is to guarantee that the record clearly reflects this investigation and determination for the purposes of possible appellate review. In this case, the Court concludes that both goals were met. The trial court conducted a detailed and lengthy colloquy

regarding the jury trial waiver, and a fully sufficient plea colloquy "just a few minutes" later. At the end of the plea colloquy, the court explicitly found that Petitioner's actions in accepting the plea were "knowing and voluntary." Thus, the trial court met the strict requirements announced in *Valonis & Tyler v. State*, and did not err in accepting Morgan's waiver of his right to a jury trial.

Chadwick Michael Nalls v. State of Maryland, No. 54, *Justin Allen Melvin v. State of Maryland*, No. 95, and *James Szwed v. State of Maryland*, No. 61, September Term 2013, filed April 23, 2014. Opinions by Greene, J.

Battaglia, J., concurs

Adkins and McDonald, JJ., concur and dissent (in Nos. 54 & 95)

Watts, J., concurs and dissents (in Nos. 54 & 95)

Adkins, McDonald, and Raker, JJ., dissent (in No. 61)

http://www.mdcourts.gov/opinions/coa/2014/54a13.pdf

http://www.mdcourts.gov/opinions/coa/2014/61a13.pdf

CRIMINAL LAW – WAIVER OF RIGHT TO JURY TRIAL – MARYLAND RULE 4-246

Facts:

Chadwick Michael Nalls ("Nalls") was charged with second degree rape, third degree sexual offense, and second degree assault. Prior to the commencement of Nalls's bench trial, defense counsel conducted a jury waiver colloquy with Nalls. At the conclusion of the colloquy, the trial judge announced "I am satisfied, sir, that you have waived your right to have a jury trial and you're going to have a court trial." After his conviction, Nalls appealed to the Court of Special Appeals, arguing that the jury trial waiver was invalid because the trial judge failed to announce that the jury waiver was "knowing and voluntary," pursuant to Md. Rule 4-246, the rule governing jury trial waivers. The intermediate appellate court held that although the issue was not preserved for review due to the lack of a contemporaneous objection, the trial court adequately announced its finding that Nalls's jury trial waiver was proper. The intermediate appellate court's opinion was filed prior to the Court of Appeals's decision in *Valonis & Tyler v. State*, 431 Md. 551, 66 A.3d 661 (2013).

In a separate case, consolidated with *Nalls* for the purposes of the Court's opinion, Justin Allen Melvin ("Melvin") was charged with theft and conspiracy to commit theft. During a status conference the week before Melvin's scheduled trial, the trial judge in each case conducted a jury trial waiver proceeding. After conducting a jury waiver colloquy with Melvin, the trial judge announced "I'm satisfied that you knowingly, intelligently waived your right for a jury trial." Following his conviction, Melvin appealed to the Court of Special Appeals, arguing that the jury trial waiver was invalid because the trial judge failed to announce that the jury waiver was "voluntary," pursuant to Md. Rule 4-246. The Court of Special Appeals held that, pursuant to the Court of Appeals's decision in *Valonis*, Melvin's failure to object does not preclude appellate review. Further, the intermediate appellate court held that despite the trial judge's "slip

of the tongue" stating that Melvin's waiver was "knowing and intelligent" instead of "knowing and voluntary," the trial judge's specific inquiry into the voluntariness of Melvin's waiver was enough to satisfy Rule 4-246.

In a third case, filed in a separate opinion, James Szwed ("Szwed") was charged with burglary, theft, and malicious destruction of property. Prior to the commencement of trial, the trial judge conducted a jury waiver colloquy, at the conclusion of which the judge stated "I'm going to find that he made a free and voluntary election of a court trial versus a jury trial." Szwed was convicted after a bench trial, and appealed to the Court of Special Appeals, challenging the trial judge's acceptance of his jury trial waiver because the judge's announcement did not address the "knowing" prong of the waiver requirement. In an unreported opinion filed prior to the publication of *Valonis*, the intermediate appellate court held that because defense counsel failed to object at the time of the defendant's jury trial waiver, the issue was not preserved for review. Nonetheless, the Court of Special Appeals stated that had the issue been preserved, the court would have held that the trial judge sufficiently satisfied Md. Rule 4-246(b).

Held: Reversed.

As the Court held in *Valonis*, Rule 4-246(b) unambiguously directs circuit court judges to make an explicit determination of the defendant's knowing and voluntary waiver, or lack thereof, on the record. Pursuant to the Rule's determination and announcement requirement, following a jury trial waiver colloquy, a trial judge must explicitly state on the record his or her finding that a criminal defendant's waiver was made both knowingly and voluntarily. Although a fixed litany is not required, both concepts must be addressed in the trial judge's announcement, either by using that precise language or using synonyms that represent the same concepts.

In *Valonis*, the Court elected to exercise its discretion to review the merits notwithstanding a lack of objection in the trial court due to the Court's perception of a recurring problem–namely, the failure of trial judges to follow Rule 4-246(b)–and to further encourage trial judges to adhere to the letter of the Rule. Similarly, based on the continued confusion surrounding this issue in the trial courts, the Court determined to exercise its discretionary review under Rule 8-131(a) in the instant cases to provide further guidance in this important area. Going forward, however, the appellate courts will review the issue of a trial judge's compliance with Rule 4-246(b) provided a contemporaneous objection is raised in the trial court to preserve the issue for appellate review.

Fraternal Order of Police, Montgomery County Lodge 35, et al. v. Montgomery County, Maryland, et al., No. 67, September Term 2013, filed April 18, 2014. Opinion by Harrell, J.

http://www.mdcourts.gov/opinions/coa/2014/67a13.pdf

LOCAL GOVERNMENT – COLLECTIVE BARGAINING

Facts:

Under the Police Labor Relations Act ("PLRA") of the Montgomery County Code, the County Executive and a representative of the Fraternal Order of Police, Montgomery County Lodge 35 ("FOP"), are to negotiate certain employee benefits. After an agreement is reached through the negotiation or "impasse procedure," the County Executive presents the collectively-bargained agreement ("CBA") to the County Council (the "Council"), which has the authority to choose to fund, or to refuse to fund in whole or in part, the CBA. If the Council indicates in writing that it will refuse to fund the CBA in full or in part, the negotiating parties—the FOP and the County Executive—are given a nine-day period of time thereafter to attempt to re-negotiate an agreement acceptable to the Council.

In the present case, on 9 May 2011, the Council indicated that it would refuse to fund several provisions in the pre-existing, two-year CBA for the second fiscal year (2012) due to budgetary concerns. Accordingly, under the PLRA's set timelines, the negotiating parties had nine days (until May 18) to arrive at a re-negotiated agreement. On 16 May 2011, the Council indicated to the negotiating parties that it would vote on the compensation and benefit proposals on May 17 and then on the overall operating budget on May 19. The negotiating parties did not reach an agreement by the May 18 deadline. On May 26, the Council adopted Resolution No. 17-149, which reduced or eliminated certain employee benefits to meet the Council's budgetary demands.

On 24 June 2011, the FOP filed suit against Montgomery County and the County Council in the Circuit Court for Montgomery County challenging the legality of the Council's actions in adopting Resolution No. 17-149 and the actions of the Council and the County in implementing the changes in the Resolution in violation of the PLRA and certain constitutional provisions. The County and Council filed a Motion to Dismiss or, in the alternative, for Summary Judgment. In response, the FOP filed a Cross-Motion for Summary Judgment. On 1 March 2012, the Circuit Court issued a memorandum opinion and declaratory judgment, declaring that the Council's actions were permissible under the PLRA, the Maryland Declaration of Rights, and the existing collectively-bargained agreement. The FOP filed a motion to reconsider, which the Circuit Court denied. The FOP appealed to the Court of Special Appeals, which affirmed the decision of the trial court in *Fraternal Order of Police, Montgomery County Lodge 35 v. Montgomery County, Maryland*, 212 Md. App. 230, 66 A.3d 1183 (2013).

The Court of Appeals granted the FOP's Petition for Writ of Certiorari, 432 Md. 466, 69 A.3d 474 (2013), to consider the following question: "May the County Council unilaterally change the terms of a pre-existing negotiated collective bargaining agreement?"

Held: Affirmed.

Under the PLRA, the Council has the authority to refuse to fund the CBA. The FOP and the County Executive, as the parties responsible under the PLRA for negotiating a new agreement acceptable to the Council, were given the opportunity to set forth the employee benefit terms, but were unable to reach a re-negotiated agreement and did not initiate the impasse procedures. By the very nature of the Council's budgetary approval function, if the parties do not set forth an acceptable agreement, then the Council must have the authority to finalize the budgetary process and determine which provisions in the CBA should be cut, and in what manner, in order to reach set budgetary goals. Thus, the Court of Appeals held that the Council acted correctly in making the cuts where deemed necessary.

The Court of Appeals held also that, as the record stood before the Court, it could not conclude that the Council "unilaterally terminated" the re-negotiations between the FOP and the County Executive in violation of the PLRA. The Court noted that the PLRA provides avenues through which the FOP and County Executive can (and are encouraged to) determine the employee benefits through a series of negotiations. Under the PLRA, the Council's role in the re-negotiations, however, is very limited and, thus, the Court concluded that it cannot fault the Council for the failure of the re-negotiations in this case.

Return to ToC

Joshua Tripp Ellsworth v. Baltimore Police Department, No. 58, September Term 2013, filed April 24, 2014. Opinion by Battaglia J.

Barbera, C.J., Harrell and Adkins, JJ., dissent.

http://www.mdcourts.gov/opinions/coa/2014/58a13.pdf

PUBLIC SAFETY – LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS – RIGHT TO DISCLOSURE OF INFORMATION UNDER SECTION 3-104(n) OF THE PUBLIC SAFETY ARTICLE

Facts:

Joshua Tripp Ellsworth, Petitioner, a homicide detective with the Baltimore City Police Department ("Department"), Respondent, was involved in an incident with Baltimore City Police Sergeant Jonathan Brickus of the Patrol Division during an investigation into a possible abduction. Sergeant Brickus filed a complaint against Detective Ellsworth, which precipitated an investigation by the Internal Investigation Division of the Baltimore Police Department in which the allegations against Detective Ellsworth were sustained. Rather than accept the Department's proposed sanction, in consonance with Section 3-107(a) of the Public Safety Article, Maryland Code (2003, 2011 Repl. Vol.), Detective Ellsworth elected a hearing under the Law Enforcement Officers' Bill of Rights ("LEOBR").

During discovery, pursuant to Section 3-104(n) of the Public Safety Article, Maryland Code (2003, 2011 Repl. Vol.), which provides for disclosure of "exculpatory information" but not "nonexculpatory information," counsel for Detective Ellsworth requested the Department provide, "discovery to the fullest extent allowed by law, and to the fullest extent required by the Maryland Law Enforcement Officers' Bill of Rights, . . . any evidence favorable to the accused because it tends to prove the accused to be not guilty or tends to mitigate punishment. *Brady v. Maryland*, 373 U.S. 83 (1963)."

At the hearing before a three member board, seven law enforcement witnesses were called to testify by the Department, including Officer Daniel Redd, who had been present during the incident between Detective Ellsworth and Sergeant Brickus. The hearing board found Detective Ellsworth guilty of two of the seven charges and recommended a sanction, which was imposed by Final Order of the Police Commissioner. Detective Ellsworth filed a petition for judicial review in the Circuit Court for Baltimore City, asserting that his LEOBR hearing was "fundamentally unfair" because the Department had not disclosed an alleged investigation into Officer Redd for unrelated criminal activity. The Circuit Court determined that the Department's nondisclosure of information regarding the alleged investigation into Officer Redd constituted a violation of the LEOBR and reversed the Police Commissioner's Final Order. The Department appealed to the Court of Special Appeals, which, in a reported opinion, reversed the judgment of the Circuit Court, determining, *inter alia*, that the information regarding Officer Redd would not

have tended to exonerate Detective Ellsworth of the administrative charges "and, therefore, does not fall within the definition of 'exculpatory.'" Detective Ellsworth petitioned the Court of Appeals, which granted certiorari.

Held: Affirmed.

The Court of Appeals of Maryland affirmed the judgment of the Court of Special Appeals. The Court reviewed the legislative history of Section 3-104(n) of the LEOBR, which provides an officer under investigation with "a copy of the investigatory file and any exculpatory information," but not "nonexculpatory information" upon certain confidentiality provisions. The Court concluded that the General Assembly did not intend to use the term "exculpatory" to import *Brady* and its progeny into the administrative LEOBR process, and concluded that Detective Ellsworth was not entitled to information regarding an alleged investigation of Officer Redd, unrelated to Detective Ellsworth or the charges for which he was under investigation. The Court also concluded that its jurisprudence did not support the application of *Brady* in a civil or administrative setting.

Kevin J. Shannon, et al. v. Mafalda Fusco, et al., No. 57, September Term 2013, filed April 24, 2014. Opinion by Battaglia, J.

Eldridge, J., dissents

http://www.mdcourts.gov/opinions/coa/2014/57a13.pdf

TORTS – NEGLIGENCE – INFORMED CONSENT – MATERIAL RISK – NECESSITY FOR EXPERT TESTIMONY – QUALIFICATIONS OF A PHARMACIST TO TESTIFY ABOUT MATERIAL RISK

Facts:

Anthony Fusco, Sr. was diagnosed with prostate cancer and, as part of his cancer treatment, received injections of Amifostine, a drug intended to protect against the harmful side effects of radiation therapy, from Dr. Kevin Shannon, Petitioner. Mr. Fusco, thereafter, contracted a skin disease called Stevens-Johnson Syndrome and succumbed to pneumonia. The Estate of Anthony Fusco and Mr. Fusco's surviving widow and children filed an informed consent cause of action against Dr. Kevin Shannon, alleging that he failed to warn Mr. Fusco of the material risks of the administration of Amifostine.

In support of their claim, the Fuscos sought to offer testimony of Dr. James Trovato, a pharmacist, who was offered as an expert in oncological drug therapy, to testify about Amifostine. In both a video-taped deposition and written proffer he opined about the most common side effects of Amifostine and that Amifostine was inappropriately administered to Mr. Fusco, because, *inter alia*, the Food and Drug Administration had not approved Amifostine for the treatment of prostate cancer patients and an insert accompanying the packaging of Amifostine cautioned against its use in an elderly population. Dr. Shannon, thereafter, moved *in limine* to preclude Dr. Trovato's testimony, which the trial court judge granted. The court determined that, as a pharmacist, Dr. Trovato was not qualified to opine about the "complete treatment plan" involved in Mr. Fusco's treatment, and moreover, his testimony sounded in negligence rather than informed consent.

At trial, counsel for the Fuscos attempted to read to the jury portions of Dr. Shannon's deposition regarding the package insert's warnings against use in an elderly population and the lack of FDA-approval for the administration of Amifostine to prostate cancer patients; the trial judge, however, excluded such evidence. A jury ultimately returned a verdict in favor of Dr. Shannon. The Court of Special Appeals, however, reversed, reasoning that Dr. Trovato's testimony should have been admitted. The intermediate appellate court concluded, moreover, that evidence related to the package insert's warnings and FDA-approved uses should have been admitted, because it was information a reasonable patient in Mr. Fusco's position would want to know before consenting to treatment.

Held:

The Court of Appeals reversed the judgment of the Court of Special Appeals. The court observed, initially, that whether a risk is "material," and thereby requires a physician to disclose the risk to effectively obtain a patient's informed consent, is a function of the severity of the risk and likelihood of its occurrence. The Court determined, then, that Dr. Trovato, a pharmacist with substantial experience in oncological medications, may have been qualified to testify about the likelihood and severity of the risks of Amifostine. Nevertheless, because Dr. Trovato did not testify about the severity or likelihood, the Court determined that the trial court judge did not abuse his discretion in excluding the pharmacist's testimony.

With regard to the package insert's warnings, the Court of Appeals reasoned that the trial court judge properly excluded such evidence, because the warnings suggested that Amifostine should not be administered to an elderly patient, which may have supported a negligence claim, but was irrelevant to an informed consent cause of action.

Finally, the Court concluded that the trial court judge did not abuse his discretion in excluding evidence pertaining to the FDA-approval status of Amifostine, because the FDA's regulatory status provides no information regarding medical treatment, and thus, need not be disclosed to effectively obtain a patient's informed consent.

Blackburn Limited Partnership d/b/a Country Place Apartments, et al. v. Alicia Daley Paul, Case No. 55, September Term 2013, filed April 28, 2014. Opinion by Adkins, J.

http://www.mdcourts.gov/opinions/coa/2014/55a13.pdf

TORT LAW – STATUTORY DUTY – STATUTORY DUTY APPLIES DESPITE COMMON-LAW RULE THAT PROPERTY OWNERS OWE NO AFFIRMATIVE DUTY TO TRESPASSERS

Facts:

On June 13, 2010, three-year-old Christopher Paul was playing outside his parents' apartment home at Country Place Apartments ("Country Place") in Burtonsville, Maryland with his older brother, Andre. After some time, Andre came to the apartment and asked the boys' mother, Alicia Paul ("Respondent"), where Christopher was. Not knowing where Christopher was, Respondent and Andre then went outside to look for him.

Upon nearing the apartment complex's pool, Respondent saw Christopher's t-shirt and slippers just inside the pool's gate. Respondent attempted to push the gate open, but could not do so. After one of the lifeguards arrived and unchained the gate, Respondent ran to the pool and saw that Christopher was submerged in the water. One of the lifeguards jumped into the pool and pulled Christopher out of the water. The lifeguards then began rescue efforts. These efforts continued until paramedics arrived and transported Christopher to the pediatric emergency room at Howard County General Hospital.

As a result of this near drowning, Christopher sustained a severe anoxic brain injury, resulting in multiple, complex medical conditions.

On December 17, 2010, Respondent filed a complaint in the Circuit Court for Baltimore City against the following parties (collectively, "Petitioners"): Second Blackburn Limited Partnership ("Second Blackburn"), the owner of Country Place Apartments; Berkshire Property Advisors, LLC ("Berkshire"), the manager of Country Place apartments; and Community Pool Service, Inc. ("CPS"), the operators of the Pool at Country Place. The parties then filed a Stipulation of Substitution of Party, stating that Blackburn Limited Partnership ("Blackburn") was actually the owner of Country Place Apartments and should be substituted for Second Blackburn.

The complaint alleged negligence and negligence per se, and sought compensatory damages for medical expenses in the amount of $15,000,000, plus costs and interest. Respondent's negligence action alleged that Petitioners breached "a duty to maintain the Country Place pool in a reasonably safe condition for all residents of Country Place Apartments, and particularly children of all ages, including Christopher." Respondent's negligence per se action alleged that Petitioners breached statutory and regulatory duties by failing to comply with pool regulations

set forth in the Code of Maryland Regulations ("COMAR") 10.17.01.01 *et seq.*, Montgomery County Code § 51-1 *et seq.*, and Code of Montgomery County Regulations ("COMCOR") 51.00.01 *et seq.*

Blackburn and Berkshire filed a motion for summary judgment with respect to all of Respondent's claims, arguing that because Christopher was a trespasser, they only owed a duty to refrain from willfully or wantonly injuring Christopher. Blackburn and Berkshire further stated that the alleged violations of state and county codes could not create a duty to Christopher because he was a trespasser, and argued that Christopher's unsupervised play was the intervening, superseding cause of his injuries.

After a hearing, the Circuit Court issued an order granting Petitioners' motions for summary judgment. Respondent appealed to the Court of Special Appeals. The intermediate appellate court reversed the Circuit Court, holding that Petitioners were required to comply with the 1997 COMAR regulations and the 1997 Montgomery County statutory provisions concerning pool barriers. *See Paul v. Blackburn Ltd. P'ship*, 211 Md. App. 52, 105–06, 63 A.3d 1107, 1139 (2013). The intermediate appellate court firmly rejected the notion that a defendant must owe a common-law duty to a plaintiff before violation of a statute can be used as evidence of negligence. *Paul*, 211 Md. App. at 109, 63 A.3d at 1141. Finally, the intermediate appellate court held that the trial court erred in "finding there was not a 'scintilla of evidence demonstrating exactly how Christopher circumvented the fence,' and in granting summary judgment on the issue of causation." *Paul*, 211 Md. App. at 112, 63 A.3d at 1142.

Petitioners appealed to the Court of Appeals, which granted *certiorari* to consider whether the Court of Special Appeals erred in ruling that Petitioners owed a statutorily-based duty to Christopher.

Held: Affirmed.

The Court of Appeals affirmed the decision of the Court of Special Appeals, holding that Petitioners' alleged violation of COMAR 10.17.01.21A(3), if proven, would demonstrate that Petitioners breached a duty to Christopher. Such a duty, derived from statute, would apply irrespective of Christopher's legal status on the property when the incident occurred. This holding, the Court observed, reflects the long-standing tort principle that a negligence action can be based on (a) the violation of a statute or ordinance designed to protect a specific class of persons which includes the plaintiff, and (b) that the violation proximately caused the injury complained of. Finally, the Court of Appeals held that a reasonable trier of fact could find that such a duty existed, that Petitioners violated this duty, and that such violation was the cause of Christopher's injuries.

COURT OF SPECIAL APPEALS

Derek Stevens v. Yoko Tokuda, No. 2724, September Term 2011, filed February 25, 2014. Opinion by Woodward, J.

http://www.mdcourts.gov/opinions/cosa/2014/2724s11.pdf

ORDER OF CONTEMPT – TIMING OF APPEALS UNDER COURTS & JUDICIAL PROCEEDINGS ARTICLE § 12-304 AND MARYLAND RULES 2-601 & 8-202 – APPEALS MUST BE FILED WITHIN 30 DAYS OF THE CONTEMPT FINDING EVEN IF NO SANCTIONS IMPOSED

CIVIL CONTEMPT – INCARCERATION FOR CIVIL CONTEMPT PERMITTED UNDER MARYLAND RULE 15-207 ONLY IF THE CONTMENOR HAS THE PRESENT ABILITY TO PURGE THE CONTEMPT TO AVOID INCARCERATION

EXCEPTION TO FINDING OF A MASTER – REMAND TO MASTER FOR THE FURTHER PROCEEDINGS – REMAND IS PERMITTED UNDER MARYLAND CASE LAW WHERE THE TRIAL COURT FAILED TO ENTER A FINAL JUDGMENT ON THE EXCEPTIONS AND DETERMINED THAT ADDITIONAL EVIDENCE IS REQUIRED

Facts:

Appellant challenged two orders pertaining to his child support obligations, dated October 18, 2010 and February 2, 2012 respectively. In the October 18, 2010 order, the Circuit Court for Carroll County found appellant in constructive civil contempt for failure to pay child support to appellee, but did not impose any sanctions. The court did include purge provisions, which required appellant to (1) make a monthly payment toward the arrearage, and (2) provide the court and appellee with information regarding appellant's job search. After a review hearing in March 2011, the court issued another order, finding appellant in contempt of the purge provisions of the October18 order, modified the purge provisions, and deferred any sanction. On February 2, 2012, the court issued the second order challenged by appellant, in which it found appellant in contempt of the purge provisions of the March order, and imposed a sanction of 179 days of incarceration with work release.

The February 2, 2012 order also remanded to the master the appellant's motion to modify his child support payment. Previously, the master had reduced appellant's child support obligation from $1,000 to $708 per month based on a finding that appellant could make $50,000 as an annual salary. Appellant filed exceptions to the reduced child support amount, because he was

unemployed. In August 2011, the circuit court ruled that, because appellant was unemployed and the master did not make a specific finding that appellant had voluntarily impoverished himself, the master could not determine appellant's potential income. The court sustained appellant's exceptions in part, but did not determine appellant's new child support obligation. Instead, in the February 2, 2012 order, the court remanded the case to the master to take additional testimony.

On appeal, appellant first argued that the trial court erred in finding him in contempt in the October 18, 2010 order. Second, appellant claimed that the court erred by incarcerating him for civil contempt on February 2, 2012, because the court had not provided him the with the "present ability to purge the contempt." Finally, appellant asserted that the February order was in error because it remanded his motion to modify child support without any request by him to do so.

Held: Vacated in part and affirmed in part.

The Court of Special Appeals held that it had no jurisdiction to decide the merits of the October 18, 2010 order finding appellant in contempt, because appellant's appeal was untimely. The Court determined under that Md. Code (1974, 2006 Repl. Vol.), § 12-304 of the Courts and Judicial Proceedings Article, and Maryland Rules 2-601and 8-202, the time period for filing an appeal from a finding of contempt was thirty days after the entry of the order making that finding. *In re Ariel G.*, 153 Md. App. 698, 704 & n.1 (2003). Appellant, however, did not appeal the contempt order until February 29, 2012, more than thirty days after the entry of the October 18, 2010 order. The Court rejected appellant's argument that, pursuant to *Bryant v. Howard County Department of Social Services*, 387 Md. 20 (2005), the contempt order was not final and appealable until the court imposed sanctions on February 2, 2012.

The Court agreed with appellant on the second issue and vacated the balance of the 179 day sentence imposed by the February 2, 2012 order. The Court held that the trial court could not order incarceration, because the court did not set a purge provision with which appellant had the present ability to comply to avoid incarceration. The Court stated that, even though appellant's contempt was his failure to comply with the previously imposed purge provisions, Maryland Rule 15-207 required a purge provision with which appellant had the present ability to comply to prevent himself from being incarcerated. A work release program did not satisfy that condition. Alternatively, the court could refer the matter to the State's Attorney, who could in turn initiate criminal contempt proceedings. That did not happen in the instant case.

Finally, the Court affirmed the court's remand of appellant's motion to modify child support. Appellant claimed that in August 2011, the trial court had determined that his child support payment should be determined based on an income of zero. Given this finding, he claimed that Rule 9-208(i)(1) permitted remand for the hearing of additional evidence only if the excepting party requested remand, which appellant did not do. The trial court found that the master erred by calculating appellant's child support payment based on a potential income of $50,000 per year, without first finding that appellant, who as unemployed at the time, was voluntarily

impoverished. The court sustained appellant's exceptions in part, but deferred ruling on the new child support amount. The Court of Special Appeals held that no final judgment had been made on appellant's exceptions by February 2, 2012, and thus the trial court could order remand under Maryland case law. *See O'Brien v. O'Brien*, 367 Md. 547, 555-56 (2002); *Levitt v. Levitt*, 79 Md. App. 394, 399 (1989). The Court concluded that Rule 9-208(i)(1) did not bar remand because it governs situations in which a party seeks to introduce new evidence not presented to the master, and not instances in which the court determines that additional evidence is required.

Baltimore County, Maryland, et al. v. Carroll Thiergartner, No. 2053, September Term 2012, filed March 26, 2014. Opinion by Sharer, J.

http://www.mdcourts.gov/opinions/cosa/2014/2053s12.pdf

LABOR AND EMPLOYMENT – PRESUMPTION OF OCCUPATIONAL DISEASE – L.E. § 9-503(a)(1) – WORKERS' COMPENSATION – BENEFITS UNDER THE RETIREMENT SYSTEM – ADJUSTMENT OF WORKERS' COMPENSATION AWARD IN LIGHT OF RETIREMENT BENEFITS DUE – L.E. § 9-503(e)(1)-(2) – STATUTORY CONSTRUCTION

Facts:

Prior to his retirement, Thiergartner was employed by the County as a sworn firefighter. During his career he paid into the County's Deferred Retirement Option Program ("DROP"). After he retired, in 2005, Thiergartner elected to receive his retirement benefits in the form of a $189,346.90 lump sum in addition to future weekly payments of $847.40. In choosing this manner of benefits, Thiergartner eschewed the option of receiving larger weekly benefit payments of $946.15. Years later, Thiergartner was diagnosed with coronary artery disease, a condition which was statutorily presumed to have resulted from his employment with the County. Thiergartner filed a claim for workers' compensation benefits. Upon consideration of Thiergartner's claim, the Workers' Compensation Commission ("the Commission") found that his compensable occupational disease amounted to a 25 percent loss of the industrial use of his body and so awarded him weekly workers's compensation benefits in the amount of $272.03 for the duration of 125 weeks. In doing so, the Commission recognized that, pursuant to L.E. § 9-503, the combined total of Thiergartner's weekly retirement and workers' compensation benefits could not legally exceed his pre-retirement weekly income of $1,213.80. In an attempt to account for the lump sum retirement benefit Thiergartner had received years earlier, the Commission determined his weekly retirement benefits to as be $946.15.

The County petitioned for judicial review of the Commission's order and, in an accompanying motion for summary judgment, argued that because the maximum award that Thiergartner's occupational disease could warrant was $307 per week, the lump sum retirement benefit Thiergartner received should have offset up to 617 weeks of workers' compensation benefits. This method of accounting for Thiergartner's lump sum retirement benefit would effectively offset the entire workers' compensation award provided for in the Commission's order. Thiergartner responded by arguing, in a cross-motion for summary judgment, that proper calculation of the offsetting of his workers' compensation benefits would not take the lump sum retirement benefit he received into account and would only observe the $847.40 in weekly retirement benefits he actually received. Alternatively, Thiergartner argued that if the lump sum retirement benefit he received had to be accounted for, the Commission's method for doing so was appropriate. The circuit court found that the Commission was correct in its calculation of Thiergartner's workers' compensation award and so denied the County's motion and granted Thiergartner's. The County appealed from the circuit court's judgment.

Held:

Affirmed as to the grant of Thiergartner's motion and denial of the County's motion; Case remanded to the circuit court with direction to remand to the Commission with instruction to recalculate Thiergartner's worker's compensation award consistent with our opinion.

The Court of Special Appeals held that the plain meaning of the language used in L.E. § 9-503(e)(2) is unambiguous and only allows for workers' compensation benefits to be offset by applicable retirement benefits which are due concurrently. As such, Thiergartner's lump sum retirement benefit should not have been factored in to his workers' compensation award offset calculation.

Return to ToC

ATTORNEY DISCIPLINE

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By an Order of the Court of Appeals dated April 2, 2014, the following attorney has been indefinitely suspended by consent:

JAMIE BLUM SEWARD

*

This is to certify that the name of

GEORGE JACOB GEESING

has been replaced upon the register of attorneys in this state as of April 7, 2014.

*

By an Order of the Court of Appeals dated April 8, 2014, the following attorney has been suspended:

MICHAEL CRAIG WORSHAM

*

By an Order of the Court of Appeals dated April 20, 2014, the following attorney has been suspended for seven months, effective October 18, 2013:

KENNETH MICHAEL ROBINSON

*

By an Order of the Court of Appeals dated April 28, 2014, the following attorney has been placed on inactive status by consent:

NEAL MARCELLAS JANEY, SR.

*

*

By an Order of the Court of Appeals dated April 29, 2014, the following attorney has been disbarred by consent:

DENISE LASHON KINNARD

*

Return to ToC

JUDICIAL APPOINTMENTS

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On February 24, 2014, the Governor announced the appointment of **HAYWARD JAMES WEST** to the Circuit Court for Charles County. Judge West was sworn in on April 3, 2014 and fills the vacancy created by the retirement of the Hon. Robert C. Nalley.

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On February 24, 2014, the Governor announced the appointment of **FLYNN MARCUS OWENS** to the District Court – Baltimore City. Judge Owens was sworn in on April 11, 2014 and fills the vacancy created by the retirement of the Hon. Charles A. Chiapparelli.

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On February 24, 2014, the Governor announced the appointment of the **HON. AUDREY ANN CREIGHTON** to the Circuit Court for Montgomery County. Judge Creighton was sworn in on April 11, 2014 and fills the vacancy created by the retirement of the Hon. Katherine D. Savage.

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