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# COURT OF APPEALS

ATTORNEYS - MARYLAND RULES OF PROFESSIONAL CONDUCT: 1.1 (COMPETENCE), 3.1 (MERITORIOUS CLAIMS AND CONTENTIONS), 3.2 (EXPEDITING LITIGATION), 3.3(a) (CANDOR TOWARD THE TRIBUNAL), 4.4(a) (RESPECT FOR RIGHTS OF THIRD PERSONS), 8.2(a) (JUDICIAL AND LEGAL OFFICIALS), 8.4(c) & (d) (MISCONDUCT).

Facts: The Attorney Grievance Commission of Maryland, Petitioner, acting through Bar Counsel, filed a Petition For Disciplinary or Remedial Action against Respondent, Charles E. McClain, on August 10, 2007. The Petition alleged that McClain violated Rules 1.1 (Competence), 1.7(b) (Conflict of Interest), 3.1 (Meritorious Claims and Contentions), 3.2 (Expediting Litigation), 3.3(a) (Candor Toward the Tribunal), 4.4(a) (Respect for Rights of Third Persons), 8.2(a) (Judicial and Legal Officials), 8.4(c) & (d) (Misconduct) of the Maryland Rules of Professional Conduct in connection with his representation of Gustav Hamilton.

The hearing judge found that McClain had violated the rules listed above, with the exception of 1.7(b). The hearing judge found that upon entering his appearance on behalf of his client, in an ongoing matter, McClain filed a Motion to Set Aside and/or Vacate Default Judgment knowing that a previous Motion to Vacate Default Judgment had been denied. The judge in that case noted that McClain had filed the motion as a tactic to stall the proceedings. In a subsequent motion, McClain asked the court to compel the Trustee to sell property held jointly by his client and the opposing party, and asserted that his client was "entitled by right, as joint tenant, to settlement with [the opposing party] if able to do so, prior to any third party purchase." Mr. McClain then cited two cases in support of his argument that were not applicable.

Knowing that his client had failed to secure financing on the property, McClain scheduled a "sham" settlement of the property at a time when he knew the Trustee would be out of the country. McClain then filed a line with the court indicating that his client had settled on the property. At a hearing on all outstanding motions, the court in that case determined that McClain's motions had been pursued in bad faith and without substantial justification, and imposed sanctions to cover the opposing party's attorney's fees.

In McClain's brief to the Court of Special Appeals,

appealing the eventual sale of the property, he misrepresented remarks made by the trial court judge. The intermediate appellate court declined to address McClain's argument that his client should not be required to pay more than fifty percent of the equity in the real property because McClain relied on inapplicable law and failed to present a lucid and substantial argument.

Held: Disbarment. In considering the proper sanction, the Court of Appeals noted that, except in cases of compelling extenuating circumstances, ordinarily the sanction for cases involving dishonesty and fraudulent conduct is disbarment. The Court did not find such compelling extenuating circumstances, and further noted that McClain had a history of sanctions imposed by the Court. As a result of McClain's ongoing disregard for the rules, and his intentional dishonesty with the court, the Court of Appeals imposed the sanction of disbarment.

*Attorney Grievance Commission of Maryland v. Charles E. McClain, Sr.*, AG No. 23, September Term, 2007. Opinion filed on September 8, 2008 by Greene, J.

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ATTORNEY GRIEVANCE - MARYLAND RULES OF PROFESSIONAL CONDUCT (MRPC) 5.1 (Responsibility of Partners, Managers, and Supervising Lawyers) and 1.4 (Communication) - INDEFINITE SUSPENSION, WITH RIGHT TO APPLY FOR REINSTATEMENT NO SOONER THAN 90 DAYS, IS APPROPRIATE SANCTION FOR FOUNDING PARTNERS OF PENNSYLVANIA-BASED LAW FIRM WHO, IN ESTABLISHING AN OFFICE IN MARYLAND TO EXTEND THEIR AUTOMOBILE WARRANTY (LEMON LAW) PRACTICE, HIRED A RELATIVELY INEXPERIENCED MARYLAND ATTORNEY AS THE SOLE STAFF OF THE NEW OFFICE AND THEN FAILED TO SUPERVISE HER ADEQUATELY, RESULTING IN THE DISMISSAL WITH PREJUDICE OF THE CASES OF 47 OF THE FIRM'S MARYLAND CLIENTS, AND FAILED TO COMMUNICATE IN A TIMELY FASHION WITH ONE CLIENT AFTER THE ASSOCIATE RESIGNED.

Facts: An out-of-state law firm, specializing in the prosecution of automotive warranty civil cases established a beachhead office in Owings Mills, Maryland to extend its "lemon law" practice to the Maryland market. The firm, Kimmel & Silverman, P.C. ("K&S"), hired Maryland attorney Robin Katz, on the day of her initial employment interview, to establish the Maryland branch. She was stationed there as the sole resident employee for 12 ½ months of her 13-month tenure with the firm. Katz had practiced law in Maryland for between six and seven years. She was experienced in handling large caseloads, but in administrative law cases in fields other than automotive warranty law. In critical areas of experience, Katz was a novice. She never practiced "lemon law"; never filed a case in a Maryland circuit court, handled a contested case, or presented a case to a jury. After a one-month orientation at the home office in Ambler, Pennsylvania, Katz was dispatched to procure space and set up the Maryland office. Katz solely was responsible for the day-to-day task associated with running an office, including copying, filing, sorting and opening mail, responding to clients, and scheduling. For aid in filing cases, she had access to paralegals working in the firm's home office in Ambler, Pennsylvania.

K&S began accepting clients during Katz's orientation. When she left Pennsylvania sometime around July 2004, she brought 50 cases to be filed immediately in Maryland. Neither Katz nor the supervising attorneys in Pennsylvania understood that, unlike Pennsylvania, Maryland ordinarily requires the case to be filed either in the county where the claimant resides or where the automobile was purchased. Katz filed her first round of cases in the courthouse nearest the Maryland office.

The firm's emphasis was on fee-generation, case turnaround, and early settlement with automotive manufacturers. Katz was instructed that "first and foremost, . . . you must make your numbers." Her weekly quotas were ten filings per week, later increased to 15 filings per week, and generating \$10,000 in attorney's fees. The increase in her caseload was rapid. By 27 September 2004, she had 127 cases, with 45 in suit. Barely a week later, on 2 October 2004 she reported that she had 194 cases. By 8 November 2004, she had 203 cases, with approximately 100 in suit. As of 6 December 2004, the number had grown to 239 cases, with 125 in suit. During her tenure, she filed 461 cases in Maryland courts. All tolled, she was responsible for 505 matters. Typically, she dealt with 200 to 300 active cases. Though her caseload was not atypical of K&S attorneys, she became overwhelmed and began asking for on-site staff support.

In response to the "backlog" in the Maryland office, founding partner Kimmel assumed direct supervisory responsibility for Katz. He required that Katz submit to him 30 demand letters each week. He tasked her to individuate each client file, suggesting that she dedicate ½ hour to 1 hour of billable time toward each matter each week, and promised that staff support would come if she complied. At this time, K&S did not investigate whether her requests for help were justified or if the needs of Maryland clients were going unfulfilled. Though she met more than 90% of her total responsibilities toward clients, toward the end of her tenure, Katz ultimately neglected 47 motions to compel discovery in cases represented by the law firm of Piper Rudnick. K&S was unaware of the missed deadlines and neglected responses because Katz, responsible for entering the relevant dates taken from all correspondence sent to the Maryland office directly, had never entered them into the computerized system. Also, she falsified at least eight demand letters and forwarded them to Kimmel to meet her weekly quota, even though they related to matters that had been dismissed. The system for case management in place at K&S did not flag the fact that the letters were generated for cases not in the system. Katz resigned abruptly in August 2005, and for the first time, her supervisor made an on-site visit. Kimmel testified that from the stacks of files in the office and Katz's "beaten" appearance, it was obvious immediately that things were terribly amiss. Citing health reasons, Katz refused to stay for a transition period. Kimmel rallied support staff, sorted the neglected paperwork in the office, and covered all pending settlements and court appearances. Within weeks of learning the full scope of the dysfunction of the Maryland office, the firm initiated settlements with the prejudiced Maryland clients.

During this time, one Maryland client attempted to learn the status of his case by contacting the Pennsylvania home office. His calls were not returned for several weeks. Eventually, he was informed of the status of his case and accepted a K&S settlement offer that fully satisfied him.

The Attorney Grievance Commission charged both founding partners with violation of MRPC 5.1 for failure to supervise and MRPC 1.4 for failure to communicate with a client. The case hearing judge in the Circuit Court for Baltimore County conducted the evidentiary hearings on 21 and 25 February 2008. She filed her written findings of fact and recommended conclusions of law on 26 March 2008.

Held: Indefinite Suspension. The Court of Appeals adopted the conclusions of the hearing judge and held that Respondents

violated MRPC 1.4 and 5.1. Respondents were found to have violated MRPC Rule 1.4 because the firm failed to respond in a timely fashion to a Maryland client's direct inquiries to the firm's Ambler, Pennsylvania, home office regarding the status of his Maryland case.

In regard to MRPC 5.1, the degree of supervision K&S's founding partners provided Katz did not account adequately for their threshold knowledge that she lacked experience in the field of automotive warranty claims generally or in prosecuting cases in Maryland's circuit courts. Additionally, the founding and supervising attorneys did not ascertain whether distinguishing elements of automotive warranty law in Maryland, versus that of Pennsylvania, necessitated an adjustment to the firm's standard policies and procedures for handling its "bread-and-butter" cases. The supervision also was insufficient because it substituted a computerized case management system for hands-on, on-site review of how cases assigned to Katz were being handled. In addition, the procedures for identifying pending deadlines lacked adequate safeguards against an attorney avoiding altogether use of the computerized case-management system. Moreover, the supervising attorneys failed to mentor an employee new to their firm in how to fulfill the ethical duties owed each client in the context of a high-volume practice emphasizing fee-generation as the primary measure of attorney success.

The Court of Appeals pointed to the Rule's contemplation that the need for "more elaborate" supervisory methods may be necessary in some circumstances, based on the nature of the practice or the structure of the firm. The Court reviewed numerous indicators the Respondents ignored that should have alerted them that heightened supervision was necessary in this case. First, intrinsic in establishing a new branch is the need for heightened care to design and maintain policies and procedures that are grounded solidly in governing principles of professional conduct. All the more, when extending a practice into an unfamiliar jurisdiction, it is incumbent on the out-of-state law firm to research, appreciate, and resolve distinguishing elements of law and procedure before filing a large number of cases in the State. Third, relatively low attorney experience in critical areas may indicate a need for more elaborate supervision in those areas. Fourth, if an attorney is new to the firm, a higher level of supervision may be necessary, at least until the employee's reliability is demonstrated. Fifth, physical isolation of an attorney from peers and supervisors indicates a heightened need to adapt supervisory strategies to ensure compliance with the MRPC. Sixth, requests for help, especially from a remote staff

attorney, warrant investigation to determine whether client obligations are going unfulfilled. Finally, in some cases, a law firm's culture inherently engenders a need for specific supervision regarding how to balance the lawyer's obligation to clients within the business model of the firm.

The appropriate sanction, in light of mitigating circumstances, was indefinite suspension with the right to apply for reinstatement no earlier than 90 days.

*Attorney Grievance Commission of Maryland v. Robert Silverman and Craig Kimmel*, Nos. 20 and 21, September Term, 2007; Opinion filed 2 September 2008, Opinion by Harrell, J.

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ATTORNEYS - MARYLAND RULES OF PROFESSIONAL CONDUCT: MRPC 1.15 (SAFEKEEPING PROPERTY), 8.4 (MISCONDUCT), AND SECTIONS 10-306 AND 10-307 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE (LIMITATION ON USE OF TRUST FUNDS AND VIOLATOR SUBJECT TO DISCIPLINARY PROCEEDINGS).

Facts: The Attorney Grievance Commission of Maryland, through Bar Counsel, filed a petition for disciplinary or remedial action against H. Allen Whitehead, in which it alleged that he violated Maryland Rules of Professional Conduct ("MRPC"), 1.15 (Safekeeping Property) and 8.4 (Misconduct), as well as Maryland Rule 16-609 (Prohibited Transactions), and Sections 10-306 and 10-307 of the Business Occupations and Professions Article of the Maryland Code (Limitation on the Use of Trust Funds and Violator Subject to Disciplinary Proceedings).

The Circuit Court for Howard County held an evidentiary hearing and issued an opinion, which presented her findings of fact and conclusions of law. The judge found that Whitehead was appointed as the Conservator of an adult disabled ward by the Superior Court of the District of Columbia. During the period of time that he served as the Conservator of the Estate, Whitehead



took two actions without obtaining prior court approval: he paid legal fees of \$40,200 to himself and he made a loan of \$600,000 of estate assets to purchase investment property in New York City that was titled in his name and that of his business partner. The subject real estate transactions was disclosed in numerous accountings filed by Whitehead in his capacity as the Conservator of the Estate and, when the Probate Division of the Superior Court of the District of Columbia raised questions regarding the propriety of the real estate transaction, Whitehead refinanced the property and repaid the Note in full, thus returning the assets, along with interest, to the Estate.

The circuit court also found that after Whitehead's actions were questioned by the Superior Court of the District of Columbia, Whitehead was removed as the Conservator of the Estate and proceedings were initiated against Whitehead by District of Columbia Bar Counsel. Whitehead represented himself during these proceedings and consented to disbarment. After the Respondent was disbarred in the District of Columbia, the Attorney Grievance Commission of Maryland filed a petition for reciprocal disciplinary action, which solely addressed the issue of legal fees. The Court of Appeals held that the Respondent's conduct in taking legal fees from funds held in trust without prior court approval warranted an indefinite suspension rather than disbarment under Maryland law and indefinitely suspended him from the practice of law with the right to reapply after 18 months. *Attorney Grievance v. Whitehead*, 390 Md. 663, 890 A.2d 751 (2006). The Court did not address the propriety of the \$600,000 loan of estate assets at that time.

The Circuit Court, addressing the issue of the \$600,000 loan, concluded that Whitehead violated MRPC 1.15 by utilizing estate property to purchase real estate for his own benefit. She concluded that MRPC 8.4 (a), (c) and (d) also were violated because Whitehead's utilization of estate funds to purchase real property that he would personally own, was self-dealing. The Circuit Court also found violations of Sections 10-306 and 10-307 of the Business Occupations and Professions Article, Maryland Code (1989, 2000 Repl.Vol.), because Whitehead's actions resulted in monies entrusted to him being utilized for unauthorized investments, although she found he did not harbor a nefarious intent. During the course of the hearing, The judge dismissed the counts alleging violations of 8.4 (b) and Rule 16-609.

Whitehead took exceptions to the hearing judge's finding that, when the Probate Division of the Superior Court of the District of Columbia raised questions regarding the propriety of the real estate transaction, he refinanced the property in July

2003 and repaid the Note in full, thus returning the assets, along with interest, to the Estate. He also took exception to the Circuit Court's conclusion that 8.4 (c) was violated. Bar Counsel took no exceptions to the findings of fact and conclusions of law.

Held: Disbarment. The Court overruled Whitehead's exception to the finding that he refinanced the property in July 2003 and repaid the Note to the Estate in response to questions raised by the Probate Division of the Superior Court of the District of Columbia regarding the propriety of the real estate transaction, finding that there was clear and convincing evidence to support the finding. The Court also overruled Whitehead's exception to the Circuit Court's conclusion that he violated 8.4(c) because it was an intentional misappropriation in violation of 8.4(c) and constituted self-dealing, which implicates dishonesty. The Court also concluded that Whitehead's conduct violated Rule 1.15, governing the safekeeping of property, and Sections 10-306 and 10-307 of the Business Occupations and Professions Article, Maryland Code (1989, 2000 Repl.Vol.), limiting the use of trust money and subjecting those who inappropriately use trust money to disciplinary proceedings as well as Rules 8.4(a) and 8.4(d), engaging in conduct that is prejudicial to the administration of justice. Addressing the appropriate sanction, the Court stated that Whitehead's misappropriation of entrusted funds, a dishonest act, justifies disbarment, absent compelling circumstances. Considering both mitigating and aggravating factors, the Court noted that Whitehead had a prior disciplinary offense, his victim was vulnerable, and he had substantial experience in the practice of law. For violating MRPC 1.15 and 8.4 (a), (c), and (d), as well as Sections 10-306 and 10-307 of the Business Occupations and Professions Article, Maryland Code (1989, 2000 Repl.Vol.), the Court disbarred Whitehead.

*Attorney Grievance Commission v. H. Allen Whitehead*, Misc. Docket, AG No. 53, September Term 2006, filed June 19, 2008. Opinion by Battaglia, J.

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CONTRACTS - APPLICABLE LAW - WHERE OPEN-ENDED AGREEMENTS MAY BE TERMINATED BY EITHER PARTY WITH 120 DAYS NOTICE, AND NEITHER PARTY GIVES NOTICE OF TERMINATION WITHIN 120 DAYS OF THE ENACTMENT OF AN APPLICABLE STATUTE, PRINCIPLES OF FAIR NOTICE, REASONABLE RELIANCE, AND SETTLED EXPECTATIONS REQUIRE THE PROSPECTIVE APPLICATION OF THE STATUTE.

CONTRACTS - APPLICABLE LAW - WHERE OPEN-ENDED AGREEMENTS ARE EFFECTIVELY RENEWED, THE EXISTING LAW AT THE TIME OF THE RENEWAL IS INCORPORATED INTO THE AGREEMENT.

CONTRACTS - PUBLIC POLICY - WHERE A CONTRACT TERM CONFLICTS WITH PUBLIC POLICY, THAT TERM IS INVALID TO THE EXTENT THAT IT CONFLICTS WITH PUBLIC POLICY.

Facts: Reliable Tractor is an authorized dealer of John Deere products. The dealer agreements between the two parties were entered into in 1984. The agreements provide that John Deere may terminate without good cause if it provides 120 days notice. In 1998, Maryland enacted a law requiring that equipment suppliers, such as John Deere, have "good cause" to terminate a dealer agreement. In 2007, John Deere issued a notice of termination to Reliable Tractor without good cause.

Reliable Tractor filed suit in the U.S. District Court for the Middle District of Georgia, which certified the following question of law to the Court of Appeals:

Whether the Maryland Equipment Dealer Act's good cause provision applies to the termination of a dealer agreement where the dealer agreement was entered into before the good cause provision was enacted but the alleged without cause termination occurred after the good cause provision was enacted.

Held: The Court of Appeals held that the good cause provision applied to the contract, because considering principles of fair notice, reasonable reliance, and settled expectations, the application of the statute to the contracts is prospective, not retrospective. Furthermore, the statute applies because the ongoing contracts, which provided a notice period of 120 days, effectively created a series of renewable 120 day contracts. As both parties permitted the contracts to renew following the enactment of the good cause provision, the provision applies to the contract. Because the contract provision which allows for termination without cause is in conflict with public policy set forth in a statute, that provision is invalid.

*John Deere Construction and Forestry Co. v. Reliable Tractor*

Inc., Misc. No. 12, September Term, 2007. Opinion filed on September 15, 2008 by Greene, J.

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JUVENILE LAW - CIVIL PROCEDURE - JUVENILE MASTERS - HEARINGS ON EXCEPTIONS

Facts: Marcus J., a juvenile, was charged in Baltimore City Circuit Court with one count of carrying a handgun, one count of concealing a dangerous or deadly weapon, and one count of possession of a firearm while under the age of 21. A juvenile Master made a finding of facts sustained and recommended that Marcus J. be found to be a delinquent child. Marcus J. filed a Notice of Exception and Request for Hearing, which excepted to the Master's findings at the adjudicatory and disposition hearings as well as the Master's admission of non-expert testimony on the operability of a handgun and requested a de novo hearing before a judge pursuant to Section 3-807(c) of the Courts and Judicial Proceedings Article, Maryland Code (1974, 2006 Repl. Vol.), and Maryland Rule 11-111.

During the exceptions hearing, Marcus J.'s attorney stated, in response to the judge's statement that she did not comply with the exceptions policy of the Baltimore City Circuit Court when exercising its juvenile jurisdiction, that she "did file the exception and the exception does specifically state what I'm excepting to." The judge, nonetheless, dismissed Marcus J.'s exceptions for lack of specificity. Marcus J. appealed to the Court of Special Appeals, in which he posed the single question of whether the circuit court erred in dismissing his exceptions. In a reported opinion, the intermediate appellate court vacated the judgment of the circuit court and remanded the case for a hearing "as to all matters decided by the master." *In re Marcus J.*, 175 Md.App. 703, 715-16, 931, A.2d 1146, 1154 (2007). We granted the State's petition for certiorari.

Held: Affirmed. The Court of Appeals held that, under

Section 3-807(c) of the Courts and Judicial Proceedings Article, Maryland Code (1974, 2006 Repl. Vol.), and Maryland Rule 11-111, Marcus J. was entitled to a de novo hearing as to all matters decided by the master. The Court concluded that the exception regarding non-expert testimony on the operability of the handgun met the specificity requirement of the statute and rule and that his taking of exceptions to all matters decided by the master was explicit and reflected the mandate of Section 3-807 of the Courts and Judicial Proceedings Article, Maryland Code (1974, 2006 Repl. Vol.), which states that any party "may file written exceptions to any or all of the master's findings, conclusions, and recommendations." To conclude otherwise, the Court noted, would render the word "all" in the Statute meaningless and would otherwise limit the ability of a juvenile to have his or her concerns heard by a circuit court judge. The Court also addressed the issue of whether, on remand, Marcus J. is entitled to a de novo hearing, as he requested, or whether the circuit court hearing should be on the record and stated that because the adjudication before a circuit court judge is the gravamen of the process, a juvenile must be entitled to elect to have a judge hear evidence, make findings and apply the law to the facts of the case, as though no proceeding had occurred, should the juvenile request a de novo hearing, after submitting appropriate exceptions. Therefore, the Court concluded that under the present case, wherein Marcus J. took exception to all matters decided by the master and unequivocally stated that he "requests that the matter be set for a hearing de novo," he was entitled to such a hearing.

In re: Marcus J., No. 107, September Term 2007, filed June 17, 2008. Opinion by Battaglia, J.

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MOTOR VEHICLES - VEHICLE LAWS - REQUIRED SECURITY - TERMINATION OF SECURITY

Facts: Robert William Jordan did not maintain insurance on a

truck registered to him as mandated by Section 17-103 of the Transportation Article, Maryland Code (1988, 2006 Repl. Vol.). When the insurance lapsed, Jordan failed to renew or otherwise surrender evidence of the registration as required under Section 17-106 and, pursuant to the same Section, the State of Maryland Central Collection Unit ("the State") filed suit against Jordan for \$5,446.35, which included compulsory insurance violation penalties as well as a collection fee. After the State obtained a judgment in the District Court, Jordan appealed to the Circuit Court; during those proceedings, Jordan testified that he sold the truck for cash before cancelling the insurance and argued that "the vehicle was not being driven with those tags without insurance." The Circuit Court Judge reversed the judgment of the District Court, stating that he found Jordan "to be extremely credible and his testimony compelling," and that he "underst[ood] that [Jordan] has these obligations under state law but it seems to me he didn't knowingly fail to do anything, in fact, [he] thought he had done everything he was supposed to do." The State petitioned for certiorari, which the Court of Appeals granted. *Central Collection v. Jordan*, 402 Md. 623, 938 A.2d 825 (2008).

Held: The Court of Appeals reversed and held that Section 17-106 of the Transportation Article is a strict liability statute that does not require a showing of knowledge or intent for a violation thereof. The Court considered the larger statutory scheme in which Section 17-106 appears and concluded that the Legislature's omission of a *mens rea* requirement in Section 17-106, as compared to its inclusion in Section 17-107, demonstrates that the Legislature deliberately chose not to make knowledge an element of the offense of maintaining required security on an automobile. The Court also analyzed the characteristics of strict liability statutes and concluded, based on the statute's regulatory purpose, the extent of the penalty involved and that Jordan was generally in a position to prevent the offense from occurring as well as recurring on a daily basis, that Section 17-106 is a strict liability statute that does not require a showing of knowledge or intent for a violation thereof.

*State of Maryland Central Collection Unit v. Robert William Jordan*, No. 118, September Term 2007, filed July 24, 2008. Opinion by Battaglia, J.

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TAXATION - APPEAL AND ERROR - FILING OF OPINION AND ISSUANCE OF MANDATE IN COURT OF SPECIAL APPEALS FOLLOWING DEATH OF MEMBER OF THE PANEL WHO FACIALLY AUTHORED THE MAJORITY OPINION WAS A NULLITY - CASE REMAINED PENDING AND UNDECIDED IN COURT OF SPECIAL APPEALS.

PARTNERSHIP - LIMITED LIABILITY COMPANIES - TAXATION - NO RECORDATION OR TRANSFER TAX WAS DUE TO COUNTY UPON TRANSFER OF TITLE TO REAL PROPERTY FROM A PARTNERSHIP TO A LIMITED LIABILITY COMPANY COMPOSED OF SAME INDIVIDUALS.

Facts: Wildwood Medical Center, L.L.C., Appellee in the Court of Special Appeals and Petitioner here, requested administratively, on April, 28 2004, a refund of certain real property recordation and transfer taxes it paid, under protest, upon presentation of a deed for recordation to Montgomery County, Maryland, Appellant below and Respondent here. That request, after a hearing, was denied by the County. Petitioner appealed to the Maryland Tax Court. The Tax Court granted Wildwood's request for the refund. From that final administrative agency action, the County filed a Petition for Judicial Review in the Circuit Court for Montgomery County. The Circuit Court affirmed the decision of the Tax Court. The County then filed a Notice of Appeal to the Court of Special Appeals.

The panel assigned to hear and decide the County's appeal in the Court of Special Appeals consisted of Judges Theodore G. Bloom, Mary Ellen Barbera, and James A. Kenney, III. Following oral argument, the panel filed a reported opinion, with a dissent, on March 8, 2007. Judge Bloom, writing for himself and Judge Barbera, would have vacated the judgment of the Circuit Court and remanded the case for entry of a judgment reversing the decision of the Tax Court. Judge Kenney, in dissent, would have affirmed the Circuit Court's judgment. Before the mandate issued, however, the Montgomery County Attorney's Office sent a letter to the court suggesting that the court "consider revising its decision before the mandate issues" and made several suggestions for changes it urged were necessary or appropriate.

The opinion was recalled before the mandate issued. Before a revised majority opinion in the Court of Special Appeals could be filed, Judge Bloom passed away; however, before he died, he

apparently approved changes in a "new" draft majority opinion. This was apparent because the title page of the new purported majority opinion (on reconsideration), filed on October 31, 2007 (after Judge Bloom's passing), said so. *Wildwood Medical v. Montgomery County*, 176 Md. App. 731, 934 A.2d 484 (2007). A mandate for this new opinion issued on the same date. Judge Kenney's dissent was filed concurrently. Thereafter, Wildwood filed with the Court of Appeals a Petition for Writ of Certiorari, which the Court granted on February 13, 2008. *Wildwood Medical v. Montgomery County*, 403 Md. 304, 941 A.2d 1104 (2008).

The sole question for which the Court issued a writ of certiorari, based on Wildwood's petition, was whether the Tax Court and the Circuit Court were correct in allowing Wildwood an exemption from transfer and recordation taxes where title to the property was transferred to Wildwood by its predecessor entity, which was a general partnership composed of the same individuals as Wildwood.

Held: Judgment of the Court of Special Appeals vacated; case remanded with instructions to affirm the judgment of the Circuit Court. As a threshold matter, the Court addressed the effect on its own jurisdiction of Judge Bloom's death before a final opinion was filed and a mandate issued in the Court of Special Appeals. Although neither party raised this issue, the Court observed that a question of its jurisdiction may be raised on its initiative when noticed. The Court noted that Judge Bloom's death meant that there was no longer a panel of three judges constituted to hear and decide the case in the Court of Special Appeals, as required by Maryland Code (1973, 2006 Repl. Vol.), Courts and Judicial Proceedings Article, § 1-403. Thus, when the Court of Appeals issued a writ of certiorari in this case on February 13, 2008, it did so, in effect, prior to entry of a proper judgment by the Court of Special Appeals and while a timely filed appeal remained pending before that court. The Court concluded that, when certiorari is granted bypassing the Court of Special Appeals, the Court of Appeals considers all the issues that would have been cognizable by the intermediate appellate court, in whose shoes the Court now stood.

On the merits, the Court held that the property transfer in this case qualified for a recording and transfer tax exemption under Maryland Code (2001, 2007 Repl. Vol.), Tax-Property Article, § 12-108(y)(2). Section 12-108(y)(2) exempts transfers to a limited liability company where "the members of the limited liability company are identical to the partners of the converting general partnership." Here, the transferor was a Maryland general partnership. The partnership confirmed its existence by



the terms of a written partnership agreement. The intent of the members to carry on as a partnership was manifested by the fact that the partners filed U. S. Partnership Tax Returns for years previous to executing the formal agreement, specifically 2000 through 2003. The transferee was a limited liability company composed of the same members that comprised the partnership. The Court rejected the County's argument that title to the subject property had to have been in the name of the partnership in order for the transfer to qualify for the exemption. The Court observed that to require the converting general partnership first to title the partnership property in the name of the partnership in order to avail itself of the exemptions at issue would ignore the past treatment of partnership property and the recognition that partnership property need not be held in the name of the partnership.

*Wildwood Medical Center, L.L.C. v. Montgomery County, Maryland*, No. 125, September Term 2007, filed August 22, 2008. Per Curiam Opinion.

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#### WORKERS' COMPENSATION - EXPERT TESTIMONY

Facts: The Workers' Compensation Commission determined that George Maldonado sustained a permanent partial disability of "50% under 'Other Cases' industrial loss of the body as a result of the injury to the back and psychiatric (serious disability)." Subsequently, a jury, in a judicial review proceeding, reduced the percentage of loss to 35%, and Maldonado's Motion for Judgment Notwithstanding the Verdict, based on the lack of testimony from a vocational expert, was denied.

During the jury trial, the employer, American Airlines, and its insurer, Insurance Company of the State of Pennsylvania (hereinafter collectively referred to as "American Airlines") had called Maldonado to the stand; he testified that he was forty-three years old and that at the time of his injury he was working as an

American Airlines fleet service clerk, a position he occupied for fourteen and a half years, which consisted of "loading, offloading, deicing an aircraft, pushing the aircraft back when it was ready for departure, [and] giv[ing] hand signals to the aircraft when it was approaching the gate." Maldonado further testified that in the process of loading luggage into an aircraft, he cut his hand on an aircraft door; thereafter he proceeded to load baggage into an aircraft with one hand, at which point he felt a tear in his lower back. He testified that the back injury prohibited him from returning to work since the accident, but that after his injury he also obtained a bachelor's degree in theology in 2002, was able to drive a car, walk between 30 to 40 minutes without taking a break and do "light work" around the house. He indicated, nevertheless, that, because he could only sit for a certain period of time before needing to lay down, "no job is going to hire me." American Airlines also presented the videotaped depositions of two medical experts, Dr. Stephen W. Siebert, a psychiatrist, and Dr. Edward R. Cohen, an orthopedic surgeon, who both testified regarding their evaluation of Maldonado's permanent impairment.

After the denial of his motion for a directed verdict, Maldonado offered the videotaped depositions of two experts, a psychologist, Dr. Morris Lasson, Ph.D, and Dr. Jeffrey D. Gaber, M.D., an internist, who also testified regarding their evaluation of Maldonado's permanent impairment. Maldonado again moved for a directed verdict and the Judge reserved ruling. After being instructed and having deliberated, the jury reduced Maldonado's Commission award by 15%. His Motion for Judgment Notwithstanding the Verdict pursuant to Maryland Rule 2-532, based upon the absence of a vocational expert testifying on behalf of American Airlines, was denied.

On appeal to the Court of Special Appeals, and similarly before the Court of Appeals, Maldonado requested a holding that any party who disputes a Commission decision under "Other cases" industrial loss must present the testimony of a vocational expert during a judicial review proceeding in order to rebut the presumption of correctness of a Commission award. After the Court of Special Appeals, in an unreported opinion, declined to so hold, the Court of Appeals granted Maldonado's petition for certiorari, *Maldonado v. American Airlines*, 403 Md. 612, 943 A.2d 1244 (2008).

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Held: Affirmed. The Court of Appeals held that the testimony of a vocational expert is not a *sine qua non* requirement to rebut the presumption of correctness of a Workers' Compensation Commission award of permanent partial disability under "Other cases" industrial loss, nor was expert vocational testimony required in the present case, in which the jury was presented with

sufficient evidence from which to determine industrial loss. The Court reasoned that the factors identified in Section 9-627 (k) (2) of the Labor and Employment Article, Maryland Code (1991, 1999 Repl.Vol.), which include "(i) the nature of the physical disability; and (ii) the age, experience, occupation, and training of the disabled covered employee when the accidental personal injury or occupational disease occurred," are not so complicated that a jury, regardless of the other evidence presented, would lack sufficient evidence upon which to alter a Commission decision without the expert testimony. The Court also noted that the conclusion that expert vocational testimony is not *per se* required to determine industrial loss is consistent with cases in sister jurisdictions in which courts have had occasion to review workers' compensation awards.

*George Maldonado v. American Airlines, et. al.*, No. 135, September Term 2007, filed July 25, 2008. Opinion by Battaglia, J.

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# COURT OF SPECIAL APPEALS

CRIMINAL LAW - FELONY-MURDER - DURESS - DEFENSES - JURY  
INSTRUCTIONS - INDICTMENT - JURISDICTION - NOTICE

Facts: Appellant was convicted of first-degree felony-murder after participating in a robbery by knocking on the victim's door. He was acquitted of first-degree premeditated murder.

When the victim, who knew appellant, opened the door, appellant's associates left appellant outside and entered the house, robbing and then killing the victim. Appellant claimed in a pre-trial statement that one of the associates had brought appellant to the victim's house and told him, "you gonna be with that old man in the house or you gonna leave out the house with us. . . ." Moreover, he claimed that they had threatened appellant after the incident to ensure his silence. Appellant also told the police that if he had not knocked on the door, he would "probably be dead because they killing everybody." The court declined to instruct the jury on duress.

Held: Affirmed. Although duress is not a defense to the intentional killing of an innocent person, it may be a defense to felony-murder, because it may be a defense to the predicate felony. Nevertheless, the circuit court did not err in failing to propound a jury instruction as to the defense of duress.

Duress consists of four elements: (1) the defendant actually believed that the duress placed him in immediate and impending danger of death or serious bodily harm; (2) the defendant's belief was reasonable; (3) the defendant had no reasonable opportunity for escape; and (4) the defendant committed the crime because of the duress. The Court adopted the requirement of continuity as an element of duress in Maryland. Neither appellant's comment in hindsight to the police nor the *post hoc* threats by appellant's associates supported a duress instruction, because they were not evidence that, *at the time of the crime*, appellant was in actual fear of imminent or impending death or serious injury. Moreover, even if the statement, "you gonna be with that old man in the house or you gonna leave out the house with us," might otherwise support a duress instruction, appellant was not entitled to the duress instruction because, after his associates entered the house, he was no longer acting under duress; appellant continued to aid and abet the robbery by failing to take steps to repudiate his prior aid.

Moreover, appellant's indictment, which conformed to the statutory "short form" for murder, invested the court with jurisdiction to try appellant for felony-murder, despite the fact that the short-form indictment alleged that appellant "feloniously, willfully and with deliberately premeditated malice killed and murdered" the victim. The State was not required to charge appellant with the underlying felony of robbery to support jurisdiction for a felony-murder conviction. Appellant waived any objection to the indictment on notice grounds (as opposed to jurisdictional grounds) by failing to raise the issue in the trial court.

*Nathaniel Paul McMillan v. State of Maryland*, No. 2453, September Term, 2006. Filed: September 9, 2008. Opinion by Hollander, J.

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CRIMINAL LAW - MERGER: Under the required evidence test, if all of the elements of one offense are included in the other so that only the latter offense contains a distinct element, the former merges into the latter. *McGrath v. State*, 356 Md. 20, 23-24 (1999) .

Md. Code Ann. (2001 Repl. Vol.), Transp. Article, § 21-902 (a)(1) prohibits a person from driving while under the influence of alcohol, subsection (a)(2) prohibits an individual from driving while under the influence of alcohol *per se* and, subsection (b)(1) prohibits a person from driving while impaired by alcohol. *Meanor v. State*, 364 Md. 511 (2001). Driving under the influence *per se* is not a lesser included offense of driving under the influence. *Id.*

The circuit court instructed the jury that, if it reached a guilty verdict on the charge of driving under the influence *per se*, it need not proceed to determine guilt as to driving under the influence of alcohol and driving while impaired by alcohol and further instructed that, if it reached a not guilty verdict on driving under the influence *per se*, the jury should proceed to

determine guilt on the other two alcohol-related driving offenses. The docket entries indicated that appellant was convicted of driving under the influence of alcohol and driving while impaired and that these additional charges had been merged on the day of sentencing.

Facts: Appellant was charged with, *inter alia*, driving under the influence *per se*, driving under the influence of alcohol and driving while impaired. A jury sitting in the Circuit Court for Calvert County found appellant guilty of driving under the influence of alcohol *per se*. No verdict was reached on the other charges; however, the docket entries indicated that the additional alcohol-related charges were merged on the day of sentencing. Defendant appealed and requested that the docket entries be amended.

Held: Case remanded to the circuit court with instructions to amend the docket entries. Under the required evidence test, driving under the influence of alcohol and driving while impaired are not technically lesser included offenses of driving under the influence *per se*. The docket entries, which reflect merger of the less serious offenses, presupposes that the jury rendered a verdict on those offenses. Because no verdict was reached on the less serious offenses, their merger erroneously reflected the action taken by the jury in the trial.

*Daniel Frank Turner v. State of Maryland*, No. 2666, September Term, 2006, decided September 10, 2008. Opinion by Davis, J.

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FAMILY LAW - DIVORCE - CONSENT ORDER - APPEALABILITY - BINDING EFFECT OF ORAL AGREEMENT ENTERED IN OPEN COURT - DISMISSAL OF APPEAL

Facts: The parties were involved in divorce proceedings, and reached a settlement agreement that they placed on the record at a hearing before a master. Appellant subsequently refused to

sign the proposed order, even though the terms corresponded to the terms placed on the record. Appellee asked the court to issue the order without appellant's signature. Appellant opposed the motion. The court issued the order.

Held: The circuit court did not err in entering an order that conformed with an oral agreement that the parties had entered on the record, even though the appellant refused to sign the proposed order. The order was, in effect, a consent order, although not titled as such; it tracked precisely the terms of the parties' oral agreement.

Ordinarily, no appeal lies from a consent order, unless the consent was coerced, the judgment exceeded the scope of consent, or it was not within the jurisdiction of the court. When a consent order is challenged on the ground that there was no actual consent, but the record demonstrates that the order is consistent with the parties' agreement, the appellate court will dismiss the appeal.

*Le'Etta Johnson Barnes v. Patrick Ivan Barnes, No. 106, September Term, 2007.* Opinion filed September 9, 2008 by Hollander, J.

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FAMILY LAW - GROUNDS FOR DIVORCE - ABSOLUTE DIVORCE - VOLUNTARY SEPARATION - CONSTRUCTIVE DESERTION - HARMLESS ERROR - MARITAL PROPERTY - MONETARY AWARD; RULE 9-207 JOINT STATEMENT - CRAWFORD CREDITS.

Facts: In divorce proceedings, neither party had alleged voluntary separation as grounds for divorce. The evidence showed that appellee left the home because of appellant's alcohol consumption and sexual misconduct. The court's monetary award to appellee constituted almost 90% of the value of the marital property.

Held: The circuit court erred in granting appellee an

absolute divorce on the ground of voluntary separation, because neither party asserted that ground and the record did not show the requisite agreement to separate for twelve months prior to filing for divorce. Appellant's filing of a counter-complaint for divorce on a fault-based ground did not establish his agreement to a no-fault divorce. Nevertheless, the error was harmless because both parties sought a divorce; the record supported a divorce on grounds of constructive desertion; and the court made factual findings tantamount to a finding of constructive desertion.

The court abused its discretion by granting a monetary award to appellee that amounted to nearly 90% of the value of the marital property. The court did not explain the basis for the disparate award, and the court's analysis of the factors relevant to distribution of marital property was flawed in several respects.

Where the parties agreed in a Rule 9-207 joint statement to the division of certain items of marital property, the agreement rendered the property non-marital, and the court did not err in excluding that property from the marital property "pool." But, with respect to a monetary award, the court erred in failing to account for the parties' non-marital property in its analysis of the equities between the parties pursuant to F.L. § 8-205(b)(2)-(3).

In awarding *Crawford* credits to appellant for his payment of the mortgage on the marital home, the court did not abuse its discretion in offsetting the award of *Crawford* credits by appellee's rental payments for an apartment.

*Wayne Edward Flanagan v. Stephanie Bonn Flanagan, No. 395, September Term, 2007.* Opinion filed September 10, 2008 by Hollander, J.

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FAMILY LAW - LIMITED DIVORCE - INDEFINITE ALIMONY. - CIRCUIT COURT IS STATUTORILY AUTHORIZED TO GRANT INDEFINITE ALIMONY ATTENDANT TO A LIMITED DIVORCE. INDEFINITE ALIMONY AND LIMITED DIVORCE ARE NOT INCOMPATIBLE CONCEPTS. INDEFINITE ALIMONY NECESSARILY TERMINATES AT TIME OF ABSOLUTE DIVORCE, HOWEVER, WITHOUT BURDEN ON PAYING PARTY TO PROVE STANDARD FOR MODIFICATION.

Facts: Robert J. Walter ("Robert") challenged a ruling by the Circuit Court for Frederick County granting to his wife Susan L. Walter ("Susan") indefinite alimony, incident to a limited divorce, and attorneys' fees. In June 2005, the parties separated voluntarily, with Robert remaining in the marital home and Susan moving to Indiana, where she has extended family. Two days after she moved out, Susan filed a complaint for limited divorce based on voluntary separation. Robert subsequently paid all costs and expenses related to maintenance and upkeep of the home, which amounted to about \$2,500 per month. For the next nine months, Robert sent Susan \$500 per month, and the parties attempted to reach a negotiated settlement. When negotiation failed, Robert stopped the \$500 monthly payments but continued to occupy and pay all expenses related to the marital home.

The evidence at trial established that Robert's income from his business was highly variable and ranged from an annual loss of \$50,000 to a positive gross of about \$30,000 annually, whereas Susan earned \$21,400 annually. The trial court imputed additional income to Robert, finding that, in order to pay the monthly housing costs in excess of \$2,500, he had to have been netting more than \$30,000 annually, corresponding to a yearly gross income of at least \$48,000. The trial court also found that Robert's financial resources were sufficient so that he should be required to pay indefinite alimony of \$1,500 per month, at least in part because he had the potential to earn between \$100,000 and \$120,000 annually from his business. Furthermore, the trial court ordered Robert to pay Susan's attorneys' fees, amounting to about \$6,400.

Held: The circuit court made several clearly erroneous factual findings, and therefore the award of indefinite alimony was vacated. Because the alimony award was vacated, so too was the award of attorneys' fees.

Because the issue was virtually certain to arise on remand, the Court exercised its discretion under Md. Rule 8-131 to address the legal issue whether the circuit court was authorized to enter an award of indefinite alimony in a case of limited divorce. The Court determined that, under Maryland law,

indefinite alimony and limited divorce are not incompatible concepts, and thus the circuit court could grant indefinite alimony, but only if the party seeking alimony satisfied its evidentiary burden on remand. The Court furthermore held that an award of indefinite alimony, in the context of a limited divorce, terminates at the time of absolute divorce, without burden on the paying party to prove the standard applicable to modification or termination of alimony. This conclusion follows from the fact that limited divorce does not and cannot address issues of equitable distribution of marital property or monetary award, which in turn are statutory factors an equity court must consider when determining whether to award alimony after absolute divorce.

*Walter v. Walter*, No. 2339, 2006 Term, filed September 5, 2008.  
Opinion by Eyler, Deborah S., J.

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TORTS - MEDICAL MALPRACTICE PROCEDURE -- WHAT ACTIVITIES ARE INCLUDED IN "PROFESSIONAL ACTIVITIES" FOR PURPOSES OF THE EXPERT WITNESS 20 PERCENT RULE IN SECTION 3-2A-04(b)(4) OF THE COURTS ARTICLE -- EXCLUSION OF STANDARD OF CARE WITNESS ON BASIS OF 20 PERCENT RULE -- INFORMED CONSENT -- EXCLUSION OF EXPERT WITNESS FROM TESTIFYING ABOUT MEDICAL ISSUES RELATED TO INFORMED CONSENT CLAIM ON GROUND OF LACK OF FOUNDATION FOR OPINION -- ABUSE OF DISCRETION STANDARD.

Facts: After discovering that she had an aneurysm in her brain, Rebecca Marie Waldt met with Gregg Zoarski, M.D., at the University of Maryland Medical System ("UMMS"), to discuss treatment options. While performing a procedure to treat the aneurysm, Dr. Zoarski allegedly perforated an artery, which caused bleeding into the brain and a stroke. The stroke caused Mrs. Waldt to suffer from physical and mental injuries. Mrs. Waldt and her husband sued Dr. Zoarski and UMMS for ordinary medical negligence and informed consent negligence.

The trial court granted judgment in favor of UMMS and Dr.

Zoarski on both counts. The Waldts appealed, claiming that the trial court erred in ruling that Gerard Debrun, M.D., the Waldts' expert witness, could not testify as to whether Dr. Zoarski breached the standard of care and in ruling that Dr. Debrun could not testify as an expert witness on the medical issues that were part of the Waldts' informed consent claim. The Waldts also claimed that the trial court erred by granting judgment in favor of UMMS and Dr. Zoarski and in ruling that certain documentary evidence was inadmissible.

Held: Affirmed in part and reversed in part, and remanded for further proceedings on the ordinary negligence claim. The Court of Special Appeals held that Dr. Debrun was not disqualified from giving expert testimony on the standard of care because, under the "20 Percent Rule," which is a prerequisite for an expert witness to testify about a breach of the standard of care in a medical malpractice trial, Dr. Debrun was qualified to testify. The Court found that the trial court's ruling that Dr. Debrun could not testify about the standard of care was prejudicial and that his opinion regarding the standard of care should have been admitted into evidence. The Court further held that the trial court did not err or abuse its discretion in excluding Dr. Debrun from testifying as an expert on the informed consent claim. The Court explained that, in order for an expert witness to give an opinion, the witness must be qualified, the testimony must be appropriate on the particular subject, and there must be a sufficient factual basis to support the expert's testimony. Because Dr. Debrun had limited experience with procedures such as that performed on Mrs. Waldt and did not disclose any specific scientific or factual basis for his knowledge of the risks of that procedure, the trial court was within its discretion to exclude Dr. Debrun from testifying. The trial court did not err in granting the appellees' motion for judgment on the informed consent claim, as the Waldts did not offer sufficient evidence in the form of expert witness opinion testimony to prove an informed consent negligence claim.

*Waldt v. University of Maryland Medical System*, No. 2623, September Term, 2006, filed September 5, 2008. Opinion by Eyler, Deborah S., J.

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# ATTORNEY DISCIPLINE

By an Opinion and Order of the Court of Appeals of Maryland dated July 24, 2008, the following attorney has been suspended for ninety (90) days, effective August 23, 2008, from the further practice of law in this State:

EPHRAIM C. UGWUONYE

\*

By an Order of the Court of Appeals of Maryland dated August 27, 2008, the following attorney has been disbarred by consent from the further practice of law in this State:

AARON D. WEINRAUCH

\*

The following attorney has been replaced upon the register of attorneys in the Court of Appeals of Maryland effective September 2, 2008:

DANIEL HOWARD GREEN

\*

By an Order of the Court of Appeals of Maryland dated September 3, 2008, the following attorney has been disbarred by consent from the further practice of law in this State:

JEFFREY THOMAS WHITE

\*

By an Order of the Court of Appeals of Maryland dated September 3, 2008, the following attorney has been suspended for ninety (90) days by consent, effective immediately, from the further practice of law in this State:

ROBERT CRAIG TURNER

\*

By an Opinion and Order of the Court of Appeals of Maryland dated September 8, 2008, the following attorney has been disbarred from the further practice of law in this State:

CHARLES E. McCLAIN, SR.

\*

By an Order of the Court of Appeals of Maryland dated September 24, 2008, the following attorney has been suspended for sixty (60) days by consent, effective immediately, from the further practice of law in this Court:

ROBERT JOHN HARRIS

\*

# JUDICIAL APPOINTMENTS

On August 7, 2008, the Governor announced the appointment of EDWARD GREGROY WELLS to the District Court for Calvert County. Judge Wells was sworn in on August 26, 2008 and fills the vacancy created by the retirement of the Hon. Stephen L. Clagett.

\*

On August 7, 2008, the Governor announced the appointment of the HON. LEO E. GREEN, JR. to the Circuit Court for Prince George's County. Judge Green was sworn in on August 28, and fills the vacancy created by the retirement of the Hon. Richard H. Sothoron.

\*

On August 7, 2008, the Governor announced the appointment of LAWRENCE VINCENT HILL, JR. to the District Court for Prince George's County. Judge Hill was sworn in on August 28, 2008 and fills the vacancy created by the elevation of the Hon. Leo E. Green, Jr.

\*

On August 7, 2008, the Governor announced the appointment of BONNIE GULLATT SCHNEIDER to the District Court for Cecil County. Judge Schneider was sworn in on August 29, 2008 and fills the vacancy created by the retirement of the Hon. James C. McKinney.

\*

On August 7, 2008, the Governor announced the appointment of the HON. MARY ELLEN BARBERA to the Court of Appeals of Maryland. Judge Barbera was sworn in on September 2, 2008 and fills the vacancy created by the retirement of the Hon. Irma S. Raker.

\*

On August 7, 2008, the Governor announced the appointment of the HON. ALBERT J. MATRICCIANI, JR. to the Court of Special Appeals of Maryland. Judge Matricciani was sworn in on September 2, 2008 and fills the vacancy created by the elevation of the Hon. Mary Ellen Barbera.

\*

On August 7, 2008, the Governor announced the appointment of KATHRYN GRILL GRAEFF to the Court of Special Appeals of Maryland. Judge Graeff was sworn in on September 2, 2008 and fills the vacancy created by the retirement of the Hon. James F. Sharer.

\*

On August 7, 2008, the Governor announced the appointment of the EILEEN ANNE REILLY to the District Court of Anne Arundel County. Judge Reilly was sworn in on September 3, 2008 and fills the vacancy created by the retirement of the Hon. Vincent A. Mulieri.

\*

On August 7, 2008, the Governor announced the appointment of SHAEM CHARLES PATRICE SPENCER to the District Court for Anne Arundel County. Judge Spencer was sworn in on September 3, 2008 and fills the vacancy created by the retirement of the Hon. James W. Dryden.

\*

On August 7, 2008, the Governor announced the appointment of the TIFFANY HANNA ANDERSON to the District Court for Prince George's County. Judge Anderson was sworn in on September 3, 2008 and fills the vacancy created by the elevation of the Hon. Beverly Jean Woodard.

\*

On August 7, 2008, the Governor announced the appointment of MARCUS Z. SHAR to the Circuit Court for Baltimore City. Judge Shar was sworn in on September 4, 2008 and fills the vacancy created by the elevation of the Hon. Albert J. Matricciani, Jr.

\*

On August 7, 2008, the Governor announced the appointment of HENRY RICHARD DUDEN, III to the District Court of Anne Arundel County. Judge Duden was sworn in on September 5, 2008 and fills the vacancy created by the elevation of the Hon. Jeffrey Michael Wachs.

\*

On August 7, 2008, the Governor announced the appointment of GEORGE RICHARD COLLINS to the District Court of Prince George's County. Judge Collins was sworn in on September 5, 2008 and fills the vacancy created by the elevation of the Hon. Cystal Mittelstaedt.

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