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http://www.mdcourts.gov/opinions/coa/2017/43a16.pdf

ADMINISTRATIVE LAW – LIQUOR BOARD REGULATIONS – STRICT LIABILITY OFFENSES:

Facts:

In April 2013, a police officer conducted an undercover investigation at Club Harem ("the Club"), an adult entertainment establishment owned by Respondent Steven Kougl. During his investigation, one of the Club's employees, Jamaica Brickhouse, approached the officer and engaged him in conversation. After introducing herself, Brickhouse exposed her breasts to Detective Jackson. Detective Jackson then asked Brickhouse if her breasts "tast[ed] as good as they look[ed]." Brickhouse proposed a lap dance or going to "the VIP" where they could "do whatever" so he could "find out." Detective Jackson asked if "whatever" meant sexual intercourse, and Brickhouse confirmed that it did. She also clarified that it would cost $170 for the VIP room plus a tip for her services. But no money was exchanged because Brickhouse went on stage to perform and Detective Jackson left the Club.

In July 2014, the Board of Liquor License Commissioners for Baltimore City ("the Liquor Board") charged Kougl with violations of three Rules and Regulations for the Board of Liquor License Commissioners for Baltimore City ("the Liquor Board Rules" or "the Rules"): (1) Rule 4.17(a), which prohibits the solicitation of prostitution on a licensee's premises; (2) Rule 4.17(b), which prohibits indecent exposure on a licensee's premises; and (3) Rule 4.18, which prohibits the violation of federal, state, and local laws on a licensee's premises. After a hearing, the Liquor Board found that Kougl violated all three Rules and imposed a 30-day suspension of his liquor license. Kougl petitioned for judicial review of the decision in the Circuit Court for Baltimore City. The Circuit Court affirmed.

Kougl appealed to the Court of Special Appeals. He argued that because he had no knowledge of Brickhouse's prohibited activity, he had not violated Rules 4.17(a), 4.17(b), or 4.18. He claimed that the Rules do not impose strict liability. In a published opinion, the court reversed.

It held that the plain meaning of the words "suffer," "permit," and "allow," as used in Rules 4.17 and 4.18 "necessarily require that some level of knowledge by the licensee must be established by the evidence." *Kougl v. Bd. of Liquor License Comm'rs for Balt. City*, 228 Md. App. 314, 330 (2016) (citation and internal quotation marks omitted). Because there was no evidence of Kougl's actual or constructive knowledge of Brickhouse's conduct, the court concluded that the Liquor Board erred in finding him guilty of violating the Rules at issue.

Held:

The Rules and Regulations for the Board of Liquor License Commissioners for Baltimore City impose strict liability on licensees for conduct violating Rules 4.17(a), 4.17(b), and Rule 4.18.

The Court of Appeals began by analyzing the plain language definitions of the words "permit," "suffer," and "allow." *Black's Law Dictionary* (*Black's*) provides three definitions for "permit": (1) "[t]o consent to formally"; (2) "[t]o give opportunity for"; and (3) "[t]o allow or admit of." *Permit*, Black's Law Dictionary (10th ed. 2014). To consent to something formally, the actor certainly must know about the approved activity. But the second definition—"[t]o give opportunity for"—does not require the actor's knowledge of the conduct at issue. *Black's* provides as an example, "[L]ax security permitted the escape." Just as lax security could permit an escape without knowledge that it is happening, licensees can permit prohibited conduct without knowledge of the offending behavior.

Black's defines "suffer" as "[t]o allow or permit (an act, etc.)." *Suffer*, Black's Law Dictionary. As established above, "permit" does not require knowledge, and—as established later in the opinion—neither does "allow." *Black's* provides "to suffer a default" as an example of how "suffer" is used. *Id*. A loan enters default when the borrower fails to make payments, regardless of whether the borrower was aware of the obligation to pay. Accordingly, by its plain meaning, "suffer" does not impose a knowledge requirement on Rules 4.17(a) or (b).

The Court also concluded that "allow" does not include a knowledge requirement. The first definition in *Black's* for "allow" includes "[t]o put no obstacle in the way of" and "to suffer to exist or occur." *Allow*, Black's Law Dictionary. A licensee could both "put no obstacle in the way of" illegal conduct and not realize it is happening.

Next, the Court considered the Board's argument that the use of the word "knowingly" elsewhere in the statutory scheme shows an intent to impose strict liability when the word is omitted. An interpretation of the Rules that requires the licensee to act with actual or constructive knowledge would render superfluous the word "knowingly" in Rule 4.17(b).

Lastly, the Court confirmed its plain language reading by looking to the purpose of Maryland's liquor regulations, which seek to ensure respect and obedience for the law. AB § 1-201(a)(1)(i). The Court explained that a liquor license is a privilege, and the Liquor Board has the power to circumscribe that privilege as "deemed necessary to prevent [its] abuse." *Piscatelli v. Bd. of Liquor License Comm'rs*, 378 Md. 623, 639 (2003) (citation omitted); AB § 12-2101(a).

Attorney Grievance Commission of Maryland v. Dalton F. Phillips, AG No. 47, September Term 2015, filed February 22, 2017. Opinion by Barbera, C.J.

http://www.mdcourts.gov/opinions/coa/2017/47a15ag.pdf

ATTORNEY GRIEVANCE COMMISSION – DISCIPLINE – DISBARMENT

Facts:

Respondent, Dalton Francis Phillips, was admitted to the Maryland Bar in 1981 and practiced with the federal government for over 35 years. Respondent's son, Solon Phillips, completed law school in 2008 and sought admission to the Maryland Bar, but has never been admitted in Maryland or in any other jurisdiction. In August 2009, Solon Phillips caused Articles of Organization to be filed with the Maryland Department of Assessments and Taxation establishing a law firm titled Phillips, Phillips and Dow LLC, to include Respondent, Solon Phillips, and a friend of Solon, Anthony Dow. Solon Phillips discussed the formation of the firm with Respondent.

In 2014, Solon Phillips prepared a cease and desist letter for Crystal Meehan ordering Abigail Meehan—the current wife of Crystal Meehan's ex-husband—to cease communicating with her. Abigail Meehan is a resident of Indiana. Solon Phillips printed the letter on Phillips, Phillips and Dow, LLC letterhead, signed Respondent's name to the letter, and mailed it to Abigail Meehan. Upon receiving the letter, Abigail Meehan began attempting to contact the firm, and eventually reached Respondent. On May 28, 2014, Abigail Meehan called and spoke with Respondent for a few minutes regarding the letter. Respondent told her that he knew nothing about the letter and stated that Phillips, Phillips and Dow, LLC was his son's law firm. Following the conversation, Abigail Meehan e-mailed Respondent an image of the letter and its envelope, and requested an e-mail confirming that Respondent did not represent Crystal Meehan.

On May 29, 2014, Respondent e-mailed Abigail Meehan and stated that a junior attorney for the firm had sent out the letter without advising him, against the firm's practice. Respondent acknowledged that Crystal Meehan was a client of the firm and encouraged Abigail Meehan to cease communications with Crystal Meehan, as directed in the letter. On June 17, Abigail Meehan replied in an e-mail to Respondent's May 29 e-mail, requesting a mailing address. The e-mail was sent to Respondent and copied Solon Phillips. Solon Phillips replied to Abigail Meehan's e-mail, copying Respondent and stating that the firm did not represent Crystal Meehan, and that Abigail Meehan's attempts to contact the firm bordered harassment and should cease. Abigail Meehan filed a complaint with the Attorney Grievance Commission regarding Respondent's conduct.

Bar Counsel began investigating the complaint by contacting Respondent and requesting information regarding the matter, including the identity of the "junior attorney" referenced by Respondent in his e-mail with Abigail Meehan. Respondent stated that the firm did not represent

Crystal Meehan, that no one he associated with had known Abigail Meehan before she began contacting the firm, and refused to identify the "junior attorney". Bar Counsel then requested Respondent's availability for a meeting to discuss these matters. Respondent failed to reply to this request, and repeatedly resisted scheduling a meeting. Bar Counsel eventually issued a subpoena for a statement under oath. Respondent then filed a motion to quash the subpoena, which was denied. Respondent and Bar Counsel then agreed to a statement under oath to be held in January 2015.

Respondent appeared for the statement under oath. In reviewing Respondent's responses during that statement, the hearing judge in this matter found that Respondent knowingly and intentionally testified falsely as to several matters.

After the statement under oath, the Attorney Grievance Commission filed a Petition for Disciplinary or Remedial Action against Respondent, and the Court of Appeals transmitted the case to the Circuit Court for Prince George's County to make findings of fact and conclusions of law. The hearing judge conducted an evidentiary hearing, reviewed the record, and concluded that Respondent violated MLRPC 3.1, 5.3(c), 5.4(d), 5.5(a), 7.5(d), 8.1(a) and (b), and 8.4(a), (c), and (d). Neither Petitioner nor Respondent filed exceptions.

Held:

The Court of Appeals concluded that Respondent engaged in the practice of law in a law firm with Solon Phillips, a nonlawyer, and ratified the unauthorized practice of law by Solon Phillips. Respondent violated the MLRPC through his obstruction of the disciplinary process in numerous ways, including by making material falsehoods to Bar Counsel and filing a frivolous motion to quash Bar Counsel's subpoena.

The Court of Appeals agreed with the hearing judge that Respondent violated MLRPC 3.1, 5.3(c), 5.4(d), 5.5(a), 8.1(a) and (b), and 8.4(a), (c), and (d). The Court held that Respondent had not violated Rule 7.5 ("Firm Names and Letterheads"), which requires that "[l]awyers may state or imply that they practice in a partnership or other organization only when that is the fact." In its conclusions that Respondent violated MLRPC 5.3(c), 5.4(d), and 5.5(a), the Court held that Respondent did practice with the law firm. Thus, a Rule 7.5 violation did not lie here.

The Court assessed Respondent's misconduct and aggravating factors, including his substantial experience in practice and his bad faith obstruction of the disciplinary process. The Court held that disbarment was the appropriate sanction. The Court stated that Respondent's intentional and repeated falsehoods when testifying at the statement under oath alone would warrant disbarment and, when added to his other violations of the MLRPC, disbarment was the clear sanction.

Attorney Grievance Commission of Maryland v. Philip James Sweitzer, AG No. 11, September Term 2014, filed February 22, 2017. Opinion by Barbera, C.J.

http://www.mdcourts.gov/opinions/coa/2017/11a14ag.pdf

ATTORNEY MISCONDUCT – DISCIPLINE – DISBARMENT

Facts:

Petitioner, the Attorney Grievance Commission of Maryland, acting through Bar Counsel, filed in the Court of Appeals a Petition for Disciplinary or Remedial Action (the "Petition") against Respondent, Philip James Sweitzer. The Petition alleged that Respondent violated Maryland Lawyers' Rules of Professional Conduct ("MLRPC") 8.4(b), (c), and (d). Those charges arose from Respondent's felony theft conviction in the Circuit Court for Howard County. The Court of Appeals issued an order suspending Respondent from the practice of law in the State of Maryland pending further order of the Court.

Respondent appealed his conviction to the Court of Special Appeals and on May 26, 2015, in an unreported opinion, the intermediate appellate court affirmed Respondent's conviction. On September 21, 2015, the Court of Appeals denied Respondent's petition for a writ of certiorari.

Bar Counsel filed a Motion for Further Proceedings. The Court assigned the matter to the Honorable Daniel P. Dwyer (the "hearing judge") to conduct an evidentiary hearing and make findings of fact and conclusions of law. The hearing judge made the following findings of fact by clear and convincing evidence.

On February 13, 2013, Respondent was indicted on the theft of property of Dr. Allen Tsai of at least $10,000 but less than $100,000, which, pursuant to Md. Code Ann., Crim. Law § 7-104 (2009, 2012 Repl. Vol.), is a felony. The Honorable Dennis Sweeney, Senior Judge, presided over the bench trial in the Circuit Court for Howard County, and, on October 7, 2013, found Respondent guilty of felony theft. The trial court relied on the following facts in reaching that decision, as later recounted in the Court of Special Appeals' opinion affirming the judgment of the trial court.

In early 2011, Dr. Tsai hired Respondent to assist him in his claim for disability benefits from his insurer, Penn Mutual (the "Penn Mutual Case"). Dr. Tsai's claim was premised on the medical opinion of Dr. Gerwin, who eventually reversed his medical opinion and concluded that Dr. Tsai was not totally disabled. As a result, Respondent urged Dr. Tsai to settle the Penn Mutual case and pursue a possible claim against Dr. Gerwin.

Meanwhile, Nu Image, a film company, filed a copyright claim against Dr. Tsai, alleging that he illegally downloaded movies from the internet (the "Nu Image Case"). Respondent also represented Dr. Tsai in that matter. When Respondent informed Dr. Tsai that Nu Image

indicated its willingness to settle the case for $2,000, Dr. Tsai sent Respondent $2,000 to settle the case. Respondent did not settle the case, nor did he return the $2,000 to Dr. Tsai. Dr. Tsai employed another attorney to settle the Nu Image Case but was unable to recover his $2,000 from Respondent.

In early 2012, Respondent informed Dr. Tsai that Penn Mutual would settle its case. Eventually, Dr. Tsai agreed to settle for $54,000. Per the terms of the settlement agreement, Penn Mutual sent Respondent the settlement funds. The disbursement sheet Respondent sent to Dr. Tsai indicated that Dr. Tsai was to receive $54,881.93. Over the following months, Dr. Tsai made "repeated attempts to get his settlement proceeds" from the Penn Mutual Case. Respondent exhibited a "collection of excuses and [a] litany of impediments that allegedly prevented him from delivering Dr. Tsai's funds." Respondent never paid Dr. Tsai the $54,881.93 in settlement proceeds from the Penn Mutual Case.

The hearing judge, relying upon Maryland Rule 16-771(g), found that Respondent's conviction of felony theft, affirmed by the Court of Special Appeals, supplied "conclusive evidence of his guilt of that crime."

Based upon these findings, the hearing judge concluded, by clear and convincing evidence, that Respondent violated MLRPC 8.4(b), (c), and (d).

Held:

Respondent filed exceptions. Those exceptions, rather than challenging the hearing judge's findings of fact or conclusions of law, generally attacked the underlying criminal conviction, the Court of Special Appeals' opinion affirming the conviction, and the Court's denial of Respondent's certiorari petition. The Court treated Respondent's arguments as "exceptions" and overruled each of them.

The Court held that Respondent's conviction for felony theft of client funds reflected poorly on his honesty and trustworthiness as a lawyer. The Court further held that Respondent intended to deprive his client of the funds in question. Theft or misappropriation of client funds is prejudicial to the administration of justice, especially when coupled with the deceitful behavior Respondent exhibited in accomplishing the theft. Based on the Court's *de novo* review of the record, the Court agreed with the hearing judge that Respondent violated MLRPC 8.4(b), (c), and (d).

Disbarment is the proper sanction when an attorney engages in dishonest and deceitful conduct for personal gain absent compelling extenuating circumstances. Respondent failed to provide any circumstances that might justify a lesser sanction. The Court therefore held that disbarment was the appropriate sanction for Respondent's misconduct.

Richmond D. Phillips v. State of Maryland, No. 7, September Term 2016, filed January 20, 2017. Opinion by Getty, J.

http://www.mdcourts.gov/opinions/coa/2017/7a16.pdf

CRIMINAL LAW – DNA ADMISSIBILITY STATUTE (COURTS & JUDICIAL PROCEEDINGS § 10-915) – COMPLIANCE WITH DNA TESTING STANDARDS

Facts:

The State charged the petitioner, Richmond Phillips, with the first-degree murders of his ex-girlfriend, Wynetta Wright, and their eleven-month-old daughter, Jaylin Wright. Wynetta died of a gunshot wound to the head. Her body was found in a park near the Hillcrest Heights Community Center in Prince George's County. Jaylin died of hyperthermia as a result of being left in a hot vehicle for an extended period of time. Her body was found in Wynetta's car in a parking lot near the park.

The police obtained DNA samples from the crime scenes, the victims, and Mr. Phillips, which were tested in June 2011 by forensic chemist Jessica Charak of the Prince George's County Police Department Crime Laboratory. Based on Ms. Charak's analysis, she concluded that the sample taken from the steering wheel of Wynetta's car was consistent with Mr. Phillips' DNA profile and, therefore, he could not be excluded as a contributor to the sample. Ms. Charak found that the steering wheel sample also contained genetic material from Wynetta, Jaylin, and at least two additional unknown contributors. Ms. Charak calculated that "[t]he chances of selecting an unrelated individual from the random population who would be included as a possible contributor to the mixed DNA profile obtained from the evidence sample . . . are approximately . . . 1 in 2.93 million individuals in the African American population." Ms. Charak's report contained a statement that the analysis was "determined by procedures which have been validated according to the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing Laboratories."

Prior to trial, Mr. Phillips filed a motion *in limine* to exclude the State's DNA evidence and related expert testimony. Mr. Phillips argued that the Prince George's County Laboratory's methods of analyzing complex, low-template DNA samples were not generally accepted as reliable in the relevant scientific community, and thus the evidence was inadmissible under *Frye-Reed*. The State responded that the DNA evidence and related expert testimony were automatically admissible under the DNA Admissibility Statute, Courts & Judicial Proceedings § 10-915, and thus a *Frye-Reed* hearing was not necessary to determine admissibility.

The trial court conducted two hearings to determine the admissibility of the DNA evidence. First, the trial court held a hearing to determine whether the Prince George's County Laboratory was in compliance with the DNA Admissibility Statute, which would render the evidence automatically admissible without the need for a *Frye-Reed* hearing. At this initial hearing, the

trial court determined that the Laboratory was not in compliance with the Statute, and therefore the DNA evidence was not automatically admissible. Next, the trial court conducted a *Frye-Reed* hearing to determine whether the Laboratory's methods of analysis were generally accepted as reliable within the relevant scientific community. The trial court concluded that the Laboratory's methods satisfied this standard, and therefore the DNA evidence would be admissible at trial.

Mr. Phillips was tried before a jury beginning on January 14, 2013. The trial court admitted into evidence the analysis of the DNA samples, and Ms. Charak testified regarding her conclusions. On January 17, 2013, the jury convicted Mr. Phillips of the first-degree murders of Wynetta and Jaylin, and related charges. On March 22, 2013, the trial court sentenced Mr. Phillips to two consecutive terms of life imprisonment without the possibility of parole. Mr. Phillips appealed, and the Court of Special Appeals affirmed the convictions. Mr. Phillips petitioned for a writ of certiorari, requesting review of whether the lower courts erred in holding that the DNA evidence was admissible under *Frye-Reed*. The State filed a conditional cross-petition, requesting review of whether the lower courts erred in holding that the DNA evidence did not qualify for automatic admissibility under Courts & Judicial Proceedings § 10-915. The Court of Appeals granted both the petition and the cross-petition.

Held: Affirmed.

The Court of Appeals held that the DNA evidence was automatically admissible under Courts & Judicial Proceedings § 10-915, and the trial court erred by conducting a *Frye-Reed* hearing to determine its admissibility. The version of the DNA Admissibility Statute in effect throughout Mr. Phillips' proceedings provided that DNA evidence is automatically admissible if the analysis was performed in accordance with "standards established by TWGDAM or the DNA Advisory Board." The Federal Bureau of Investigation's Quality Assurance Standards were promulgated by the DNA Advisory Board in 1998 and 1999, and revised by the FBI Director in 2009. Therefore, the QAS are standards established by the DNA Advisory Board, regardless of the fact that the Board itself expired in 2000 at the end of its statutory term.

The Prince George's County Laboratory's DNA analysis, performed in accordance with the QAS, satisfied the DNA Admissibility Statute's requirements. Accordingly, the trial court should have determined that the DNA evidence was automatically admissible under Courts & Judicial Proceedings § 10-915, and should not have conducted a *Frye-Reed* hearing to determine its admissibility. However, the trial court's error in conducting a *Frye-Reed* hearing was harmless because it ultimately reached the correct conclusion that the DNA evidence would be admissible at trial.

In the Matter of Judge Pamela J. White, Misc. No. 5, September Term 2016, filed February 22, 2017. Per Curiam.

http://www.mdcourts.gov/opinions/coa/2017/5a16m.pdf

RIGHT OF APPEAL – ORIGIN, NATURE, AND SCOPE.

JUDGES – REMOVAL OR DISCIPLINE – REPRIMAND – PROCEEDINGS AND REVIEW –MANDAMUS.

Facts:

Judge Pamela J. White is an Associate Judge of the Circuit Court for Baltimore City who became the subject of several complaints to the Commission on Judicial Disabilities ("Commission") by an attorney named Rickey Nelson Jones. All of Mr. Jones' complaints related to alleged misconduct of Judge White during hearings in 2014 in a case in which Mr. Jones represented the plaintiff.

The Commission's Investigative Counsel conducted an investigation of those complaints and, in March 2016, was authorized by the Commission to file a statement of charges against Judge White. After holding an evidentiary hearing on those charges, the Commission issued an order finding that Judge White had committed sanctionable conduct and reprimanding her.

Under the Maryland Constitution and Maryland Rules, the Commission may reprimand a judge for misconduct without referring the matter to the Court of Appeals. However, Judge White sought review of the Commission's action in the Court of Appeals. She filed a pleading entitled "Appeal and, in the Alternative, Petition for Writ of Certiorari." She asked the Court to review (1) whether the Commission had denied her procedural due process and (2) whether the Commission had erred in finding sanctionable misconduct and reprimanding her. The Commission asked the Court of Appeals to dismiss her appeal.

Held:

Appellate jurisdiction is largely a creature of statute. There is no statute that grants appellate jurisdiction to the Court of Appeals to review a decision of the Commission to reprimand a judge.

The Court of Appeals, however, does have original jurisdiction to review the Commission's exercise of its non-discretionary duties under a common law writ of mandamus. In this case, that means that the Court may review whether the Commission proceedings concerning Judge White provided the fundamental fairness required by the Maryland Constitution and Maryland Rules. Once the Commission has provided the procedural due process required by the Constitution and

Rules, if the Commission reprimands a judge, the Court of Appeals does not have authority to review the Commission's exercise of discretion in finding sanctionable conduct and in reprimanding a judge for that conduct.

The Court directed the Commission to file the record of its proceedings involving Judge White. Once the record is filed, the Court will establish a briefing schedule. The briefs are to be confined to the issue whether the Commission proceedings provided the due process required by the Constitution and Rules.

Balfour Beatty Infrastructure, Inc. v. Rummel Klepper & Kahl, LLP, No. 14, September Term 2016, filed February 21, 2017. Opinion by Adkins, J.

http://www.mdcourts.gov/opinions/coa/2017/14a16.pdf

TORTS – DUTY – ECONOMIC LOSS DOCTRINE

TORTS – DUTY – PRIVITY-EQUIVALENT INTIMATE NEXUS

Facts:

The City of Baltimore ("City") contracted with Rummel Klepper & Kahl, LLP ("Engineer") to design upgrades to the Patapsco Wastewater Treatment Plant. Under the contract, Engineer was tasked with designing the plans for two interrelated projects, Sanitary Contract 852R ("SC 852R") and Sanitary Contract 845R ("the companion project"). Balfour Beatty Infrastructure, Inc. ("Contractor") was the successful bidder for SC 852R.

Under its contract with the City, Contractor agreed to construct 34 denitrification filter cells ("DNF cells"), which are concrete tubs that hold untreated wastewater, next to the existing wastewater treatment facility. During construction, Contractor encountered leaking and other problems, which resulted in delays and cost overruns.

In 2014, Contractor filed a complaint against Engineer in the Circuit Court for Baltimore City seeking to recover its financial losses. According to Contractor's complaint, it constructed the DNF cells according to Engineer's design, and any leaking was a "direct result of deficiencies in [Engineer's] design." It alleged "substantial additional costs, expenses and time to remediate the leaks." Contractor also claimed that Engineer failed to timely complete the design and established an unreasonable time line for SC 852R's companion project, which "hindered and delayed" Contractor's construction of SC 852R. As a result, Contractor claimed, it "incurred significant cost, expense and time for which [Engineer] is responsible."

In its three-count complaint against Engineer, Contractor brought a professional negligence claim, a negligent misrepresentation claim, and a cause of action based on Restatement (Second) of Torts § 552. As to the professional negligence claim, Contractor alleged that an "intimate nexus" and "contractual privity equivalent" existed between it and Engineer, and that Engineer owed it a duty of reasonable care "exercised by similarly situated design professionals."

In its negligent misrepresentation claim, Contractor asserted that because Engineer designed the interrelated projects, it was aware that any delay in the design of the companion project would impact SC 852R. In Contractor's words, Engineer owed it "a duty to fairly and accurately describe the contract duration for [SC 852R] as well as the status of the [companion project's] design." Finally, in its Restatement (Second) of Torts § 552 cause of action, Contractor alleged that Engineer provided designs, plans, and specifications for the construction of SC 852R, which

contained deficiencies, and knew or should have known that Contractor would rely on those documents, causing it damages.

Engineer filed a motion to dismiss for failure to state a claim, primarily arguing that without privity between the parties, no legally cognizable tort duty ran from Engineer to Contractor that would permit recovery of purely economic losses. The Circuit Court granted Engineer's motion to dismiss. The Court of Special Appeals affirmed.

Held: Affirmed.

The Court of Appeals held that the privity-equivalent duty analysis of the intimate nexus test from *Jacques v. First National Bank of Maryland*, 307 Md. 527 (1986), does not extend to design professionals on public construction projects. Therefore, in the absence of privity of contract, physical injury, or risk of physical injury a design professional cannot be held liable to a contractor on the same government construction project for purely economic losses. In reaching its holding, the Court revisited the economic loss doctrine, which is a principle courts have used to limit the expansion of tort liability absent privity. It explained that under Maryland law, when there is no physical injury or risk of physical injury, a party must establish that an intimate nexus exists between the parties to recover purely economic losses. The intimate nexus test may be satisfied by privity or its equivalent.

Contractor argued that the Court should apply the privity-equivalent analysis of the intimate nexus test to design professionals like Engineer. Applying the economic loss doctrine, the Court rejected Contractor's argument. It explained that a complex web of contracts typically underlies large public construction projects, and these contractual agreements should govern because parties have sufficient opportunity to protect themselves (and anticipate their liability) in negotiating them. Moreover, imposing a tort duty on design professionals on public construction projects would likely result in increased project costs which would be passed on to government entities. The Court expressly left open whether the privity-equivalent duty analysis applies to design professionals in other contexts.

As to Contractor's claims, because the Court declined to extend the privity-equivalent duty analysis to design professionals on government construction projects, Contractor could not establish a duty on the part of Engineer. Therefore, its professional negligence claim failed. Contractor's negligent misrepresentation claim also depended on its ability to establish a duty on the part of Engineer, so it similarly failed. Finally, as to Contractor's Restatement (Second) of Torts § 552 cause of action, the Court explained that § 552 describes a type of negligent misrepresentation, which it has cited as a privity equivalent. But, the Court further explained, a privity equivalent still depends upon judicial recognition of a tort duty. And because it had already concluded that the privity-equivalent intimate nexus test does not apply to large-scale government construction projects, Contractor could not use § 552 to establish a duty.

COURT OF SPECIAL APPEALS

Monarch Academy Baltimore Campus, Inc., et al. v. Baltimore City Board of School Commissioners, No. 404, September Term 2016, filed February 2, 2017. Opinion by Graeff, J.

http://www.mdcourts.gov/opinions/cosa/2017/0404s16.pdf

APPELLATE JURISDICTION – FINAL JUDGMENT – EXHAUSTION OF ADMINISTRATIVE REMEDIES – STAY PENDING ADMINISTRATIVE REVIEW – EFFECTIVELY OUT OF COURT – COLLATERAL ORDER DOCTRINE

Facts:

In 2015, a number of Baltimore City's public charter schools (the "Charter Schools"), appellants, filed breach of contract complaints against the Baltimore City Board of School Commissioners (the "City Board"), appellee. The Charter Schools asserted that the Charter School Agreement (the "Contract") that they entered into with the City Board, addressed, among other things, funding of the schools and the City Board's obligation to provide financial transparency in the funding process. The complaints asserted one count for breach of contract, averring that the City Board "is contractually obligated to provide [the Charter Schools] "commensurate funding" under the Contracts, but has failed to do so"; the City Board "is contractually obligated to provide [the Charter Schools] certain budget and financial information under the Contracts, but has failed to do so"; and the Charter Schools "ha[ve] sustained damages and will continue to sustain damages as a result of [the City Board's] breach of contract."

The City Board filed motions "to dismiss, or in the alternative, motion to stay," asserting, among other things, that the "gravamen" of the complaints, that the City Board had not provided "commensurate funding" for charter school students, was a matter that should be decided by the State Board, not the court, under the primary jurisdiction doctrine. The court ultimately determined that the State Board has primary jurisdiction over issues involved in the Charter Schools' breach of contract claim against the City Board, and therefore, it stayed the circuit court proceedings pending administrative review of issues relating to the parties' dispute (the "Stay Order").

The Charter Schools filed this appeal seeking review of the court's Stay Order, arguing that the court's Stay Order was erroneous because primary jurisdiction does not apply in this case.

Although the parties did not seek a ruling on whether the Stay Order is an appealable issue, this Court must address appellate jurisdiction.

Held: Dismissed.

Except in a case involving one of the narrow exceptions under Maryland Code (2013) § 12-303 of the Courts & Judicial Proceedings Article, the collateral order doctrine, or Rule 2-602(b), a party may appeal only from a final judgment on the merits. "[T]o constitute a final judgment, a trial court's ruling 'must either decide and conclude the rights of the parties involved or deny a party the means to prosecute or defend rights and interests in the subject matter of the proceeding.'" *Schuele v. Case Handyman & Remodeling Servs.*, LLC, 412 Md. 555, 565 (2010) (quoting *Nnoli v. Nnoli*, 389 Md. 315, 324 (2005)).

Here, the Stay Order did not conclude the rights of the parties or adjudicate all of the claims in the action. Thus, the issue is whether the Stay Order denied the Charter Schools the ability to litigate its breach of contract claim and resulted in the Charter Schools being put effectively out of court. We conclude that it did not. Once the State Board makes a determination on the commensurate funding issues presented, the breach of contract case can return to the circuit court and proceed on the merits. The Stay Order effectively operates as a postponement of trial, not as an order resulting in the Charter Schools being put effectively out of court. Under these circumstances, the Stay Order is not a final judgment.

The Stay Order is not appealable under the limited collateral order doctrine. To be appealed under the collateral order doctrine, an order must meet the following four requirements: "'(1) conclusively determines the disputed question, (2) resolves an important issue, (3) resolves an issue that is completely separate from the merits of the action, *and* (4) would be effectively unreviewable if the appeal had to await the entry of a final judgment.'" *Id*. at 572 (quoting *Walker v. State*, 392 Md. 1, 15 (2006)).

Here, the Stay Order does not meet the third requirement, that it resolve an issue separate from the merits of the action. A trial court's determination whether the primary jurisdiction doctrine is applicable is "bound up" with the merits of the action, and therefore, a ruling in this regard is not appealable under the collateral order doctrine.

Earl Sylvester Cousins v. State of Maryland, No. 99, September Term 2016, filed February 1, 2017. Opinion by Arthur, J.

http://www.mdcourts.gov/opinions/cosa/2017/0099s16.pdf

CRIMINAL LAW – RIGHT OF DEFENDANT TO COUNSEL OF HIS/HER CHOICE – REQUEST TO DISCHARGE COUNSEL

SIXTH AMENDMENT – CRIMINAL DEFENDANT'S RIGHT TO BE PRESENT AT TRIAL – WAIVER OF RIGHT TO BE PRESENT

Facts:

On the day before his robbery trial was to begin in the Circuit Court for Baltimore County, Earl Sylvester Cousins asked to discharge his court-appointed counsel because of (1) counsel's failure to introduce a portion of a video-recording from his police interview during the motions hearing which Mr. Cousins believed was evidence that his police statement was not voluntary, and (2) the breakdown of his relationship with his counsel, which included a pending complaint to the Attorney Grievance Commission.

In accordance with Maryland Rule 4-215, the court afforded Mr. Cousins and his attorney multiple opportunities to explain Mr. Cousins's complaints, and ruled that he did not have a meritorious reason to discharge counsel. The court attempted to dissuade Mr. Cousins from dismissing defense counsel and warned him of the consequences of doing so. Nevertheless, Mr. Cousins refused to proceed with defense counsel and elected to exercise his right of self-representation.

When the trial began the following day, Mr. Cousins announced his intention to disrupt the proceedings, and he engaged in a profanity-laden tirade against the judge. The court ordered that he be removed from the courtroom. The court did not provide with Mr. Cousins with a means to watch or listen to the proceedings, but it offered him multiple opportunities to return if he agreed to behave in a civil fashion. Mr. Cousins did not agree.

The jury convicted Mr. Cousins of robbery, and the court sentenced him to 15 years' imprisonment. Mr. Cousins appealed.

Held: Affirmed

The Court held that the trial court did not abuse its discretion in ruling that Mr. Cousins's reasons to discharge counsel were unmeritorious. The video that Mr. Cousins wanted to introduce consisted of almost two hours of irrelevant footage of him passing time in a room after he had been interviewed by the police. Throughout the majority of the video, Mr. Cousins is either

asleep or lying on the floor with a blanket on top of him. The Court reasoned that failing to attempt to introduce two hours of video footage showing Mr. Cousins asleep or unconscious after would have been senseless and an unproductive use of the court's time. The motions court had an ample opportunity to observe Mr. Cousins's demeanor during the interview itself and to rule accordingly on the voluntariness of his statements.

The Court concluded that the breakdown of Mr. Cousins's relationship with counsel, which included the groundless, and subsequently dismissed, attorney grievance complaint, was Mr. Cousins's unilateral attempt to manipulate the proceedings against him. The acrimony Mr. Cousins harbored towards defense counsel stemmed from his unreasonable demands and an irrational disagreement regarding legal strategy.

Although defense counsel objected to going forward while the grievance was pending, he did not identify how the grievance would materially inhibit his ability to represent Mr. Cousins other than to prevent him from making a vain request to re-open the suppression hearing to attempt to introduce the video of Mr. Cousins asleep or unconscious. Instead, counsel told the court that he was ready to try the case and "would like to take every opportunity to continue to represent [the defendant]." The court gave wide latitude to both Mr. Cousins and his attorney to discuss Mr. Cousins's complaints. Consequently, the trial court properly recognized that the baseless grievance had no material effect on counsel's ability to represent Mr. Cousins at trial. Permitting discharge of counsel and a postponement in these circumstances would have rewarded Mr. Cousins for his unacceptable conduct, for his unjustified contentions, and for fabricating a conflict by filing a groundless grievance.

The Court held that the trial court also did not err in its decision to remove Mr. Cousins from the courtroom, where he engaged in a profanity-laden tirade against the judge and announced his intention to disrupt the proceedings. Maryland Rule 4-231 provides a defendant the right to be present at every stage of his or her trial. However, a defendant who engages in conduct that justifies exclusion from the courtroom waives that right. A defendant who is removed from the courtroom must be advised of the opportunity to return to the proceedings upon a promise to behave properly.

Citing *Biglari v. State*, 156 Md. App. 657 (2004), Mr. Cousins contended that the court should have given him a video or audio feed of the proceedings so that he could remain apprised of what was happening. However, *Biglari* does not require that defendants be provided a means to watch or listen to the proceedings when a court removes them from the courtroom because of their misconduct. *Biglari* requires only that a trial court give a defendant the opportunity to return to the courtroom upon a promise to behave appropriately. The court properly safeguarded Mr. Cousins's right to re-enter the trial, where it afforded him multiple opportunities to return to the courtroom if he promised to behave appropriately. Mr. Cousins refused to conform his conduct to the court's reasonable expectations.

Curtis Maurice Lopez v. State of Maryland, No. 1887, September Term 2013, filed February 2, 2017. Opinion by Krauser, C.J.

http://www.mdcourts.gov/opinions/cosa/2017/1887s13.pdf

CRIMINAL LAW – SENTENCING – VICTIM IMPACT

Facts:

Curtis Maurice Lopez, appellant, brutally murdered and robbed Jane McQuain, striking her in the head with a thirty pound dumbbell and stabbing her twice in the back with a butcher knife, and he subsequently kidnapped and brutally murdered her eleven-year-old son, William McQuain, beating him in the head with an aluminum baseball bat, shattering his skull into 36 pieces. Lopez thereafter entered *Alford* pleas to the robbery and first degree murder of Jane McQuain and the kidnapping and first degree murder of William McQuain, in the Circuit Court for Montgomery County.

In preparation for his sentencing hearing, Lopez filed a motion, asking the circuit court to direct the State "to disclose and state with particularity" what it intended to introduce at the sentencing hearing pursuant to Maryland Rule 4-342(d), which requires the State, "[s]ufficiently in advance of sentencing to afford the defendant a reasonable opportunity to investigate," to "disclose to the defendant or counsel any information that the State expects to present to the court for consideration in sentencing." The State responded that it intended to use anything that was in the discovery materials that had been provided to Lopez, which comprised approximately 10,000 pages. Agreeing with the State, the circuit court denied Lopez's motion. Then, during the non jury sentencing hearing, the State, over defense objection, broadcast a victim impact video to the court. The challenged video was an approximately six-minute montage of 115 still photographs, showing the two victims, Jane and William McQuain, throughout their lives, either alone, together, or with a family member or friend; it began with a bell ringing and was then initially accompanied by a piano instrumental piece and then by a pop song, as each photograph faded in and out. Finally, it concluded with the same sound of a ringing bell that signaled the commencement of the video. It contained no oral or written narration; the only words appearing in the video were its title, "The Story of Jane and William," and the credits at the end of the video, listing individuals who provided photographs.

At the conclusion of the sentencing hearing, the circuit court imposed multiple terms of imprisonment, the longest of which were two consecutive terms of life imprisonment, without the possibility of parole, for the two first degree murder charges. Lopez subsequently filed an application for leave to appeal, contending that the circuit court had erred in denying his motion to compel the State to comply with Rule 4 342(d) and in admitting the victim impact video. The Court of Special Appeals granted Lopez's application and transferred the case to the appeals docket.

Held: Affirmed.

The Court of Special Appeals held that, under the circumstances, the State's purported response to Lopez's request "to disclose and state with particularity" what it intended to introduce at the sentencing hearing did not comply with Maryland Rule 4-342(d), given the enormous volume of discovery materials. It further held, however, that the circuit court's error, in denying Lopez's motion to compel the State to comply with the rule, was harmless, given defense counsel's failure to indicate, during sentencing, that he was not prepared to respond to any information adduced by the State, and the sentencing court's express reliance, in pronouncing sentences, on the uncontested brutality of the murders and Lopez's violent criminal history.

As for the victim impact video, the Court of Special Appeals rejected Lopez's claims that the introduction of that video, during his sentencing hearing, violated both the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment. Regarding Lopez's Eighth Amendment claim, the appellate Court observed that, even in capital sentencing proceedings, the Supreme Court has outlawed only victim impact evidence containing the "victim's family members' characterizations and opinions about the crime, the defendant, [or] the appropriate sentence" but that the challenged video contained nothing within those prohibited categories. Regarding Lopez's due process claim, the Court held that the victim impact video was relatively brief, affording the victims' family the opportunity to present to the sentencing court a "quick glimpse" into the two lives extinguished by Lopez; that it was probative because it portrayed the harm inflicted by Lopez's double murders; and that neither the use of still photographs of the victims, nor the music selections, created an undue risk that Lopez's consecutive sentences of life, without the possibility of parole, were the product of an inflammatory video.

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Vaqar Choudry v. State of Maryland, No. 2541, September Term 2015, filed February 3, 2017. Opinion by Friedman, J.

http://www.mdcourts.gov/opinions/cosa/2017/2541s15.pdf

CRIMINAL LAW – SEXUAL SOLICITATION OF A MINOR – ELEMENTS

Facts:

Vaqar Choudry sought the help of Corina Drury to find a prepubescent female child with whom Choudry could have sexual relations. Although Drury told Choudry that she was in contact with a minor, Drury never solicited a minor or a law enforcement officer posing as a minor. Drury did, however, contact the police and inform them about what Choudry wanted. Acting on police instructions, Drury recorded conversations in which Choudry described the sexual acts he wanted to perform with the minor. When Choudry arrived at a hotel to meet Drury and the fictitious minor, he was arrested by police.

Held: Reversed.

Because there was not an actual minor or law enforcement officer posing as a minor solicited by Choudry or by Drury, Choudry did not violate Criminal Law § 3-324. CR § 3-324 requires: (1) a solicitation; (2) of a minor or a law enforcement officer posing as a minor; and (3) to engage in a prohibited sex act. The legislature intended courts to apply an objective standard to determine the second element of the crime, whether the defendant solicited a minor or a law enforcement officer. Choudry's request that Drury solicit a minor is not sufficient to constitute a violation of CR § 3-324 because the language of the statute does not include a prohibition on attempted sexual solicitation of a minor.

Cleanwater Linganore, Inc. et al. v. Frederick County, Maryland et al., No. 2212, September Term 2015, filed February 3, 2017. Opinion by Berger, J.

http://www.mdcourts.gov/opinions/cosa/2017/2212s15.pdf

LAND USE – DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENTS – FREEZE PROVISION – COVENANT RUNNING WITH THE LAND – ENHANCED PUBLIC BENEFIT

Facts:

This case is a challenge of a a Development Rights and Responsibilities Agreement ("DRRA") entered into by property owners Lillian C. Blentlinger, LLC and William L. Blentlinger, LLC, ("the Blentlingers") and Frederick County ("the County") for the development of the Blentlingers' two parcels of land in Frederick County. The parcels had been designated low density residential, pursuant to which a property owner is permitted to apply for a Planned Unit Development ("PUD"), until 2007, when the property was reclassified and became ineligible for PUD designation. In 2012, the Frederick County Board of Commissioners ("BOCC") restored the low density residential designation, and the Blentlingers subsequently filed a PUD zone application on February 25, 2014, which included a draft DRRA. After public hearings, the BOCC voted to approve the PUD application and the proposed DRRA. The final DRRA was executed on November 24, 2014.

The appellants, made up of various individuals and citizens groups, filed a petition for judicial review of both the PUD and DRRA actions in the Circuit Court for Frederick County. The circuit court upheld both actions, and the appellants appealed to this Court.

Held: Reversed.

Appellants raised three issues before the Court of Special Appeals: (1) whether the DRRA "froze" a wider category of laws than permitted under the statute; (2) whether the DRRA could lawfully contain a provision providing the DRRA constitutes a covenant running with the land; and (3) whether the DRRA was void for lack of consideration in the form of enhanced public benefits.

With respect to whether the DRRA impermissibly "froze" a wider category of laws than permitted under the statue, the Court looked to its recent opinion in *Cleanwater Linganore, Inc., et al. v. Frederick County, Maryland, et al.*, ___ Md. App. ___, No. 1917, Sept. Term 2015 (Ct. of Spec. App. Dec. 28, 2016), in which the Court addressed a nearly identical issue regarding the scope of a DRRA freeze provision. The Court considered the legislative history and purpose of the DRRA Act and concluded that the DRRA freeze provision can include a broader range of

laws beyond local zoning ordinances. The Court held that the language of the Blentlinger-County DRRA did not impermissibly expand the scope of local laws, rules, regulations, and policies under Md. Code (2012, 2014 Repl. Vol.), § 7-304 of the Land Use Article ("LU").

The Court next considered the appellants' argument that the DRRA impermissibly included a provision providing that the DRRA constitutes a covenant running with the land. The appellants had argued that Maryland law does not permit a DRRA to be converted into a real property interest, while the Blentlingers responded that the language of the DRRA merely confirmed what was already required under Maryland law. The Court of Special Appeals observed that a DRRA must be recorded in the land records of the local jurisdiction pursuant to LU § 7-305(d) and that the statute provides that successors in interest are bound by a properly recorded DRRA. The Court held that the Blentlinger County DRRA satisfied the requirements for a covenant running with the land because (1) the covenant touched and concerned the land; (2) the original covenanting parties intended the covenant to run with the land; (3) there was privity of estate because the original parties continue to hold interests in the property; and (4) the covenant was in writing.

Finally, the Court of Special Appeals addressed whether the DRRA was supported by consideration in the form of enhanced public benefit to the County. The Court explained that a DRRA must be supported by some benefit that will accrue to the local government over and above what is required by existing land use regulations. The Court of Special Appeals held that the benefit identified by the parties in this case -- namely, a requirement that the developer proffer a school site to the Board of Education, which may prove illusory if the Board of Education chose to reject the proffered site, as well as the developer's agreement to pay for certain road, sewer, and water improvements -- failed to satisfy what was required under the law.

William H. Torbit, Sr., et al. v. Baltimore City Police Department, et al., No. 1475, September Term 2015, filed February 2, 2017. Opinion by Friedman, J.

http://www.mdcourts.gov/opinions/cosa/2017/1475s15.pdf

TORTS – DUTY – SPECIAL RELATIONSHIP

TORTS – DUTY – CAUSATION

TORTS – GROSS NEGLIGENCE

Facts:

Two people died and several were injured during a police-involved shooting. On the night of the shooting, Police ordered the closing of a nightclub. A perimeter was established and Baltimore Police Department ("BPD") officers directed people to a nearby parking lot to retrieve their cars. An unidentified man in dark clothing got into an argument with one of the nightclub patrons in the parking lot. A man then "sucker punched" the dark-clothed man and a group of men beat and knocked the dark-clothed man to the ground. The dark-clothed man began indiscriminately firing a gun. Several BPD officers rushed to the scene and fired at the dark-clothed man. The dark-clothed man and another man were fatally wounded, and several other nightclub patrons suffered gunshot wounds. The dark-clothed man was later identified as Officer William Torbit.

Held: Affirmed.

The Court held that the Police Department and Police Commissioner did not owe a legally cognizable tort duty to Appellants because neither committed an affirmative act to give rise to a special relationship.

Further, the Court held that an adjoining parking lot owner and operator were not the proximate cause of Appellants' injuries because an intervening act—the dark-clothed man firing a gun—was a superseding cause of Appellants' injuries.

Finally, the Court held that no reasonable juror could find that individual police officers who fired their guns were grossly negligent.

Marcee Zakwieia v. Baltimore County, Board of Education, No. 2492, September Term 2015, filed February 3, 2017. Opinion by Berger, J.

http://www.mdcourts.gov/opinions/cosa/2017/2492s15.pdf

WORKERS COMPENSATION – DISABILITY PENSIONS – STATUTORY OFFSET

Facts:

On December 13, 2007, Marcee Zakwieia, the claimant, suffered an accidental injury to her back while employed by the Baltimore County Board of Education. Thereafter, the claimant filed a claim with the Workers' Compensation Commission ("the Commission") and was awarded workers' compensation benefits for injuries to her back and right shoulder.

Following the injury, the claimant applied for accidental disability retirement benefits through the Maryland State Retirement Agency. The Maryland State Retirement and Pension System denied the claimant's application for accidental disability retirement benefits but awarded the claimant ordinary disability retirement benefits. Part of the ordinary disability retirement award was due to the claimant's pre-existing back condition related to degenerative arthritis of the lumbar spine.

A hearing was held before the Commission on March 26, 2014 on, *inter alia*, the issue of whether the Board was entitled to an offset under Md. Code (1991, 2008 Repl. Vol.), § 9-610 of the Labor & Employment Article ("LE"). The Commission concluded that the claimant's ordinary disability retirement benefits and workers' compensation benefits were "similar benefits" under LE § 9-610(a), and, therefore, were subject to the statutory offset.

The claimant appealed the Commission's orders to the Circuit Court for Baltimore County, which upheld the decisions by the Commission and found that the statutory offset in LE § 9-610 was applicable to the claimant's benefits. The claimant appealed.

Held: Affirmed.

The Court of Special Appeals held that the statutory offset set forth in LE § 9-610 was applicable to the claimant's benefits. The relevant statute provides:

> (a)(1) Except for benefits subject to an offset under § 29-118 of the State Personnel and Pensions Article, if a statute, charter, ordinance, resolution, regulation, or policy, regardless of whether part of a pension system, provides a benefit to a covered employee of a governmental unit or a quasi-public corporation that is subject to this title under § 9-201(2) of this title or, in case of death, to the dependents of the covered employee, payment of the benefit by the

> employer satisfies, to the extent of the payment, the liability of the employer and the Subsequent Injury Fund for payment of similar benefits under this title.

The Court of Special Appeals explained that the crux of the appeal was whether the workers' compensation benefits awarded to the claimant for her permanent partial disability were "similar benefits" to the ordinary disability benefits paid by the employer. The court rejected the claimant's contention that the LE § 9-610 offset applies only when the basis for both benefits is the result of the same injury, instead holding that the term "similar" refers to the nature of the benefit awarded to the employee (i.e., disability benefits), and not the nature of the underlying injury.

The Court examined the history of workers' compensation law in Maryland and observed that the law has long aimed to prevent governmental authorities from being obliged to pay double benefits for a single injury. The Court considered the history of LE § 9-610, explaining that the legislative intent of the offset provision was to provide a single recovery for employees covered by both government pension plans and workers' compensation. The Court of Special Appeals considered its previous opinion in *Reynolds v. Board of Educ. of Prince George's County*, 127 Md. App. 648 (1999), in which the Court held that the LE § 9-610 offset applied to when an employee was awarded ordinary disability retirement benefits for health problems caused by occupational exposure to diesel fuel and fumes. In *Reynolds*, the Court reasoned that "[t]he ordinary disability retirement benefit is tantamount to a wage loss benefit similar to a workers' compensation award to the extent that the benefits are payable prior to a point in time when service retirement benefits would have been payable in the absence of disability or to any amount in excess of service retirement benefits." *Id*. at 655.

The claimant had maintained that, under *Reynolds*, the LE § 9-610 offset applied only when a single medical condition forms the basis for both the ordinary disability retirement benefits and the workers' compensation benefits. The Court rejected that assertion, emphasizing that the critical similarity in *Reynolds* was based upon the benefits provided, not upon the medical condition. The Court noted that permitting the claimant to receive both the workers' compensation award and the ordinary disability retirement award would result in a windfall to the claimant which would be contrary to the purposes of LE § 9-610. Accordingly, the Court held that the proper interpretation of the term "similar benefits" is whether the benefits provide a similar wage loss benefit to a workers' compensation award, not whether the benefits accrue from a similar injury.

The Court further rejected an assertion by the claimant that the employer and the Subsequent Injury Fund cannot both receive the benefit of the LE § 6-910 offset, finding that the clear and unambiguous language of the statute provided that both the employer and the Subsequent Injury Fund were entitled to the offset.

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ATTORNEY DISCIPLINE

*

By an Opinion and Order of the Court of Appeals dated January 20, 2016, the following attorney has been indefinitely suspended, effective February 21, 2017:

RICHARD ALLEN MOORE, II

*

By an Order of the Court of Appeals dated January 20, 2016, the following attorney has been indefinitely suspended by consent, effective February 21. 2017:

GEORGE ZACHARIAS PETROS

*

By an Order of the Court of Appeals dated February 16, 2017, the following attorney has been suspended:

DIANA BETH DENRICH

*

By an Order of the Court of Appeals dated February 16, 2017, the following attorney has been disbarred:

ELEANOR NACE

*

By an Order of the Court of Appeals dated February 22, 2017, the following attorney has been indefinitely suspended by consent:

WILLIE JAMES MAHONE

*

By an Order of the Court of Appeals dated February 28, 2017, the following attorney has been disbarred by consent:

BRANDON DAVID ROSS

*

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JUDICIAL APPOINTMENTS

*

On December 21, 2016, the Governor announced the appointment of **RAND LEWIS GELBER** to the District Court of Maryland – Montgomery County. Judge Gelber was sworn in on February 9, 2017 and fills a new judgeship created by the General Assembly.

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RULES ORDERS AND REPORTS

A Rules Order pertaining to the One Hundred Ninety-Second Report of the Standing Committee on Rules of Practice and Procedure was filed on February 16, 2017.

http://mdcourts.gov/rules/rodocs/ro192.pdf

UNREPORTED OPINIONS

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

http://www.mdcourts.gov/appellate/unreportedopinions/index.html

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