UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2655

September Term, 2014

DESIREE HARRIS, et al.

v.

HOWARD COUNTY POLICE DEPARTMENT, et al.

Meredith,
Nazarian,
Friedman,

JJ.

Opinion by Meredith, J.

Filed: January 13, 2016

Desiree Harris and her sons — Tyrell Harris and Tevin Harris — collectively, "appellants," noted this appeal after the Circuit Court for Howard County granted a motion to dismiss an amended complaint filed against the Howard County Police Department, its former chief (William J. McMahon), and three individual police officers (Christopher Weir, Shannon Cole, and James Myers), collectively, "appellees." The motion to dismiss asserted that appellants failed to comply, either strictly or substantially, with the notice requirements found in Maryland Code, Courts and Judicial Proceedings Article ("CJP"), § 5-304 of the Local Government Tort Claims Act (hereinafter, "LGTCA"), without good cause to excuse their non-compliance. In this appeal, appellants contend that the circuit court erred and abused its discretion in granting appellees' motion, both because it should have found substantial compliance by the appellants, and because it should have found good cause for appellants' non-compliance.

QUESTIONS PRESENTED

Appellants present the following two questions for our review:

1. Whether the circuit court erred in ruling that the Harris family did not substantially comply with the Local Government Tort Claims Act notice requirement?

2. Whether the circuit court abused its discretion by not finding good cause for waiving the Local Government Tort Claims Act notice requirement?

We answer both questions "no," and affirm the judgment of the Circuit Court for Howard County.

FACTS AND PROCEDURAL HISTORY

The record in this case reflects the following. On June 16, 2014, appellants filed a two-count complaint against appellees in the Circuit Court for Howard County. Appellants' complaint asserted that the individual officers arrived at appellants' Laurel residence in the early-morning hours of June 14, 2012, in response to a 911 call placed by appellant Desiree Harris. Harris requested assistance with a "medical emergency" involving her son Tyrell. When the officers arrived, they observed Tyrell in the shower, unclothed, and incoherent. According to the appellants, the officers "assumed Tyrell was having a medical emergency brought on by the consumption of illegal drugs" and the police officers "refused to permit the medical team to treat Tyrell until he was handcuffed." Appellants' complaint further alleged that the police officers ignored Desiree Harris and appellant Tevin Harris when each told the officers that the medical emergency was not drug-related and that there were "no drugs in the house." The police also "conducted an illegal search of the rooms in the house" once Tyrell, handcuffed and nude, was being treated by the emergency-medical responders. Appellants alleged that the officers were negligent (Count One) and that the search was an invasion of their privacy (Count Two), and further that each appellant sustained damages. The complaint demanded a jury trial, and judgment in the amount of $900,000.00. The complaint made no mention of compliance with the notice provisions of the LGTCA.[1]

[1] The LGTCA provision at issue here is CJP § 5-304, which provides, in pertinent parts:

(continued...)

[1](...continued)

(b) (1) Except as provided in subsections (a) and (d) of this section, **an action for unliquidated damages may not be brought against a local government or its employees unless the notice of the claim required by this section is given within 180 days after the injury.**

(2) **The notice shall be in writing and shall state the time, place, and cause of the injury.**

(c) (1) The notice required under this section shall be given in person or by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, by the claimant or the representative of the claimant.

(2) Except as otherwise provided, if the defendant local government is a county, the notice required under this section shall be given to the county commissioners or county council of the defendant local government.

(3) **If the defendant local government is**:

(i) Baltimore City, the notice shall be given to the City Solicitor;

(ii) **Howard County** or Montgomery County, **the notice shall be given to the County Executive**; and

(iii) In Anne Arundel County, Baltimore County, Harford County, or Prince George's County, the notice shall be given to the county solicitor or county attorney.

(4) For any other local government, the notice shall be given to the corporate authorities of the defendant local government.

(d) **Notwithstanding the other provisions of this section**, unless the defendant can affirmatively show that its defense has been prejudiced

(continued...)

On September 2, 2014, appellees filed a motion to dismiss for failure to state a claim, pursuant to Maryland Rule 2-322(b)(2), arguing that appellants failed to comply with the notice provisions of CJP § 5-304. Appellees pointed out that appellants had failed to plead notice in the complaint, and had failed to move for the court to find good cause to excuse their noncompliance. Appellees requested that the complaint be dismissed with prejudice.[2]

On September 22, 2014, appellants filed a response. Appellants asserted that they "gave notice to defendants prior to the 180-day requirement and are not barred by the notice requirement" of the LGTCA, specifically citing a letter their counsel faxed to "Howard County Government Office of Human Rights and Howard County Police" on October 8, 2012. A copy of the letter was attached to appellants' response as Exhibit A. It was written on appellants' then-counsel's letterhead, and provided as follows:

[1](...continued)

> by lack of required notice, **upon motion and for good cause shown the court may entertain the suit even though the required notice was not given**.

(Emphasis added.)

[2] Both parties have given short shift to the affidavit requirement of Maryland Rule 2-311(d), which provides: "A motion or response to a motion that is based on facts not contained in the record **shall be supported by affidavit** and accompanied by any papers on which it is based." (Emphasis added.) But neither party has raised an issue in this Court regarding compliance with this requirement.

October 8, 2012

Via Facsimile
Howard County Government
Office of Human Rights
6751 Columbia Gateway Drive, Box 239
Columbia, MD 21046

Re: Date of Incident: June 14, 2012
Clients: Desiree Harris, Tyrrell Kelly, Tevin Kelly

Dear Sir/Madam:

Please be advised that Ms. Desiree Harris, Mr. Tyrrell Kelly and Mr. Tevin Kelly are represented by this office regarding an incident that occurred on June 14, 2012 at their home located at 9456 Canterbury Riding, Laurel, MD 20723.

Please direct all future correspondence to the undersigned.

Thank you for your attention to this matter.

Sincerely,

[Appellants' former counsel]

cc: Howard County Police[3]

Attached to appellants' response as Exhibit B was a copy of the same letter, with a photocopied phone "message" memo overlaid on the bottom, indicating that "Walter Shuck" of "Ho Co Human Rights" had called appellants' counsel at 11:06 a.m. on 10/10/12, in reference to "Desiree Harris." Written across the photocopied message are the words "Called

[3]Appellant Tyrell Kelly's first name is variously spelled "Tyrell" and "Tyrrell" throughout the record. We use "Tyrell" because that is the spelling that appeared in the initial Complaint.

back." In appellants' response to the motion to dismiss, appellants pointed to these documents as proof that they had given notice of this "incident" to Howard County, and the notice had been received.

Appellants also argued that appellees "intentionally tried to thwart" appellants' "claim by denying responsibility." Appellants represented that their counsel's request for an incident report from the Howard County Police Department was returned to counsel on November 1, 2012, with the notation "This incident was not handled by the Howard County Department of Police. We suggest that you submit your request to: Fire Department." A copy of the form appellants' counsel received from the Records Department reflecting the foregoing was appended to appellants' response to the motion to dismiss as Exhibit C.

Attached to the opposition to the motion to dismiss as Exhibit D was a response from the Records Department to a later records request made by counsel. Dated "6/26/13," the document reflects "Incident confirmed, but no report was written," directs that "future requests" be accompanied by "a report number, type of incident, date of occurrence, time of occurrence, exact location, and the name of the officer," and states that "This incident was not handled by the Howard County Department of Police. We suggest that you submit your request to Laurel Vol. F.D. * HCPD assisted." In their opposition to the motion to dismiss, appellants cited these exhibits as evidence of an effort by the Howard County Police Department and the Howard County Office of Human Rights to stymie their investigation of this incident.

Appellants also argued in their opposition to the motion to dismiss that appellees "have not affirmatively shown that its defense has been prejudiced by lack of required notice," and that it was actually appellants who had been prejudiced. Appellants further argued that they had "substantially complied" with the LGTCA's notice requirement, and that they had also "met the standard for whether good cause exists to permit a waiver of the notice requirement."

Unpersuaded, the Circuit Court for Howard County issued an order on October 17, 2014, granting appellees' motion to dismiss, with leave to amend within thirty days.

On November 17, 2014, appellants filed a timely amended complaint and jury demand. The amended complaint retained Counts 1 (negligence) and 2 (invasion of privacy) from the initial complaint, and added Count 3 (false imprisonment) and Count 4 ("discrimination"). Unlike the original complaint, the amended complaint included express assertions that appellants had "complied with the statutory requirements and provided written notice of their claim" under the LGTCA. In support of that assertion, appellants attached to the amended complaint Exhibits A, B, and C from their response to the motion to dismiss, *i.e.*, the October 8, 2012, letter of representation from their counsel to the Office of Human Rights, the same letter with a message overlaid atop it reflecting that Walter Shuck had called appellants' counsel, and a response from the Records Department of the Howard County Police Department indicating that the police department had no records of the incident in question.

On December 16, 2014, appellees filed a motion to dismiss the amended complaint for failure to state a claim upon which relief can be granted, again citing appellants' failure to adequately satisfy the LGTCA's notice requirement. Appellees argued that appellants' counsel's letter dated October 8, 2012, was not directed to the County Executive, who is the only official in Howard County empowered by CJP § 5-304(c)(3)(ii) to receive notice of a tort claim. Appellees asserted that the sparsely-worded letter of representation directed to a county agency other than the Howard County Executive did not serve as notice under the LGTCA. Furthermore, appellees argued that the letter from appellants' counsel did not give adequate details of a tort claim, and appellants had failed to file a motion to excuse their non-compliance with the notice requirement. Moreover, appellees asserted the appellants had failed to demonstrate good cause for non-compliance in any event.

On January 5, 2015, appellants filed an opposition, in which they conceded that "they are not in strict compliance with notice to the County Executive," but claimed they had "substantially complied with the notice requirement," and had acted "as any reasonable prudent person would under the circumstance." They asked that the court find good cause sufficient to waive the notice requirement. Attached to the opposition was an affidavit from appellant Desiree Harris, averring:

1. On June 14, 2012 Officer [sic] came to my house in response to a 911 call.

2. I contacted Howard County the next day regarding the treatment my family and I received on June 14, 2012.

3. I was asked to come in for an interview with Howard County.

4. I retained counsel two (2) months after the incident to represent me in a meeting with the Howard County [sic].

5. I was not aware of the 180 day statutory notice requirement.

Also attached to the opposition was a copy of a "Pre-Complaint Questionnaire-Law Enforcement," completed by appellants and submitted to the Howard County Office of Human Rights on or about July 25, 2013. The "Pre-Complaint Questionnaire" described the events of June 14, 2012, and asserted: "I wish to complain against Howard County Police Department [and] Howard County Government."

Neither party requested a hearing on the motion. On January 28, 2015, the Circuit Court for Howard County granted the appellees' motion to dismiss the amended complaint. This appeal followed.

STANDARD OF REVIEW

In *Halloran v. Montgomery County Dept. of Public Works*, 185 Md. App. 171, 181-82 (2009), a case that dealt with substantial compliance with the notice requirement of the LGTCA — and, in the alternative, an argument that there was good cause for failure to comply — we observed:

> Where "the facts surrounding the notice issue are essentially undisputed," this Court "review[s] the circuit court's decision de novo to determine if it was legally correct." *Wilbon v. Hunsicker*, 172 Md. App. 181, 198, 913 A.2d 678 (2006), *cert. denied*, 398 Md. 316, 920 A.2d 1060 (2007).

We review the court's disposition of the good-cause issue for abuse of discretion. "The question of whether there is good cause to waive the notice requirement is within the discretion of the trial court." *Moore v. Nourozi*, 371 Md. 154, 168 (2002).

DISCUSSION

I. The LGTCA's notice requirement

The purpose of the LGTCA notice requirement is "to apprise local governments of possible liability at a time when they can conduct their own investigation into the relevant facts, while evidence and the recollection of witnesses are still fresh." *Smith v. Danielczyk*, 400 Md. 98, 112 (2007). Notice under the LGTCA is a condition precedent to maintaining an action for damages against a local government. *Faulk v. Ewing*, 371 Md. 284, 304 (2002). "The notice requirement applies to tort actions brought against the local government directly as well as those brought against an employee." *Rounds v. Maryland-Nat. Capital Park and Planning Com'n*, 441 Md. 621, 640 (2015).

II. Substantial compliance

As noted above, appellants do not contend that they provided notice directly to the Howard County Executive as required by § 5-304(c)(3)(ii). Rather, appellants argue that they substantially complied with the notice provisions of the LGTCA, pointing to their former counsel's October 8, 2012, letter of representation, which was sent to the Office of Human Rights, with a courtesy copy to the Howard County Police Department. In their brief, appellants assert that the October 8 letter was "remarkably similar" to a letter the Court of

Appeals found to constitute substantial compliance with the LGTCA in *Faulk v. Ewing*, 371 Md. 284 (2002).

Faulk involved a car accident between Mr. Faulk's vehicle and a vehicle owned by the Town of Easton, and operated by a Town employee. Within twelve days after the accident, Faulk's attorney notified the Town's insurer, The Hartford, that Mr. Faulk had been injured in an accident caused by the Town's employee. The letter specifically advised the insurance company "that this office represents [Faulk] in the matter of personal injuries and/or property damage sustained as the result of being involved in an accident with your insured on the above captioned date," and requested that the insurer "acknowledge coverage in this matter." Less than two weeks later, The Hartford responded to Faulk's counsel, noting that it had "reviewed the circumstances surrounding the accident" and had developed "sufficient information to make a proper decision regarding this liability claim." The Hartford denied Faulk's claim. Thereafter, Faulk filed suit in the District Court of Maryland for Talbot County. At trial, the Town's attorney argued for the first time that Faulk's letter to the Town's insurer did not constitute sufficient notice to pursue a claim under the LGTCA. The District Court judge disagreed, and entered judgment in favor of Faulk.

The Town appealed to the Circuit Court for Talbot County, which reversed, finding that notice to the Town's insurer was not notice to the Town, and that there had not been good cause shown to excuse Faulk's non-compliance. The Court of Appeals issued a writ of *certiorari*, and reversed the Circuit Court.

The Court of Appeals observed preliminarily that it was "debatable" whether Faulk's letter satisfied the statute's requirement that the written notice "fully inform[ ] the addressee as to the 'time' (although a date is supplied), 'place' (some unspecified point along 'Glebe Rd., Talbot Co., MD'), [and] 'cause of the injury' (advising only of an 'accident,' without regard to whether it involved a motor vehicle or vehicles, an open hole, or any other operative modality."[4] 371 Md. at 307.

Despite the minimal details in Faulk's letter, the Court found that Faulk had substantially complied with the LGTCA by putting The Hartford on notice of the accident. The Court noted:

> The touchstone of substantial compliance is whether the alleged "notice" was sufficient to fulfill the purpose of the requirement. As we recognized in *Moore* [*v. Nourozi,* 371 Md. 154 (2002)], the purpose of the notice requirement is "to ensure that the local government is made aware of its possible liability at a time when it is able to conduct its own investigation and ascertain, for itself, from evidence and recollection that are fresh and undiminished by time, the character and extent of the injury and its responsibility for it." *Moore*, 371 Md. at 176, 807 A.2d 632. For a local government, such as the Town of Easton, insured by a private insurance carrier, such as Hartford, the underlying purpose of § 5-304 is satisfied by the notice to the insurer on the facts of this case. As indicated in the 8 April 1998 letter response from Hartford to Petitioner's counsel, the insurer indicated that

[4] In the present case, the October 8 letter from appellants' counsel does not mention the word "injury," and would not have been adequate to put the County on notice of "the time, place, and cause of the injury," as required by CJP § 5-304(b)(2), even if the letter had been properly delivered to the County Executive. In *Ellis v. Housing Authority of Baltimore City,* 436 Md. 331, 346 n.8 (2013), the Court of Appeals stated: [W]e hold that, to substantially comply with the LGTCA notice requirement, a plaintiff must indicate — either explicitly or implicitly — that the plaintiff intends to sue the local government regarding an injury."

> it had "reviewed the circumstances surrounding the accident," and had "sufficient information at this time to make a proper decision regarding this liability claim" against its insured. Hartford further stated "[f]rom our investigation, we do not feel our insured would be legally liable for this incident." Hartford maintained that, on behalf of its insured, it had been able to conduct an investigation (or had available to it the fruits of Mr. Tarrant's 19 March 1998 investigation of the accident) and "ascertain . . . the character and extent of the injury and its [insured's] responsibility for it." The 8 April 1998 letter, written less than one month after the accident and two weeks after Petitioner's letter, made manifest that Hartford had notice of the accident. Given that Petitioner acted to put Hartford on notice, and that Hartford stated that an investigation sufficient to justify it making a decision to deny the claim had been performed, Petitioner complied substantially with § 5-304(a) and (b).

Because the party Faulk communicated with was, in fact, the specific party tasked with reviewing and investigating tort claims of the variety Fault intended to assert, and the insurer expressly advised Faulk after receiving the letter that it had completed its investigation of Faulk's tort claim, *Faulk* is inapposite to the facts of this case.

In *Moore*, the plaintiff alleged he was injured in an accident caused by the negligence of an employee of Montgomery County. Montgomery County is self-insured, and it contracted with Trigon Administrators, Inc., to provide claims administration services for the County. Moore was in touch with Trigon "[w]ithin two or three days after the accident," and Trigon advised Moore by return correspondence that it was "the third party administrator for Montgomery County, and [was] currently investigating the facts" of the accident. Ultimately, Moore's discussions with Trigon did not resolve the matter, and, without ever providing notice of his claim to the Montgomery County Executive as required by CJP § 5-304(c)(3)(ii), Moore sued the County in the circuit court. The County filed a motion to

dismiss, asserting Moore's failure to provide the County Executive notice as required by statute. The County's motion was granted, and Moore noted an appeal to this Court, which was not heard because the Court of Appeals granted *certiorari* on its own motion.

The Court of Appeals found that notice to the Montgomery County's claims administrator constituted substantial compliance with the notice requirements of the LGTCA. The contractual relationship between the County and Trigon was key to its finding, as the Court found "it is clear, given this contractual relationship, its comprehensiveness and the degree of control that the County maintains, that actual notice to the County results when notice is given to Trigon." 371 Md. at 177. The Court held:

> [W]here the tort claimant provides the local government, **through the unit or division with the responsibility for investigating tort claims** against that local government, or the company with whom the local government or unit has contracted for that function, the information required by § 5–304(b)(3) to be supplied, who thus acquires actual knowledge within the statutory period, the tort claimant has substantially complied with the notice provisions of the LGTCA. **This test is fair and has the advantage of taking account of the reality of how tort claims actually are handled.**

Id. at 178 (emphasis added).

But, in *Moore*, unlike the present case, the party responsible for handling "tort claims" against the County was the party that was given notice of the plaintiff's tort claim. In this case, appellants' efforts to analogize the Office of Human Rights and/or the Howard County Police Department to "the unit or division with the responsibility for investigating tort claims" against Howard County fall short. Appellants concede in their brief that they do not "contend that the OHR is ordinarily the entity responsible for reviewing and investigating

potential tort claims against the County." They nevertheless argue that the OHR is "expressly tasked with the responsibility to receive complaints of law enforcement discrimination and to conduct investigations thereon," and that while "none of the[] prohibited categories of police conduct" which the OHR investigates "are torts," they "nevertheless support underlying actions in tort." Similar arguments were rejected by us in *White v. Prince George's County*, 163 Md. App. 129 (2005), and *Wilbon v. Hunsicker*, 172 Md. App. 181 (2006).

In *White*, the plaintiff filed a police brutality complaint with the Prince George's County Police Department in 2001, and he was notified by the Internal Affairs Division that the complaint had been received. White was informed that he needed to file a notarized complaint, and that he would be contacted by an investigator; both of these things happened. In 2004, White filed suit against the County and four police officers in the Circuit Court for Prince George's County, alleging violation of his civil and constitutional rights, battery and excessive force, and negligent entrustment of a police dog. The County's motion to dismiss for lack of notice under the LGTCA was granted. White appealed to this Court, arguing, *inter alia*, that he had substantially complied with the notice requirement by filing his police brutality complaint with the police department in 2001. White cited *Moore*, among other cases. We disagreed with White's position that notice to a police department regarding a police brutality allegation suffices as substantial compliance under the LGTCA to permit filing a tort action against the police department. We explained:

Based on the foregoing, we are satisfied that appellant did not substantially comply with the statutory notice requirement by filing a complaint with I.A.D. about police brutality. **Unlike in *Moore*, appellant did not provide notice to an entity with responsibility for investigating tort claims lodged against the County.** Instead, appellant sent notice to the Department's Internal Affairs Division. The content of that complaint pertained to White's allegation of police brutality, not to tort claims arising from such conduct.

Moreover, the investigation that ensued was conducted by and for I.A.D., under a wholly separate procedure. Indeed, as the Department's letter of July 18, 2001 reflects, the Department indicated that appellant's brutality claim was governed by the statute pertaining to the Law Enforcement Officers' Bill of Rights ("LEOBR") under Md. Code (1999 Repl. Vol.) Art. 27, §§ 727–734 D. Notice to I.A.D. simply was not notice to the County Attorney or County Solicitor, as required by C.J. § 5–304(b)(2).

To be sure, in *Moore*, the Court indicated that substantial compliance may be found when notice is provided to the entity responsible for investigating the tort claim, rather than to the party named in the statute. That is not what happened here, however. Indeed, there was no indication of a relationship between I.A.D. and the County Attorney or County Solicitor, akin to the working relationship between Montgomery County and Trigon. To the contrary, there was no evidence that the Department actually communicated with the County Attorney or County Solicitor, so as to apprise the County of its potential liability and enable it to conduct a thorough investigation while memories were still fresh. Moreover, **unlike in *Moore*, the Department was not charged with the duty to investigate tort claims against the County, nor did the Department construe appellant's complaint of police brutality as a tort claim against the County.** *See Faulk*, 371 Md. at 307, 808 A.2d 1262 (observing that it was "important to us in *Moore*, in accepting the claimants' substantial compliance arguments, that the intertwined information technology systems of the two existed, that Trigon had authority to settle unilaterally claims up to $2500 per claim, and that Trigon conducted extensive fact-finding and other negotiations with the claimants, on behalf of the County").

163 Md. App. at 147-48 (emphasis added).

To similar effect is *Wilbon v. Hunsicker*, 172 Md. App. 181 (2006). Wilbon was arrested for attempted theft of a vehicle, and taken to Central Booking. While there, officers noted that his "toe was bleeding, his face was discolored, he was soiled, and he was unresponsive." *Id.* at 186. The EMT on duty directed that Wilbon be taken to the hospital. Officers took Wilbon to the emergency room of Mercy Hospital, where Wilbon had a seizure and died of what was later determined to be "a cardiac arrhythmia associated with atherosclerotic cardiovascular disease and past cocaine use." *Id.* at 187.

But, four days after Wilbon's death, his mother, Ms. Jackson, submitted a "Statement of Incident" to the Civilian Review Board, "an independent agency tasked with investigating complaints from the public regarding police misconduct," and not "an agency of the [Baltimore City Police Department]." *Id*. at 194. Ms. Jackson's complaint "sparked an investigation by the Internal Investigation Division . . . of the Baltimore City Police Department." *Id*. at 192.

More than 180 days after Wilbon's death, Ms. Jackson mailed, via certified mail, a "Notice of Intent to File Suit" to the Maryland State Treasurer, the Comptroller of the Treasury, and the Commissioner of the Baltimore City Police Department. That letter informed the recipients that Ms. Jackson "intend[ed] to file a lawsuit . . . arising out of an incident occurring June 5, 2000, in Baltimore, Maryland," and described generally the allegations regarding the incident. The letter contained the words "This Notice is written pursuant to the Maryland/Local Government Tort Claims Act." A claims adjuster in the

Insurance Division of the State Treasurer's Office wrote back, informing Ms. Jackson that the State was not at fault in the incident, and advising her to pursue her claim with the Baltimore City Police Department.

A year after Wilbon's death, the attorney for his estate mailed and hand-delivered to the City Solicitor a "Notice of Claim Form" which "purported to give notice of a claim pursuant to [§] 5-304." *Id*. at 193.

Almost three years after Wilbon's death, his daughter, as representative of his estate, filed a complaint in the Circuit Court for Baltimore City against the arresting officers, alleging various torts, including that his rights under Articles 24 and 26 of the Maryland Declaration of Rights had been violated. It was undisputed that Wilbon's estate had never provided timely notice of a claim to the City Solicitor, as required by § 5-304(c)(3)(i). The City filed a motion to dismiss for lack of notice under the LGTCA, arguing that none of the communications regarding the "June 5, 2000 incident" amounted to proper, timely notice to the City Solicitor, as required by the LGTCA. The court denied this motion, as well as a motion for summary judgment on the notice issue, and a motion raising a similar argument filed after the jury returned a verdict for Wilbon's estate.

The City appealed to this Court, and argued the circuit court erred in finding that Wilbon's estate had complied with the notice provisions of the LGTCA. Wilbon's estate argued that Ms. Jackson's June 9, 2000 "Statement of Incident" to the Civilian Review Board

("CRB") constituted full compliance with the notice requirement. We disagreed, and explained:

> **[T]he letter** was not a claim for damages or a notice of intent to file suit. It **only stated a complaint of police misconduct.** In other words, **Jackson's "Statement of Incident" was a notice of an occurrence involving alleged police brutality, not notice of tort claims arising out of that occurrence.** *See White*, 163 Md. App. at 147, 877 A.2d 1129 (stating that "[t]he content of that complaint pertained to White's allegation of police brutality, not to tort claims arising from such conduct"). Moreover, Jackson did not submit the statement to the City Solicitor, as required by section 5–304(c)(1)(i). This meant that plaintiff did not satisfy "a condition precedent to maintaining an action against a local government or its employees. . . ." *Rios* [*v. Montgomery County*], 386 Md. [104] at 127, 872 A.2d 1 [(2005)]. Thus plaintiff did not strictly comply with the notice requirement.

Id. at 198-99 (emphasis added).

We note that the October 8, 2012, letter from appellants' counsel to the Office of Human Rights (with a courtesy copy to the Howard County Police Department), relied upon here in support of appellants' contention that they substantially complied with the LGTCA, included far fewer details than the "Statement of Incident" referenced above in *Wilbon*. Unlike in *Wilbon*, the October 8 letter could not be fairly characterized as "notice of an occurrence alleging police brutality," let alone a "notice of tort claims arising out of that incident."

Wilbon's estate argued, in the alternative, that the "Statement of Incident" — a report alleging police brutality, made to the agency that handles complaints of police misconduct — established substantial compliance with the LGTCA. Citing *White*, we flatly rejected that argument, and stated:

We find that the facts of this case are virtually indistinguishable from the facts in *White*. Within the statutory notice period, Jackson filed a complaint of alleged police misconduct. As in *White*, "[t]he content of [the] complaint pertained to [an] allegation of police brutality, not to tort claims arising from such conduct." 163 Md. App. at 147, 877 A.2d 1129. More importantly, Jackson did not provide notice of her claim "to an entity with responsibility for investigating tort claims lodged against the County." *Id*. As previously stated, the CRB is not an agency of the City of Baltimore or the BCPD and is charged with the responsibility of advising the Police Commissioner regarding matters of police discipline arising out of alleged misconduct. The assistant city solicitor assigned as staff to the CRB is not an agent of the City or the BCPD authorized to receive notice of tort claims and, in fact, has never received any such claim.

Finally, as in *White*, Jackson's complaint prompted an investigation that was vastly different from an investigation of a tort claim for damages. The BCPD conducted a dual-natured investigation, involving both the Homicide Unit and the IID. The purpose of this investigation was to determine whether a crime had been committed and whether the officers had violated departmental rules and standards of behavior. By contrast, an investigation into a tort claim for damages involves different issues, including, among other things, legal defenses, the nature and extent of the actual injuries sustained, the causal relationship of the injuries to the alleged misconduct, the likelihood of an award of compensatory and/or punitive damages, the necessity and cost of expert testimony, and litigation strategy. Therefore, as defendants properly state in their brief, "[j]ust as the investigation in *White* did not suffice as a claim investigation, the investigation in the present case did not fulfill all of the purposes of the LGTCA's notice requirement."

We recognize that the IID of the BCPD responded to the complaint with an investigation, and the case received significant media attention. Moreover, we are aware that three months after Wilbon's death, the Commissioner of the BCPD indicated that he was familiar with the case and recognized that it might lead to a lawsuit. Internal investigations and media attention, however, do not mean, necessarily, that a complainant will sue the police officers involved for tort damages. Not every excessive force complaint develops into a civil action. Indeed, in his radio interview, the Commissioner recognized only the possibility of a future lawsuit. **It would be a totally unreasonable burden to require a local police department or other governmental agency to conduct a tort claim investigation on every complaint of police misconduct**

> **because of the mere possibility that the complainant may file a lawsuit for tort damages based on that conduct.**
>
> For these reasons, we conclude that Jackson's complaint to the CRB did not substantially comply with the notice requirement of the LGTCA.

Id. at 203-05 (emphasis added).

With respect to a claim of substantial compliance, and referring specifically to *Moore, Wilbon, White*, and *Faulk*, we said in *Ransom v. Leopold*, 183 Md. App. 570, 584 (2008):

> As the cases discussed above illustrate, substantial compliance exists when timely notice has been given in a manner that, although not technically correct, nevertheless has afforded actual notice of the tort claim or claims to the local government. In all of those cases, the relationship between the person or entity in fact notified and the person or entity that the statute requires be notified was so close, with respect to the handling of tort claims, that notice to one effectively constituted notice to the other.

The Howard County Office of Human Rights and the Howard County Police Departments are neither the statutorily-designated entities to receive notice of a tort claim against Howard County, nor is either of them "an entity with responsibility for investigating tort claims lodged against the County."

There is no evidence anywhere in this record that a complaint to the Office of Human Rights, or to the police department itself, is substantially equivalent to notice "to an entity with responsibility for investigating tort claims lodged against the County." *White, supra*, 163 Md. App. at 147-48. As in *White*, there is no evidence in this record that there is any relationship between the Office of Human Rights, or the Howard County Police Department's records section, and the Howard County Executive, nor is there any evidence

that the Office of Human Rights or the Howard County Police Department's records section investigates potential tort claims against the County.

For all these reasons, we conclude that the circuit court did not err in ruling that the appellants did not substantially comply with the notice requirements of the LGTCA.

III. "For good cause shown"

Appellants contend that, even if their notice was inadequate, the circuit court abused its discretion in not excusing their lack of compliance with the notice requirements of the LGTCA for "good cause shown." Such a waiver is permissible under § 5-304(d), "upon motion and for good cause shown[,]" in the absence of prejudice to the defense. Appellants argue that they were unaware that a notice requirement existed, and that they otherwise pursued their claims diligently, as an ordinarily prudent person would have under the circumstances.

But appellants' claim of ignorance regarding the notice requirement of CJP § 5-304 cannot demonstrate good cause where appellants were represented by counsel. We are unaware of any case that supports the proposition that a represented party can claim ignorance of the law as "good cause" for failing to comply with the notice provisions of the LGTCA. At least two cases of this Court stand for the contrary proposition: *Ransom v. Leopold*, *supra*, 183 Md. App. 570 (2008), and *Williams v. Montgomery County*, 123 Md. App. 119 (1998).

In *Ransom*, plaintiff's counsel prepared a timely, compliant notice of claim, but mailed it to the wrong county. The error was corrected shortly after the notice period expired, and Ransom asked the court to either find substantial compliance, or excuse the lack of timely notice by finding good cause. The circuit court declined to excuse the untimely notice, and granted Leopold's motion to dismiss, a decision we affirmed. In our opinion, we rejected Ransom's "good cause" argument and explained:

> In the case at bar, counsel for the appellants asserts in their brief that the appellants did not act without diligence in prosecuting their claim. **They obtained counsel and relied upon counsel to take the steps necessary to pursue the claim. Counsel argues that the appellants should not be made to pay for the mistake of their lawyers**. Counsel does not explain, and did not provide any affidavits below addressing, what accounted for the mistake about the jurisdiction for the case, however. The most he says is that a law clerk was confused about which county the injury occurred in. The appellants of course would know what county they live in, and their counsel would have (or certainly should have) their address. The letter allegedly mailed to Prince George's County on May 25, 2007, had a blank signature line. If it were signed, it should have been signed by counsel for the appellants, as their representative, and not by a law clerk, who would be under the supervision of counsel in any event. Moreover, Edgewater is in eastern Anne Arundel County, not close to Prince George's County. (We note also that the May 25, 2007 letter does not state the place of the injury, as required by CJ section 5–304(c)(3)).
>
> Accordingly, under the circumstances here, **it was not an abuse of discretion for the circuit court, in ruling on the motion to dismiss, to conclude that the appellants had not shown good cause sufficient to waive the CJ section 5–304 notice requirements.** For that reason, the court properly dismissed Counts I through IV and VI of the complaint.

183 Md. App. at 586-87 (emphasis added).

In *Williams v. Montgomery County*, 123 Md. App. 119, 134 (1998), *aff'd on other grounds*, 359 Md. 379 (2000), we found no abuse of discretion on the part of the circuit court in concluding that the claimant had not shown good cause for failing to give notice of the LGTCA claim. We pointed out that the claimant was represented by counsel who claimed to be "unaware" of the requirements imposed by CJP § 5-304. Under circumstances similar to the present case, we concluded in *Williams*:

> [T]he requirements of CJ § 5–304 are not numerous or burdensome. Accordingly, **we hold that the trial court did not abuse its discretion when it found, in effect, that ignorance of the law is no excuse when a party, represented by counsel, fails to give notice because he was unaware that notice was required**.

123 Md. App. at 134 (emphasis added).

Appellant points out that, subsequent to our decision in *Williams*, the Court of Appeals has commented in dicta that at least one case decided in other states has concluded that ignorance of the law might provide good cause for failing to comply with the notice requirements of CJP § 5-304, and, while "recognizing the Court of Special Appeals specifically rejected ignorance of the law requiring notice as good cause" in *Williams*, the Court of Appeals has observed: "The question continues to remain open." *Rios v. Montgomery County*, 386 Md. 104, 141 n.18 (2005). *See also Heron v. Strader*, 361 Md. 258, 272 n.13. Although it goes without saying that the holdings of this Court are open to further consideration by the Court of Appeals when and if it ever hears a case involving those holdings, in the absence of such further guidance from our State's highest court, the question

we squarely considered and resolved in *Williams* continues to remain settled and applicable to appeals under consideration by the Court of Special Appeals. In the absence of extraordinary circumstances, none of which have been asserted in the present case, we can perceive no sound reason a circuit court would find good cause for an attorney licensed to practice law in Maryland to agree to handle a tort claim against a local government without reviewing the LGTCA and becoming knowledgable about the notice requirements plainly set forth in CJP § 5-304. Those requirements have been the topic of numerous reported appellate opinions during the three decades since the LGTCA was enacted by Chapter 594 of the Acts of 1987, and there would seem to be little excuse for an attorney who agrees to pursue a tort claim against a local government to remain oblivious to the long-established statutory notice requirements for pursuing such claims.

We conclude that it was not an abuse of discretion for the circuit court to have declined to find good cause in this case to excuse appellants' lack of compliance with the LGTCA.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.