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# COURT OF APPEALS

*Attorney Grievance Commission of Maryland v. Melissa Donnelle Gray*, Misc. Docket AG No. 52, September Term 2012, filed January 24, 2014. Opinion by Watts, J.

<http://www.mdcourts.gov/opinions/coa/2014/52a12ag.pdf>

ATTORNEY DISCIPLINE – SANCTIONS – INDEFINITE SUSPENSION

## **Facts:**

The Attorney Grievance Commission of Maryland (“the Commission”), Petitioner, charged Melissa Donnelle Gray (“Gray”), Respondent, with violating several Maryland Lawyers’ Rules of Professional Conduct (“MLRPC”).

In November 2010, Carmen Bustamante retained Gray to represent her in connection with her divorce. On January 20, 2011, on behalf of Ms. Bustamante, Gray filed in the circuit court a Complaint for Limited Divorce against Mr. Bustamante.

In a scheduling order issued in the divorce case, the circuit court ordered that discovery be completed by July 25, 2011. In March 2011, Mr. Bustamante’s counsel sent Interrogatories and a Request for Production of Documents to Gray. Gray failed to respond to either discovery request. On June 30, 2011, Mr. Bustamante’s counsel filed a Motion to Compel Discovery. Gray failed to respond to the motion or to otherwise prepare written responses to the discovery requests. On December 9, 2011, over four months after the deadline for completion of discovery, Gray sent discovery requests to Mr. Bustamante’s counsel. And, despite Ms. Bustamante’s claims that Mr. Bustamante had been misusing and concealing assets, Gray failed to obtain Mr. Bustamante’s testimony under oath in response to interrogatories before the scheduled trial date.

On February 6, 2012, the parties reached a settlement, which was placed on the record in the circuit court, and the circuit court ordered the parties to submit a proposed Judgment of Absolute Divorce within ten days. Gray agreed to prepare the proposed judgment. Although Gray testified before the hearing judge in the attorney discipline proceeding that she sent a proposed judgment to Mr. Bustamante’s counsel via e-mail, Gray failed to corroborate that claim by producing a copy of that e-mail or other documentation indicating that she complied with the circuit court’s order that a proposed judgment be submitted within ten days. In a letter dated

February 22, 2012, the law clerk for the circuit court judge assigned to the divorce action reminded Gray that the proposed judgment was due. On April 11, 2012, no response having been received, the circuit court ordered counsel for both parties to appear in chambers on April 30, 2012, with a proposed judgment. On May 4, 2012, a Judgment of Absolute Divorce was entered.

In a letter dated April 4, 2012, the Commission notified Gray of Ms. Bustamante's complaint and requested a written response to the allegations in the complaint within ten days. In a letter dated April 30, 2012, the Commission again notified Gray of the complaint. Gray failed to respond to either letter.

Based on the above facts, the hearing judge concluded that Davy had violated MLRPC 1.1 (Competence), 1.3 (Diligence), 3.2 (Expediting Litigation), and 8.1(b) (Failing to Respond to Lawful Demand for Information from Disciplinary Authority).

**Held:**

The Court of Appeals held that Gray violated MLRPC 1.1 and 1.3 by failing to take appropriate and timely action to pursue Ms. Bustamante's claim, by failing to act diligently in representing Ms. Bustamante, and by failing to respond to discovery requests or to timely propound discovery requests on behalf of Ms. Bustamante.

The Court of Appeals held that Gray violated MLRPC 3.2 by failing to comply with discovery requests and to respond to a motion to compel responses to the discovery requests, and by delaying taking necessary and required steps on behalf of Ms. Bustamante, as demonstrated by her failure to timely submit a proposed Judgment of Absolute Divorce. The Court of Appeals observed that, as a result of Gray's failure to timely prepare the proposed judgment as ordered, a Judgment of Absolute Divorce was not entered in the divorce case until almost three months after the parties had agreed upon a settlement.

The Court of Appeals held that Gray violated MLRPC 8.1(b) by failing to respond to two letters from the Commission regarding Ms. Bustamante's complaint.

The Court of Appeals indefinitely suspended Gray from the practice of law in Maryland. The Court of Appeals found at least three aggravating factors: prior disciplinary offenses resulting in a reprimand and a sixty-day suspension; a pattern of misconduct; and multiple offenses. There were no mitigating factors. The Court held that, in light of existing caselaw and taking into account the aggravating factors present, including Gray's prior disciplinary offenses and violations of multiple MLRPC, and the sanctions ordered by the Court in those prior disciplinary offenses—which arose out of violations of two of the same MLRPC violated, MLRPC 1.3 and 8.1(b)—an indefinite suspension was the appropriate sanction.

*Attorney Grievance Commission of Maryland v. Michael Ron Worthy*, Misc. Docket AG No. 6, September Term 2012, filed January 30, 2014. Opinion by Battaglia, J.

<http://www.mdcourts.gov/opinions/coa/2014/6a12ag.pdf>

ATTORNEY DISCIPLINE – ATTORNEY MISCONDUCT – INDEFINITE SUSPENSION

**Facts:**

The Attorney Grievance Commission, acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action against Respondent, Michael Ron Worthy, charging violations of Rules 8.4(b), (c) and (d) of the Maryland Lawyers’ Rules of Professional Conduct, alleging that Worthy “pleaded guilty to two counts of failure to file tax returns in the [U.S.] District Court of Maryland.”

The Court of Appeals referred the matter to the Circuit Court for Prince George’s County for a hearing, after which the hearing judge issued written Findings of Fact and Conclusions of Law. The hearing judge found that Worthy did not timely file federal personal income tax returns for the years 2006 and 2007, owing at least \$70,000 in federal taxes for those two years and concluded that Worthy had violated Rules 8.4(b) and (d) by engaging in conduct that was both criminal and “prejudicial to the administration of justice.” Neither party took exception to the hearing judge’s Findings of Fact and Conclusions of Law.

**Held:**

The Court of Appeals held that the trial judge’s conclusions of law were supported by the findings of fact and imposed an indefinite suspension with the right to apply for reinstatement after six months. The Court of Appeals rejected Worthy’s request for a finite six months’ suspension due to the nature and gravity of the violations and the unresolved status of his tax arrears. The Court of Appeals also rejected Worthy’s request for a suspension *nunc pro tunc* to his period of incarceration, in anticipation of which he had closed his law practice, concluding that his actions in anticipation of incarceration were in keeping with what an attorney should do, but less than what an attorney must do if rendered incapable of practicing law.

*Attorney Grievance Commission of Maryland v. Sandra Lynn Reno*, Misc. Docket AG No. 5, September Term 2013, filed January 24, 2014. Opinion by Watts, J.

<http://www.mdcourts.gov/opinions/coa/2014/5a13ag.pdf>

ATTORNEY DISCIPLINE – MARYLAND LAWYERS’ RULE OF PROFESSIONAL CONDUCT 8.4

**Facts:**

The Attorney Grievance Commission (“the Commission”), Petitioner, charged Sandra Lynn Reno (“Reno”), Respondent, with violating Maryland Lawyers’ Rule of Professional Conduct (“MLRPC”) 8.4.

A hearing judge found the following facts. Reno gave a handgun to Cortney Stevens (“Stevens”), who could not legally possess a regulated firearm. Reno did not know that Stevens could not legally possess a regulated firearm. The State charged Reno with violating the statute that is currently codified as Md. Code Ann., Pub. Safety (2003, 2011 Repl. Vol., 2013 Supp.) (“PS”) § 5-144. Reno pled not guilty pursuant to an agreed statement of facts. The Circuit Court for Anne Arundel County found Reno guilty and granted Reno probation before judgment. Reno acknowledged that she “should have known” that Stevens could not legally possess a regulated firearm. Reno reported herself to the Commission.

Based on the above facts, the hearing judge concluded that Reno did not violate MLRPC 8.4(b) (Criminal Act), 8.4(c) (Dishonesty, Fraud, Deceit, or Misrepresentation), 8.4(d) (Conduct Prejudicial to the Administration of Justice), or 8.4(a) (Violating MLRPC).

Neither party excepted to the hearing judge’s findings of fact or conclusions of law. In the Court of Appeals, the Commission moved to dismiss the attorney discipline proceeding.

**Held:**

The Court of Appeals denied the motion to dismiss the attorney discipline proceeding, and held that Reno violated MLRPC 8.4(d) (Conduct Prejudicial to the Administration of Justice) and 8.4(a) (Violating MLRPC) by committing an illegal act (i.e., violating PS § 5-134(b)(2), which states: “A . . . person may not . . . transfer a regulated firearm to a . . . transferee who the . . . person knows or has reasonable cause to believe . . . has been convicted of a disqualifying crime[.]”), but did not violate MLRPC 8.4(b) (Criminal Act) or 8.4(c) (Dishonesty, Fraud, Deceit, or Misrepresentation).

Instead of determining an appropriate sanction on its own initiative, the Court of Appeals gave Reno and the Commission the opportunity to recommend a sanction for Reno's violation of MLRPC 8.4(d) and 8.4(a).

*Michael C. Worsham v. Robert Greenfield and Romualda Greenfield*, No. 139, September Term 2009, filed October 23, 2013. Opinion by Bell, C.J. (ret.)

<http://www.mdcourts.gov/opinions/coa/2013/139a09.pdf>

CIVIL PROCEDURE – SANCTIONS – MARYLAND RULE 1-341

**Facts:**

Michael Worsham filed a six-count complaint in the Circuit Court for Hartford County against Robert Greenfield, his wife Romualda Greenfield, and two neighbors, alleging, among other things, defamation, false light/invasion of privacy, civil conspiracy, and aiding and abetting. Additionally, Mr. Worsham alleged malicious prosecution against Mr. Greenfield. The charges arose out of a dispute between Mr. Greenfield and Mr. Worsham, in which Mr. Greenfield filed criminal charges against Mr. Worsham alleging second-degree assault and malicious destruction of property. A jury acquitted Mr. Worsham of malicious destruction of property and was unable to reach a verdict as to the assault count.

Prior to trial, the Circuit Court granted the Greenfields' and the neighbors motion for summary judgment with regard to all claims except the count for malicious prosecution. Summary judgment was granted as to the last count at the close of Mr. Worsham's case against Mr. Greenfield. Mr. Worsham noted an appeal of the judgment to the Court of Special Appeals, which affirmed the judgment of the trial court. Mr. Worsham's petition for a writ of certiorari, filed with the Court of Appeals, was denied.

Following the Court of Appeal's denial of "cert," the Greenfields filed a "Motion for Award of Attorney's Fees and Costs," pursuant to Maryland Rule 1-341, seeking recovery of the attorney's fees, expenses, and costs associated with the litigation initiated by Mr. Worsham, fees that the Greenfields acknowledged had been paid by their insurance carrier, Erie Insurance Exchange. The Circuit Court denied the motion with respect to Mr. Greenfield, but granted it with regard to Mrs. Greenfield, finding that she had been joined in the action without "substantial justification." The Circuit Court awarded Mrs. Greenfield \$3,613.13 for the costs that it found she had "incurred," within the meaning of Rule 1-341, notwithstanding the fact that Erie Insurance had paid all of the costs of litigation on her behalf. The Court of Special Appeals affirmed the trial court's award.

**Held:** Affirmed.

The Court of Appeals explained that the issue to be resolved was the meaning of "incur" as used in Rule 1-341. As an issue of construction, the Court of Appeals applied longstanding canons of statutory interpretation.

The Court of Appeals found the plain language of Rule 1-341 to be unambiguous. Relying on dictionary definitions of “incur,” the Court of Appeals determined the term represented a party becoming liable for, subject to, suffering, or bringing on oneself the cost of litigation. Furthermore, the legal responsibility to pay these costs exists apart from the method he or she chooses to use to discharge that responsibility. The Court of Appeals explained: “[T]here are a variety of ways in which a litigant may discharge the financial obligation required to defend against a frivolous claim, including contracting for the purchase, and use, of liability insurance.”

The Court of Appeals found this conclusion to be consistent with its precedents, as well as with conclusions reached by other courts addressing the same or a similar relevant issue. Statutory history and case law interpreting the Rule provide further support for this conclusion. Accordingly, the Court of Appeals found “it irrelevant, in the context of Rule 1-341, whether the cost to a party of defending him or herself against abusive litigation is covered by an outside source or a third party.”

*Kevin P. Clark v. Mayor Martin O'Malley, et al.*, No. 93, September Term, 2009, and *Natasha Clark v. Mayor Martin O'Malley, et al.*, No. 94, September Term 2009, filed August 23, 2013. Opinion by Bell, C.J. (ret.)

<http://www.mdcourts.gov/opinions/coa/2013/93a09.pdf>

COURTS – CIVIL PROCEDURE – RES JUDICATA – SUMMARY JUDGMENT –  
MOOTNESS – REINSTATEMENT – EMPLOYMENT CONTRACT

**Facts:**

Respondents, the former Mayor of Baltimore City, Martin O'Malley ("Mayor"), and the City Council of Baltimore, discharged the petitioner, Kevin Clark, from his position as Police Commissioner for Baltimore City pursuant to a provision contained in the petitioner's employment contract permitting discharge without cause. The petitioner then filed a lawsuit against the respondents in the Circuit Court, *Clark II*, challenging the discharge. The Circuit Court issued a judgment in favor of the petitioner. The Court of Appeals later granted certiorari on the question of "whether [the petitioner] is bound by the unambiguous 'right to terminate without cause' provision in the employment contract that he negotiated with the City of Baltimore." In answering this question in the negative, the Court of Appeals affirmed the Circuit Court judgment and remanded the case for additional action, concluding that § 16-5 (e) of the Code of Public Local Laws precluded the Mayor from discharging the petitioner without cause.

The petitioner then filed the instant action in the Circuit Court for Baltimore City seeking among other things, reinstatement on the grounds that the Court of Appeals, in *Clark II*, "ruled unanimously ... that Plaintiff was removed from the Office of Police Commissioner of Baltimore City illegally by Mayor O'Malley," which effectively required the City to reinstate him as police commissioner for the remainder of the unexpired term.

After a hearing on the respondents' motion for summary judgment, the petitioner's motion for partial summary judgment, and a motion to intervene filed by the petitioner's wife, Natasha Clark, "the Circuit Court granted the respondent's summary judgment motion, denied the petitioner's motion for partial summary judgment, and denied, as moot, the motion to intervene." The intermediate appellate court later affirmed the Circuit Court's rulings. Before the Court of Appeals, the petitioner challenged the Circuit Court's ruling on the grounds that he was entitled to partial summary judgment based on the Court of Appeals decision in *Clark II*. The petitioner's wife contemporaneously challenged the Circuit Court's denial of her motion to intervene.

**Held:**

The Court of Appeals held that because “neither [it] nor the Court of Special Appeals reached the merits of [the petitioner’s] claims or purported to do so and neither decision had the effect of doing so, ... the petitioner was not entitled to reinstatement or... judgment as a matter of law.” The Court further concluded that summary judgment was properly granted in favor of the respondents because the petitioner failed to identify with particularity, as required by Md. R. 2-501(b), each material fact that raised a genuine dispute on the contractual and liability issues. The denial of Mrs. Clark’s motion to intervene was also proper because the asserted purpose of the request was to seal records from a family court proceeding, and such records were already sealed by court order under Md. R. 16-1005(a).

*Anthony Dzikowski v. State of Maryland*, No. 15, September Term 2011, filed December 30, 2013. Opinion by Bell, C.J. (ret.).

<http://www.mdcourts.gov/opinions/coa/2013/15a11.pdf>

CRIMINAL LAW – CRIMINAL PROCEDURE – BILL OF PARTICULARS – MARYLAND  
RULE 4-241

**Facts:**

Anthony Dzikowski was tried in the Circuit Court for Montgomery County on charges of manslaughter, reckless endangerment, and conspiracy to commit assault. The Indictment used statutory “short form,” prescribed by Maryland Code (2002) § 3-206(d)(2) of the Criminal Law Article, to charge Mr. Dzikowski on the reckless endangerment count, and did not set out the elements of the charged offense or the factual basis for that offense. Mr. Dzikowski timely requested that the State provide him with a bill of particulars, pursuant to Maryland Rule 4-241(a). The State’s response to each question merely directed the petitioner to discovery, rather than specifically answer each question.

Mr. Dzikowski timely filed exceptions to the State’s responses, challenging the sufficiency of each response. Following a hearing, the trial court overruled the petitioner’s exceptions, finding that the State’s responses satisfied the requirements of Maryland Rule 4-241(b), and reasoning that the rule “provides on demand for particulars as to the offense charged and not as to all evidence which the State may adduce to prove it.” The jury found the petitioner guilty of reckless endangerment. The trial court denied Mr. Dzikowski’s motion for a new trial and sentenced him to five years in prison, suspending all but nine months, and placing him on probation for three years.

Mr. Dzikowski appealed his conviction to the Court of Special Appeals, arguing, in part, that the trial court abused its discretion when it denied his exceptions to the State’s responses to his demand for a bill of particulars. He asserted that the trial court’s ruling prejudiced him, as it prevented him from preparing and executing a proper defense. The Court of Special Appeals affirmed the trial court’s ruling.

The Court of Appeals granted certiorari to address three issues: (1) whether the trial court abused its discretion in overruling the petitioner’s exceptions to the State’s bill of particulars response; (2) whether the trial court abused its discretion by denying a new trial when the State refused to provide a proper response to the petitioner’s bill of particulars and the trial court’s decision to permit the State to change its theory of reckless endangerment unfairly surprised the petitioner and effectively foreclosed him from putting on a case; and, (3) whether the trial court erred in denying the petitioner’s motion to dismiss when the trial court’s decision to permit the State to change its theory of reckless endangerment rendered the indictment duplicitous.

**Held:** Reversed.

The Court of Appeals reversed the judgment of the Court of Special Appeals, holding that the State's responses to the questions posed in Mr. Dzikowski's demand for a bill of particulars were inadequate and, therefore, the trial court abused its discretion when it overruled the petitioner's exceptions to those responses. The Court based its ruling on the nature and purpose of a "bill of particulars," as it relates to the constitutional underpinnings of a charging document.

In cases in which a defendant is charged by short form indictment, the common law rule in Maryland is that the charging document must allege the essential elements of the offense charged. Defendants are protected from injury, however, by the right of the defendant to demand the particulars of the accusation. Additionally, "CL § 3-206(d), which prescribes the short form indictment for reckless endangerment, carries this principle a step further, by making a bill of particulars mandatory, if timely demanded, whenever a statutory short form indictment is used to charge that crime. CL § 3-206(d)(5)." Therefore, "a bill of particulars, when guaranteed as a supplement to a short form indictment, is designed to provide the defendant with information with which he would have been supplied had he been indicted using the standard indictment, which information constitutes notice that is constitutionally required to be given in order to apprise the defendant of the crime with which he is accused, as well as of the particular conduct to which that accusation relates and refers." Therefore, merely directing a defendant to discovery simply is not responsive to a demand for a bill of particulars and certainly does not provide the constitutionally required notice, which includes the elements of the charges and their corresponding factual bases.

Furthermore, it is possible that the petitioner was prejudiced when the trial court permitted the State to proceed upon a factual basis, on which it did not rely in the indictment. "Had the State notified the petitioner that the basis for the reckless endangerment charge was the 'timed push,' and not the knockdown punch that, objectively, more directly related to the victim's death, *or* that both events were the bases for its reckless endangerment charge, the petitioner may have adopted a different strategy at trial or otherwise altered his preparations (i.e. he may have identified different witnesses, possibly expert witnesses, or possibly altered the focus of his cross-examinations)." Therefore, the Court could not reasonably determine, with the degree of certainty required, that the impact of the improper notice was. The Court of Appeals did not reach the merits of the petitioner's other contentions.

*Bagada Dionas v. State of Maryland*, No. 75, September Term 2011, filed December 10, 2013. Opinion by Bell, C.J. (ret.).

<http://www.mdcourts.gov/opinions/coa/2013/75a11.pdf>

CRIMINAL LAW – APPEALS – HARMLESS ERROR

**Facts:**

Bagada Dionas was convicted in the Circuit Court for Baltimore City of multiple counts of second degree murder, first degree assault, use of a handgun in the commission of a felony or crime of violence, openly carrying a dangerous weapon, and conspiracy to commit first degree murder. The charges arose from a shooting incident in a field on Radecke Avenue in Baltimore, Maryland, on the evening of July 15, 2007, in which two victims, Wayne White and Maurice White, were shot and killed. Mr. Dionas was sentenced to an aggregate sentence of life imprisonment plus 170 years. Sean White, also a victim, witnessed the incident and testified at Mr. Dionas’ trial on behalf of the State.

Following the shooting incident, but prior to Mr. Dionas’ trial, Mr. White, while on probation, plead guilty to possession of a firearm by a minor. While incarcerated on that charge, Mr. White sought a continuance of his violation of probation hearing, and requested to be released on home detention pending that hearing, in order to testify at Mr. Dionas’ trial. The presiding judge in the violation of probation hearing granted Mr. White’s request.

Prior to Mr. Dionas’ trial, defense counsel objected to the State’s motion in limine to bar the petitioner from questioning any of its witnesses regarding prior arrests, arguing that Mr. White had an agreement for leniency with his violation of probation judge relevant to his potential motive for testifying. The trial court determined that, although Mr. White and the VOP judge had an agreement, that agreement was merely that Mr. White testify, and not that Mr. White testify “one way or the other.” Additional, subsequent efforts to cross-examine Mr. White with respect to his motivation to testify were also rejected.

After a three and a half day trial, jury deliberations lasted for five and a half days. During jury deliberations, the jury submitted several notes to the court requesting clarification of jury instructions and indicating an inability to reach a unanimous decision.

Mr. Dionas appealed his convictions to the Court of Special Appeals, arguing, in part, that the trial court erred in prohibiting his cross-examination of a State’s witness regarding that witness’ expectation of leniency in a separate pending case. The Court of Special Appeals held that the trial court had erred, but concluded that the error was harmless and affirmed the judgment of the Circuit Court.

**Held:** Reversed and remanded.

The Court of Appeals reversed the judgment of the Court of Special Appeals, and remanded the case for a new trial. The parties agreed with the Court of Special Appeals that the trial court erred in limiting Mr. Dionas' cross-examination of Mr. White with regard to his expectation of leniency from the VOP judge. Accordingly, the Court of Appeals focused on the question of the effect of that error, and whether it was harmless.

The Court of Appeals stated the "well established, and relatively stringent" harmless error test first provided in *Dorsey v. State*, 276 Md. 638, 350 A.2d 665 (1976). Furthermore, the Court of Appeals explained that the harmless error standard must be applied with a focus not on what evidence was available to the jury, but what evidence the jury used to reach its verdict. "We have stated frequently that, where credibility is an issue, and thus, the jury's assessment of who is telling the truth is critical, an error affecting the jury's ability to assess a witness' credibility is not harmless error."

Additionally, the Court of Appeals considered factors, relevant in the harmless error analysis, that may have influenced the jury's perspective as the arbiters of fact, particularly the jury's behavior during deliberations. In the present case, the Court of Appeals found both the length of jury deliberations and the jury's notes to the court during deliberations as relevant.

Finally, the Court of Appeals determined that the Court of Special Appeals, by concluding that the strength of the State's case against Mr. Dionas indicated that the trial court's error was harmless, effectively substituted its own fact-finding for that of the jury's. The Court of Special Appeal's assumption that the proffered cross-examination relating to Mr. White's credibility would likely have had limited impact, due to the strength of the State's case, was one that could have been made only upon the evidence the Court of Special Appeals credited. Instead, the proper application of the *Dorsey* test must consider whether the trial court's error, beyond a reasonable doubt, must have made no difference in reaching the verdict obtained. The Court of Appeals could not conclude, beyond a reasonable doubt, that the trial judge's error did not influence the jury's verdict, and therefore found the error was not harmless.

*Tony Lamont Haile v. State of Maryland*, No. 112, September Term 2006, filed April 25, 2013. Opinion by Bell, C.J. (ret.)

<http://www.mdcourts.gov/opinions/coa/2013/112a06.pdf>

CRIMINAL LAW – PROCEDURE – MOTION FOR JUDGMENT OF ACQUITTAL – SUFFICIENCY OF EVIDENCE – STATUTES – INTERPRETATION

**Facts:**

The petitioner, Tony Lamont Haile, was convicted of aggravated cruelty to animals after he struck and injured a police canine while the police were attempting to apprehend him for alleged involvement in a stabbing. During the trial, the petitioner’s trial counsel moved for acquittal after the State’s case, but did not renew the motion after the close of all the evidence. The petitioner appealed, contending that the evidence presented at trial was insufficient to sustain his conviction, and that he received ineffective assistance of counsel because his attorney failed to preserve his evidentiary sufficiency claim when counsel did not renew the motion to acquit. The Court of Special Appeals affirmed the conviction and the Court of Appeals granted the petitioner’s petition for certiorari.

**Held:** Affirmed.

Noting the failure of the petitioner’s trial counsel to preserve his evidentiary insufficiency claim at trial, the Court nonetheless exercised its statutory discretion to consider the claim on appeal. In considering the plain language of § 10-606 (a) (3) from Subtitle 6, Crimes Relating to Animals, the Court rejected the petitioner’s claim that the statute required proof of specific intent. The Court further rejected the petitioner’s insufficient evidence claim on the grounds that the statute is not limited to “serious bodily harm,” and “a rational jury could [and] did find beyond a reasonable doubt” that the petitioner intentionally and repeatedly struck the dog, therefore satisfying the elements of aggravated cruelty to animals. Having rejected the petitioner’s insufficient evidence claim, the Court declined to address the petitioner’s effectiveness of counsel claim, concluding that the issue “must await subsequent post-conviction review.”

*Joseph Mobuary v. State of Maryland*, No. 27, September Term 2011, filed October 24, 2013. Opinion by Bell, C. J. (ret.).

<http://www.mdcourts.gov/opinions/coa/2013/27a11.pdf>

## CRIMINAL LAW – REVERSIBLE ERROR

### **Facts:**

The petitioner, Joseph Mobuary, appealed from his conviction in the District Court of Maryland, sitting in Baltimore City, of second degree assault in two cases. On the date that the petitioner was scheduled to attend a hearing on his appeals, the Baltimore City Detention Center where the petitioner was incarcerated, did not transport him to court. After the petitioner failed to appear in court, the Circuit Court dismissed the petitioner's appeals based solely on secondhand information from an unidentified correction officer, who claimed that the petitioner had refused to be transported from the correctional facility. The petitioner learned of the court's decision and informed his trial counsel that he had not refused transport and wanted to pursue his appeals. The Circuit Court subsequently refused to reinstate the petitioner's appeals despite contradictory evidence from the petitioner suggesting that the secondhand information on which the court had based its decision was unreliable. The petitioner subsequently petitioned the Court of Appeals for certiorari review, which the Court granted.

### **Held:** Reversed.

The Court of Appeals reversed the judgment of the Circuit Court for Baltimore City, holding that the Circuit Court committed reversible error when it denied the petitioner's Motion to Reinstate Appeal. Considering the totality of the circumstances, the Court concluded that the petitioner's submissions to the court, after he missed the hearing, may have constituted good cause for reinstating the appeals. The Circuit Court therefore abused its discretion in denying the petitioner's reinstatement motion without considering whether good cause existed. Additionally, the Court concluded that the Circuit Court misstated the law in denying the petitioner's motion to reinstate pursuant to Maryland Rule 4-345, rather than the correct standard prescribed in Maryland Rule 7-112(f)(3).

*Ronald Alexander Hobby v. State of Maryland*, No. 33, September Term 2013, filed January 24, 2014. Opinion by Watts, J.

<http://www.mdcourts.gov/opinions/coa/2014/33a13.pdf>

CRIMINAL LAW – SUFFICIENCY OF THE EVIDENCE – THEFT – PROPERTY – DECEPTION – VALUE – BURGLARY – DWELLING – BREAKING

**Facts:**

Ronald Alexander Hobby, Petitioner, was convicted by a jury sitting in the Circuit Court for Charles County of theft of property valued in excess of \$100,000, forgery, uttering a false document, identity fraud, and first-degree burglary arising out of his unauthorized occupancy of a home for a period of approximately seven months.

The following facts were adduced at trial. Dr. Coryse Brathwaite resided at 2742 Kirk Drive (“the property”) in Waldorf, Maryland, from June 2007 until July 2009. Brathwaite had a mortgage on the home in the amount of approximately \$900,000, and owed the builder an additional \$500,000. Brathwaite’s monthly mortgage payment was approximately \$6,000 and her monthly payment to the builder was between \$2,500 and \$3,000. At the time Brathwaite moved out of the property, all of the doors and windows were closed and secured. Brathwaite never signed a lease with Petitioner or anyone else, and did not know Petitioner or authorize him to occupy the property or to place her name on a lease.

Petitioner’s wife testified that she and Petitioner were contacted by a real estate agent, Derrick Williams, about renting the property for \$3,500 per month for one year. On February 1, 2010, Petitioner signed the lease, and she and Petitioner paid Williams \$7,000 in cash to cover the first month’s rent and the security deposit. In March 2010, Petitioner and his family moved into the property. On April 1, 2010, Williams visited the property to collect a rent payment in the amount of \$3,500, which Petitioner and his wife paid in cash. Thereafter, upon receipt of a notice that the property was in foreclosure, Petitioner’s wife attempted unsuccessfully to contact Williams, whose telephone was disconnected. In September 2010, Petitioner’s wife was notified that the purported lease was a forgery. On October 1, 2010, Petitioner and his family moved out of the property. Petitioner’s wife acknowledged that no rent was paid after April 1, 2010.

On July 26, 2010, the property was sold at foreclosure auction to Severn Savings Bank FSB (“Severn Bank”). On September 29, 2010, Severn Bank obtained a writ of possession for the property. According to a Severn Bank representative, the bank’s re-sale of the property was delayed by months due to Petitioner’s tenancy; namely, Severn Bank was unable to take action or to show the property to potential purchasers until after Petitioner had been evicted and the property had been cleaned and repaired.

At the close of the State's case, Petitioner moved for judgment of acquittal, contending that the theft charge had not been proven because the house "wasn't taken or moved or in any way hidden[,]" and arguing that there was no testimony as to any financial loss incurred by Severn Bank. As to first-degree burglary, Petitioner asserted that there was no intent to commit theft of any property and no breaking as he was given keys and a garage door opener to enter the house. Petitioner later augmented the motion for judgment of acquittal, arguing as to first-degree burglary that the house was not a dwelling because it was vacant and not intended to be used as an abode. At the close of all the evidence, Petitioner renewed the motion for judgment of acquittal. The circuit court denied the motion.

Petitioner noted an appeal to the Court of Special Appeals. In an unreported opinion, by majority, a panel of the intermediate appellate court affirmed all judgments of conviction, concluding that the evidence was sufficient to sustain convictions for theft over \$100,000 and first-degree burglary. The Honorable Christopher B. Kehoe dissented as to the sufficiency of the evidence for the conviction of theft of property in excess of \$100,000. Judge Kehoe agreed that Petitioner was guilty of theft, but disagreed that the State had presented sufficient evidence to support a finding that the fair market rental value of the property during the period of Petitioner's occupancy was in excess of \$100,000.

Petitioner filed a Petition for Writ of Certiorari, which the Court of Appeals granted.

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

The Court of Appeals held Petitioner failed to preserve an issue as to whether the State proved the element of exerting unauthorized control pursuant to Criminal Law Article (2002, 2012 Repl. Vol.) ("C.L.") § 7-104(a) of the Maryland Code. The Court of Appeals determined that Petitioner did not raise an argument regarding an alleged "squatter" not exerting unauthorized control over a vacant property during the motion for judgment of acquittal before the circuit court nor did Petitioner raise the argument in the Court of Special Appeals or in the Petition for Writ of Certiorari. As such, the matter was not preserved and the Court of Appeals declined to address the contention.

The Court of Appeals held that theft of a house may occur through occupancy or possession of the house without payment for it or its use to the lawful owner and without authorization or consent of the lawful owner; *i.e.*, the occupancy or possession of the house is a thing of value that can be the subject of theft.

The Court of Appeals stated that asportation, or the carrying away or removal of property, is not required under the consolidated theft statute.

The Court of Appeals held that the evidence was sufficient to support the conclusion that Petitioner committed theft pursuant to C.L. § 7-104(b)—theft by deception—by obtaining control and possession of the property through deception, and, specifically, that Petitioner brought about the physical transfer of possession of the property through deception. The Court of Appeals

concluded that there was ample evidence from which the jury could reasonably have concluded that Petitioner resided in, or possessed, the home for approximately seven months, without the consent or knowledge of Brathwaite, the lawful owner, and that he forged a lease with the intent to remain in the home rent-free.

The Court of Appeals determined that the State was not required to prove actual deprivation to support a conviction pursuant to C.L. § 7-104(b).

The Court of Appeals held that the proper approach for valuation of the property was to determine the fair market value of the right to possess the house during the period of Petitioner's occupancy, rather than the fair market value of the house itself. Under this approach, the State demonstrated a financial loss, at a minimum, of \$24,500, and, at a maximum, of \$66,500. As such, the Court of Appeals agreed with Judge Kehoe that the evidence was insufficient to support Petitioner's conviction for theft of property valued in excess of \$100,000.

The Court of Appeals concluded, however, that in finding Petitioner guilty of theft of property valued in excess of \$100,000, the jury, of necessity, found Petitioner guilty of theft of property of a value of at least \$10,000. Accordingly, the Court of Appeals reversed the conviction for theft of property valued in excess of \$100,000, and directed that the judgment of the circuit court as to that count be vacated, that a verdict of guilty of theft of property having a value of at least \$10,000 but less than \$100,000 be entered, and that on remand Petitioner then be sentenced on the conviction.

The Court of Appeals held that the evidence was sufficient to support Petitioner's conviction for first-degree burglary. Specifically, the Court of Appeals held that the property was a dwelling for purposes of the burglary statute because, although vacant for an eight-month period, the property was suitable for occupancy and was, indeed, occupied by Petitioner and his family for seven months. The Court of Appeals observed that although Brathwaite moved out of the home, there was no testimony suggesting that she intended the home to remain forever vacant or unoccupied by others.

The Court of Appeals also held that there was sufficient evidence for a determination beyond a reasonable doubt that there was a breaking because Petitioner obtained keys and a garage door opener, which he used to access the home, without authorization or permission from Brathwaite.

*Big Louie Bail Bonds, LLC. v. State of Maryland, et al.*, No. 31, September Term 2012, filed October 23, 2013. Opinion by Bell, C.J. (ret.).

<http://www.mdcourts.gov/opinions/coa/2013/31a12.pdf>

#### CRIMINAL PROCEDURE – BAIL – BOND FORFEITURE

##### **Facts:**

Bail bondsman petitioned to strike the forfeiture of bonds issued to defendants who were subsequently deported and, as a result, failed to appear for trial. The District Court denied bondsman's petition. Bondsman noted an appeal to the Circuit Court, Baltimore County, and filed amended petitions in that court to strike forfeiture and release bond. Following a hearing, the Circuit Court for Baltimore County denied seven of the amended petitions, and bondsman noted appeals to the Court of Special Appeals, which transferred the appeals to the Court of Appeals. The Circuit Court denied the three remaining amended petitions, and bondsman noted appeals to the Court of Appeals. The Court of Appeals granted certiorari in all the cases.

##### **Held:**

The Court of Appeals held that deportation is an "act of law," similar to interstate extradition. As such, deportation constitutes reasonable grounds for a defendant's failure to appear for trial. Therefore, a posted bail bond is not properly forfeited where the criminal defendant for whom the bail is posted is deported, even if bondsman knew or should have known that defendant was subject to deportation.

*In the Matter of 2012 Legislative Districting of the State*, Misc. Nos. 1, 2, 3 and 5, September Term 2012, filed December 10, 2013. Opinion by Bell, C.J. (ret.).

<http://www.mdcourts.gov/opinions/coa/2013/2a12m.pdf>

## ELECTION LAW – LEGISLATIVE REAPPORTIONMENT

### **Facts:**

Once every ten years, following each United States Census, Article III, § 5 of the Maryland Constitution requires that the State’s 47 Legislative Districts (also referred to as “Senate Districts”) be reapportioned. The Governor must submit the reapportionment plan to both the President of the Senate and the Speaker of the House of Delegates, who then must introduce the Governor’s plan as a Joint Resolution by the first day of the Legislature’s regular session in the second year following the decennial United States census. Unless the General Assembly adopts an alternative legislative apportionment plan by the forty-fifth day of that legislative session, the Governor’s plan becomes law.

Following the receipt of the 2010 census data for Maryland, the Governor presented a legislative apportionment plan to the Senate President and House Speaker, who introduced it in their respective Houses as Senate Joint Resolution 1 and House Joint Resolution 1. The Governor’s plan became law on February 24, 2012 as revisions to Maryland Code (1984, 2004 Repl. Vol.) §§ 2-201 and 2-202 of the State Government Article. The newly enacted legislative apportionment plan was challenged on various theoretical grounds in the Court of Appeals.

### **Held:**

Where challenger asserted that the seats of the Maryland House of Delegates and Senate must be apportioned in a way identical to the apportionment of the United States House of Representatives and Senate, the Court of Appeals held that the petitioner failed to present compelling evidence in support of his claim.

Where the State asserted that State constitutional requirements for legislative apportionment must be considered on a statewide basis, the Court of Appeals held that the proper inquiry for considering a challenge brought under Article III, § 5 of the Maryland Constitution’s does not strictly depend upon whether a potential violation exist statewide, but upon those facts generally probative of any constitutional compliance or conflict.

Where challengers asserted that the reapportionment plan contained a legislative district that unconstitutionally crossed over the political border of Baltimore City and Baltimore County, the Court of Appeals held that the border crossing was permissible as it was required by Federal and State equal protection principles.

Where challengers asserted that the reapportionment plan violated the “one person, one vote” doctrine, under the Federal and State Constitutions, the Court of Appeals held that the challengers failed to demonstrate that the plan manifested deliberate discriminatory intent.

Where challengers asserted that the reapportionment plan violated Section 2 of the Voting Rights Act of 1965, the Court of Appeals held the challengers did not satisfy the threshold requirements necessary to prove a violation of Section 2 of the Voting Rights Act.

*In re: Adoption/Guardianship of Tracy K.*, No. 139, September Term 2007, filed August 23, 2013. Opinion by Bell, C.J. (ret.).

<http://www.mdcourts.gov/opinions/coa/2013/139a07.pdf>

## COURTS – ORPHANS' COURT – JURISDICTION

### **Facts:**

The petitioner, Jacqueline D. K., filed a petition in Prince George's County Orphans' Court to obtain legal guardianship of her nephew, Tracy K, after his mother (the petitioner's sister) passed away. After a hearing on the guardianship petition, the Orphans' Court dismissed the petition, concluding that it lacked jurisdiction because the petitioner's nephew was not entitled to receive assets from his mother's death or any other estate, and his father maintained parental rights. The petitioner appealed to the Court of Special Appeals. Before the intermediate appellate court decided the appeal however, the Court of Appeals issued a writ of certiorari on whether the Orphans' Court possessed jurisdiction over "Petitions for Guardianship of the Person, where at least one of the natural parents is alive, parental rights have not been terminated, and no testamentary appointment has been made."

### **Held:**

The Court of Appeals held that the Orphans' Court did not have jurisdiction in this situation and affirmed its dismissal of the petition. The Orphans' Court did not have jurisdiction under the governing case law because the guardianship petition was not incidental to a probate case. The Court also rejected the petitioner's contention that the Orphans' Court has statutory jurisdiction to determine whether the parent is "serving as a guardian." After applying the principles of statutory construction, the Court instead held that Maryland Code, Estates and Trusts Article, § 13-105 (a) does not expand the Orphans' Court's jurisdiction over situations where "at least one of the natural parents [is] alive, parental rights [have] not been terminated, and no testamentary appointment had been made."

*Lawrence LaValle v. Janet LaValle*, No. 2, September Term 2007, filed June 26, 2013. Opinion by Bell, C.J. (ret.).

<http://www.mdcourts.gov/opinions/coa/2013/2a07.pdf>

## PROTECTIVE ORDER – MOTION TO FILE EXTENSION

### **Facts:**

On May 25, 2006, Petitioner, Lawrence La Valle and his wife, the Respondent, Janet La Valle were involved in a domestic dispute. Respondent then filed a petition with the Montgomery County District Court. The petition sought a protective order against the Petitioner. At the Respondent's hearing, the District Court issued a Final Protective Order against the Petitioner. Prior to the order's October 10 expiration, Respondent filed a motion for extension with the District Court. When Petitioner received notice of the motion to extend the order, he filed an opposition motion with the court. Petitioner argued in his motion that the court could not extend the protective order as the hearing date for extension occurred after the order's expiration. Petitioner also argued that granting the protective order's extension would be in violation of Family Law Article 4 507 (a).

The District Court ignored Petitioner's legal arguments against extension and extended the protective order until March 1, 2007. Petitioner then appealed the decision to the Circuit Court. The Circuit Court concurred with the District Court's decision. The Circuit Court concluded that Respondent's motion for extension met the requirements under Family Law Article 4-507 (a). The Court reasoned that the motion for extension qualified the order as "being modified before the expiration date of the order." Unsatisfied with the Circuit Court's decision, Petitioner filed simultaneously appeals. Petitioner filed an appeal with the Court of Special Appeals and filed a writ of certiorari with this court. We granted Petitioner's writ on April 11, 2007. The Court of Special Appeals transferred Petitioner's appeal to this Court pursuant to Maryland Rule 8-132. The Petitioner submitted to this court for review one question: whether a court may extend a domestic violence protective order, pursuant to a motion timely filed during the term of the order, without also holding a hearing on the motion during the term of that order.

### **Held:**

A protective order can only be extended during its term. The Court of Appeals disagreed with the Circuit Court's findings. The Court found that by looking at the statute and interpreting its language that extensions to existing orders had to be finalized within their term. The Court concluded that the plain language of definition of extension qualified it as a type of "modification" for the purposes the law.

The Court also reasoned that the purpose of section 4-507 was to provide victims of domestic violence an immediate and effective remedy. The Court opined that allowing for an extension of a protective order based on a motion alone would frustrate the purpose of section 4-507.

*Dumbarton Improvement Association, Inc., et al. v. Druid Ridge Cemetery Company, et al.*, No. 128, September Term 2010, filed August 22, 2013. Opinion by Bell, C.J. (ret.)

<http://www.mdcourts.gov/opinions/coa/2013/128a10.pdf>

COVENANTS – RESTRICTIVE COVENANTS – ENFORCEABILITY – INTERPRETATION  
– EXTRINSIC EVIDENCE

**Facts:**

In 1913, the Druid Ridge Cemetery Company purchased the Druid Ridge Cemetery. The cemetery's deed contained a covenant restricting the property from any use other than a cemetery. From 1921 until 1989 however, the owners conveyed parcels of the property to other parties for non-cemetery purposes. In 1999, the property owners agreed to sell a parcel of the cemetery to Druid Ridge, LLP for the purpose of residential development. Several neighboring land owners and owners of burial plots in the cemetery brought an action against the property owners and the proposed buyer challenging the sale and seeking declaratory relief on the ground that the restrictive covenant contained in the property's original deed precluded residential use. The property owners claimed that the covenant contained ambiguous language, meant only to express the original seller's intent to further the property owner's contemporaneous need to establish a successful business and a well-maintained cemetery.

The Circuit Court found that the covenant in the original deed was ambiguous. Relying on extrinsic evidence, the Circuit Court then concluded that the original covenanting parties did not intend to restrict the property in its entirety to cemetery use. The Court of Special Appeals affirmed the judgment of the Circuit Court. *Dumbarton Improvement Association, Inc., et al. v. Druid Ridge Cemetery Company et al.*, 195 Md. App. 53, 5 A. 3d 1133 (2010). That court held that the restrictive covenant's language concerning the extent and nature of the cemetery's use was ambiguous. The court further concluded that a reasonable reading of the covenant – given the lack of specific words of duration and reverter language – would have been that the non-residential use restriction did not extend to the entire cemetery.

**Held:** Reversed and remanded.

As a matter of law, the phrase "the said property" contained in the covenant clearly referred to a habendum clause, which as written, clearly and unambiguously restricted the property's use for any purposes other than a cemetery. Nor did the absence of reverter or durational language render the restrictive covenant, as a whole, unambiguous since it will be implied that the original covenanting parties intended some reasonable limitation adapted to the nature of the case. Furthermore, the changing character of the neighborhood and recent changes in land-use

regulations did not form the required nexus with the covenant's purpose to preserve the cemetery in its entirety for the maintenance and operation of a cemetery and thus, the restrictive covenant was valid and enforceable.

*Montgomery County, Maryland v. Brenda Robinson*, No. 67, September Term 2010, and *Board of Education of Montgomery County, Maryland v. Jamie Anderson*, No. 68, September Term 2010, filed September 27, 2013. Opinion by Bell, C.J. (ret.)

<http://www.mdcourts.gov/opinions/coa/2013/67a10.pdf>

LABOR AND EMPLOYMENT – WORKERS’ COMPENSATION – AWARD  
CALCULATION

**Facts:**

Respondents, Brenda Robinson (“Robinson”) and Jamie Anderson (“Anderson”), were each involved in on-the-job accidents and suffered permanent partial disability. At least one of the two injuries was a "scheduled injury" pursuant to Md. Code Ann., Lab. & Empl § 9-627 (a) through (j). The other injury was considered an "unscheduled injury" pursuant to § 9-627 (k). The respondents each filed a claim with the Workers’ Compensation Commission (“Commission”), which combined the scheduled and unscheduled injuries in calculating the respondents’ respective awards. The respondents’ employers (“Petitioners”) challenged the Commission’s awards and the Circuit Court for Montgomery County issued judgments in favor of the petitioners. The Court of Special Appeals reversed the lower court’s judgments, holding that “the Commission could combine awards for scheduled injuries with awards for other cases for the purpose of determining whether the second tier compensation rate was applicable.” The petitioners subsequently petitioned the Court of Appeals for certiorari review, which the Court granted.

**Holding:** Affirmed.

The Court of Appeals affirmed the judgment of the Court of Special Appeals, concluding that the respondents were properly compensated pursuant to the Workers’ Compensation Act. Employing the rules of statutory interpretation, the Court considered the legislative intent underlying the Workers’ Compensation Act and its remedial nature and held that the Workers’ Compensation Act permitted the Commission to combine the respondents’ scheduled and unscheduled losses for the purpose of “determin[ing] which of the three levels of compensation prescribed by Md. Code Ann., Lab. & Empl. §§ 9-628 - 9-630 (1991, 2008 Repl. Vol.) was appropriate.”

*Thaddus Roberts v. Montgomery County, Maryland*, No. 39, September Term 2013, filed January 28, 2014. Opinion by Battaglia, J.

<http://www.mdcourts.gov/opinions/coa/2014/39a13.pdf>

## WORKERS' COMPENSATION – GOING AND COMING RULE

### **Facts:**

Thaddus Roberts, Petitioner, was employed by Montgomery County, Respondent, as a firefighter and had been placed on “light duty,” because of a back injury and was assigned to work at Fire Headquarters, as opposed to his “regular duty” station, which was Fire Station 19. Mr. Roberts, as with all Montgomery County firefighters including those on light duty, were encouraged to engage in two hours of physical training per shift and were compensated during those two hours of physical training. The training could be done at any location of the firefighter’s choice.

On the day of his injury, Mr. Roberts began being paid by the County at 7 a.m., and started his physical training at Friendly High School in Prince George’s County at that time. He then left the high school and traveled to pick up his “work mail,” which was left for him at Fire Station 19, located in Montgomery County, a practice engaged in by other firefighters and about which Mr. Roberts’s supervisors were aware. In transit, Mr. Roberts was injured in a motor vehicle accident.

Mr. Roberts filed for workers’ compensation benefits and his claim was denied by the Maryland Workers’ Compensation Commission. On review, the Circuit Court for Montgomery County affirmed the decision of the Commission on the ground that recovery by Mr. Roberts was barred under the “going and coming” rule, which generally precludes an award for an injury sustained by an employee traveling to and from work. The Court of Special Appeals affirmed on appeal.

### **Held:**

The Court of Appeals reversed. The Court of Appeals concluded that the “going and coming” rule is not applicable in the situation where an employee is traveling from a site where he or she was engaged in employer-encouraged activities to another site where the employee is to engage in a work-related task, to which the employer has acquiesced. The Court applied the “positional-risk” test under which an injury is compensable if “but for” the conditions or obligations of employment, the employee would not have been in the position where he or she was injured. The Court held that “but for” Mr. Roberts’s work-related activities, he would not have been injured traveling between Friendly High School and Fire Station 19 and, therefore, his injury was compensable.

# COURT OF SPECIAL APPEALS

*Comptroller of the Treasury v. Henry Immanuel*, No. 1078, September Term 2012, filed January 29, 2014. Opinion by Nazarian J.

<http://www.mdcourts.gov/opinions/cosa/2014/1078s12.pdf>

PUBLIC INFORMATION ACT – PERMITTED DISCLOSURES

PUBLIC INFORMATION ACT – CREATION OF A NEW RECORD

PUBLIC INFORMATION ACT – DISCLOSURE OF FINANCIAL INFORMATION

## **Facts:**

Pursuant to the Maryland Uniform Disposition of Abandoned Property Act, the Comptroller of the Treasury maintains a division for managing property reported unclaimed by banks and other financial institutions. Md. Code (1975, 2005 Repl. Vol., 2012 Supp.), §§ 17-101 to 17-326 of the Commercial Law Article (“CL”). Henry Immanuel is engaged in the business of locating the owners of unclaimed property held by the Comptroller and, then, for a fee, reuniting them with their former possessions.

To further his business, Mr. Immanuel asked the Comptroller, under the Public Information Act, Md. Code (1984, 2009 Repl. Vol., 2012 Supp.), §§10-611 to 10-630 of the State Government Article (“SG”), to produce to him a list of the names and addresses of those entitled to the 5,000 most valuable property accounts, “formatted from largest account values to smallest account values,” but excluding the precise value of each item. The Comptroller denied Mr. Immanuel’s request on the grounds that producing the data as he requested would require the Comptroller to both “create” a new record and disclose the “financial information” of property owners to a third party, neither of which the Public Information Act requires him to do.

Mr. Immanuel petitioned the Circuit Court of Wicomico County for a judicial review of the Comptroller’s decision. The circuit court decided that Mr. Immanuel’s public information request should have been granted and ordered that the Comptroller “provide the unclaimed property records in the manner requested.”

The Comptroller appealed, renewing his claims that Mr. Immanuel’s request would impermissibly require him to both “create” a new public record and disclose the financial information of property owners to third parties.

**Held:** Reversed and Remanded.

The issue on appeal concerned whether the Comptroller was required to fulfill Mr. Immanuel’s public information request. The Public Information Act requires that State agencies disclose requested public records unless an unwarranted invasion of the privacy of the subject of the record would result. Among the grounds pursuant to which a State agency may deny a public information request, two were relevant here: first, where a request requires a custodian to create, compile, or program a new record, SG § 10-620(a)(2)(iv)(3), and second, where a request requires the disclosure of a part of a record containing “information about the finances of an individual.” SG § 10-617(f)(2).

In determining whether Mr. Immanuel’s request required the Comptroller to create, compile, or program a new record, the Court of Special Appeals reviewed the record against the everyday definitions of the three operative terms—create, compile, and program. The Assistant Manager of the Comptroller’s Unclaimed Property Unit acknowledged that the Comptroller’s database contained the information Mr. Immanuel sought and that its Information Technology staff could perform the requested data extraction and sorting within their existing functionality and in the normal course. As such, the Court held that the fulfillment of Mr. Immanuel’s request did not require the Comptroller to create, compile, or program a new record.

In determining whether Mr. Immanuel’s request required the Comptroller to disclose information about the finances of an individual, the Court first recognized that the Abandoned Property Act independently requires the Comptroller to publish annually, in newspapers of broad circulation, the same core information that Mr. Immanuel requested—an alphabetical list of abandoned property owners with claims greater than \$100—for the purpose of notifying the owners of abandoned property to claim it. See CL § 17-311(c). The Court then found that Mr. Immanuel had not requested any information that would not be published in the annual disclosure.

Although Mr. Immanuel’s request sought information that the Comptroller was required to disclose, the Court found that Mr. Immanuel’s request overreached in one, and possibly two, ways. Specifically, the Court found that a list rank-ordered by value would reveal additional individual financial information that Mr. Immanuel was not entitled to have, and that his request potentially overreached by asking for the top 5,000 claims rather than tying the request to the \$100 threshold prescribed in the Abandoned Property Act. The Court therefore held that Mr. Immanuel was not entitled to a list sorted by dollar value and that a remand was required to determine whether Mr. Immanuel’s request for the top 5,000 claims included claims worth less than \$100.

So although Mr. Immanuel was entitled to the bulk of the information he requested, the Court reversed the judgment of the circuit court and remanded for further proceedings for the limited purpose of determining the precise scope and format of the list the Comptroller must produce.

# ATTORNEY DISCIPLINE

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By an Opinion and Order of the Court of Appeals dated December 3, 2013, the following attorney has been suspended for ninety days, effective January 2, 2014:

GEORGE JACOB GEESING

\*

By a Per Curiam Order of the Court of Appeals dated January 14, 2014, the following attorney has been disbarred:

STEVEN GENE BERRY

\*

By an Order of the Court of Appeals dated January 22, 2014, the following attorney has been indefinitely suspended by consent:

ROBERT LEE SHIELDS

\*

This is to certify that

ROBERT JOHN HARRIS

has been replaced upon the register of attorneys in this state as of January 28, 2014.

\*

By an Opinion and Order of the Court of Appeals dated January 30, 2014, the following attorney has been indefinitely suspended:

MICHAEL RON WORTHY

\*

# JUDICIAL APPOINTMENTS

On November 25, 2013, the Governor announced the appointment of **BRENDA ALVERTA SEXTON** to the Circuit Court for Cecil County. Judge Sexton was sworn in on January 3, 2014 and fills a new judgeship created by the General Assembly.

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On November 25, 2013, the Governor announced the appointment of **FRED SCOTT HECKER** to the Circuit Court for Carroll County. Judge Hecker was sworn in on January 3, 2014 and fills a new judgeship created by the General Assembly.

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On November 25, 2013, the Governor announced the appointment of **DANNY BRIAN O'CONNOR** to the Circuit Court for Frederick County. Judge O'Connor was sworn in on January 3, 2014 and fills a new judgeship created by the General Assembly.

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On November 25, 2013, the Governor announced the appointment of **EARL WILBUR BARTGIS** to the District Court of Maryland – Frederick County. Judge Bartgis was sworn in on January 15, 2014 and fills the vacancy created by the retirement of the Hon. W. Milnor Roberts.

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