LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS

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MARYLAND LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS (LEOBR)

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INTRODUCTION

History of the Law Enforcement Officers' Bill of Rights (LEOBR)

Enacted by the General Assembly in 1974, the Law Enforcement Officers' Bill of Rights (LEOBR) guarantees substantive and procedural protections to law enforcement officers during disciplinary investigations, interrogations, and hearings that could lead to disciplinary action, demotion or dismissal. The LEOBR provides an officer's exclusive remedy in matters of departmental discipline.

The LEOBR applies to law enforcement officers who are authorized to make arrests and are a member of a majority of Maryland's law enforcement agencies. The LEOBR does not apply to law enforcement officers; 1) that serve at the pleasure of the Chief, Commissioner, Superintendent, or Sheriff; 2) the police chief of a municipal corporation; or 3) a law enforcement officer who is in a probationary status on initial entry into the law enforcement agency except if an allegation of brutality in the execution of the officer's duties is made.

II. TITLE 3. LAW ENFORCEMENT

LAW ENFORCEMENT OFFICERS BILL OF RIGHTS.

§ 3-101. DEFINITIONS IN GENERAL

(a) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED

REVISOR'S NOTE: This subsection formerly was Art. 27, § 727(a).

The only changes are in style.

CHIEF

(b) (1) "CHIEF" MEANS THE HEAD OF A LAW ENFORCEMENT AGENCY.

(2) "CHIEF" INCLUDES THE OFFICER DESIGNATED BY THE HEAD OF A LAW ENFORCEMENT AGENCY.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 727(g).

Paragraph (1) of this subsection is revised for clarity to refer generally to the "head" of a law enforcement agency. Consequently, the former specific references to the "superintendent", "commissioner", "chief of police", and "sheriff" are deleted as included in the general reference to the "head" of a subsection.

HEARING

(c) (1) "HEARING" MEANS A PROCEEDING DURING AN INVESTIGATION CONDUCTED BY A HEARING BOARD TO TAKE TESTIMONY OR RECEIVE OTHER EVIDENCE.

(2) "HEARING" DOES NOT INCLUDE AN INTERROGATION AT WHICH NO TESTIMONY IS TAKEN UNDER OATH.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 727(e).

In paragraph (1) of this subsection, the reference to a "proceeding" is substituted for the former reference to a "meeting" for clarity. Correspondingly, the reference to an "investigation" is substituted for the former reference to an "investigatory proceeding" to avoid using the term "proceeding" twice.

Also in paragraph (1) of this subsection, the former reference to "adducing" testimony is deleted as included in the reference to "taking" testimony.

Defined term: "Hearing board" § 3-101

HEARING BOARD

(d) "HEARING BOARD" MEANS A BOARD THAT IS AUTHORIZED BY THE CHIEF TO HOLD A HEARING ON A COMPLAINT AGAINST A LAW ENFORCEMENT OFFICER.

REVISOR'S NOTE: This subsection is new language derived without substantive change from the first clause of the first sentence of former Art. 27, § 727(d)(1).

Defined terms: "Chief" § 3-101.

"Hearing" § 3-101.

"Law enforcement officer" § 3-101.

LAW ENFORCEMENT OFFICER

(e) (1) "LAW ENFORCEMENT OFFICER" MEANS AN INDIVIDUAL WHO:

(i) IN AN OFFICIAL CAPACITY IS AUTHORIZED BY LAW TO MAKE ARRESTS; AND

(ii) IS A MEMBER OF ONE OF THE FOLLOWING LAW ENFORCEMENT AGENCIES:

1. THE DEPARTMENT OF STATE POLICE;

2. THE POLICE DEPARTMENT OF BALTIMORE CITY;

3. THE BALTIMORE CITY SCHOOL POLICE FORCE;

4. THE BALTIMORE CITY WATERSHED POLICE FORCE;

5. THE POLICE DEPARTMENT, BUREAU, OR FORCE OF A COUNTY;

6. THE POLICE DEPARTMENT, BUREAU, OR FORCE OF A MUNICIPAL CORPORATION;

7. THE OFFICE OF THE SHERIFF OF A COUNTY;

8. THE POLICE DEPARTMENT, BUREAU, OR FORCE OF A COUNTY AGENCY;

9. THE MARYLAND TRANSPORTATION AUTHORITY POLICE;

10. THE POLICE FORCES OF THE DEPARTMENT OF TRANSPORTATION;

11. THE POLICE FORCES OF THE DEPARTMENT OF NATURAL RESOURCES;

12. THE FIELD ENFORCEMENT DIVISION OF THE COMPTROLLER'S OFFICE;

13. THE HOUSING AUTHORITY OF BALTIMORE CITY POLICE FORCE;

14. THE CROFTON POLICE DEPARTMENT;

15. THE POLICE FORCE OF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE;

16. THE POLICE FORCE OF THE DEPARTMENT OF GENERAL SERVICES;

17. THE POLICE FORCES OF THE DEPARTMENT OF LABOR LICENSING, AND REGULATION;

18. THE POLICE FORCES OF THE UNIVERSITY SYSTEM OF MARYLAND;

19. THE POLICE FORCE OF MORGAN STATE UNIVERSITY;

20. THE OFFICE OF STATE FIRE MARSHAL;

21. THE OCEAN PINES POLICE DEPARTMENT;

22. THE POLICE FORCE OF THE BALTIMORE CITY COMMUNITY COLLEGE; OR

23. THE POLICE FORCE OF THE HAGERSTOWN COMMUNITY COLLEGE.

(2) "LAW ENFORCEMENT OFFICER" DOES NOT INCLUDE:

(i) AN INDIVIDUAL WHO SERVES AT THE PLEASURE OF THE POLICE COMMISSIONER OF BALTIMORE CITY;

(ii) AN INDIVIDUAL WHO SERVES AT THE PLEASURE OF THE APPOINTING AUTHORITY OF A CHARTER COUNTY;

(iii) THE POLICE CHIEF OF A MUNICIPAL CORPORATION;

(iv) AN OFFICER WHO IS IN PROBATIONARY STATUS ON INITIAL ENTRY INTO THE LAW ENFORCEMENT AGENCY EXCEPT IF AN ALLEGATION OF BRUTALITY IN THE EXECUTION OF THE OFFICER'S DUTIES IS MADE;

(v) A MONTGOMERY COUNTY FIRE AND EXPLOSIVE INVESTIGATOR AS DEFINED IN § 2-208.1 OF THE CRIMINAL PROCEDURE ARTICLE;

(vi) AN ANNE ARUNDEL COUNTY OR CITY OF ANNAPOLIS FIRE AND EXPLOSIVE INVESTIGATOR AS DEFINED IN § 2-208.2 OF THE CRIMINAL PROCEDURE ARTICLE;

(vii) A PRINCE GEORGE'S COUNTY FIRE AND EXPLOSIVE INVESTIGATOR AS DEFINED IN § 2-208.3 OF THE CRIMINAL PROCEDURE ARTICLE;

(viii) A WORCESTER COUNTY FIRE AND EXPLOSIVE INVESTIGATOR AS DEFINED IN § 2-208.4 OF THE CRIMINAL PROCEDURE ARTICLE; OR

(ix) A CITY OF HAGERSTOWN FIRE AND EXPLOSIVE INVESTIGATOR AS DEFINED IN § 2-208.5 OF THE CRIMINAL PROCEDURE ARTICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 727(b) and (c).

In the introductory language of paragraph (1) and in paragraph (2) (i) and (ii) of this subsection, the reference to an "individual" is substituted for the former reference to a "person" because only an individual, and not the other entities included in the defined term "person", can be a law enforcement officer. See § 1-101 of this article for the definition of "person".

In paragraphs (1) (ii)6 and (2) (iii) of this subsection, the references to a "municipal corporation" are substituted for the former references to an "incorporated city or town" for consistency with Md. Constitution, Art. XI-E.

In paragraph (1)(ii)7 of this subsection, the former reference to "Baltimore City" is deleted as surplusage in light of the article-wide definition of "county" in § 1-101 of this article.

In paragraph (1)(ii)11, 15, 16, 17, and 19 of this subsection, the reference to the police "force[s]" is substituted for the former reference to police "officers" for internal consistency in this paragraph in referring to law enforcement agencies.

In paragraph (1)(ii)18 of this subsection, the reference to the police "forces" of the University System of Maryland is substituted for the former reference to police "officers" to indicate that each college/university in the University System of Maryland has a separate police force.

In paragraph (1)(ii)20 of this subsection, the former reference to a "full-time investigative and inspection assistant" is deleted for accuracy. These individuals do not have arrest powers.

In paragraph (2)(iv) of this subsection, the reference to initial entry into the "law enforcement agency" is substituted for the former reference to initial entry into the "Department" because this provision is not limited to officers who are entering a

particular police department, but covers officers entering any law enforcement agency listed in paragraph (1)(ii) of this subsection.

Defined term: "County" § 1-101

SEE CASES

65. *Cheverly Police Department v. Day*, 135 Md. App. 384, 762 A.2d 981 (2000).
66. *Mohan v. Norris*, 386 Md. 63, 871 A.2d 575 (2005).

§ 3-102. EFFECT OF SUBTITLE

CONFLICTING LAW SUPERSEDED

(a) EXCEPT FOR THE ADMINISTRATIVE HEARING PROCESS UNDER TITLE 3, SUBTITLE 2 OF THIS ARTICLE THAT RELATES TO THE CERTIFICATION ENFORCEMENT POWER OF THE POLICE TRAINING COMMISSION, THIS SUBTITLE SUPERSEDES ANY OTHER LAW OF THE STATE, A COUNTY, OR A MUNICIPAL CORPORATION THAT CONFLICTS WITH THIS SUBTITLE.

PREEMPTION OF LOCAL LAW

(b) ANY LOCAL LAW IS PREEMPTED BY THE SUBJECT AND MATERIAL OF THIS SUBTITLE.

AUTHORITY OF CHIEF NOT LIMITED

(c) THIS SUBTITLE DOES NOT LIMIT THE AUTHORITY OF THE CHIEF TO REGULATE THE COMPETENT AND EFFICIENT OPERATION AND MANAGEMENT OF A LAW ENFORCEMENT AGENCY BY ANY REASONABLE MEANS INCLUDING TRANSFER AND REASSIGNMENT IF:

(1) THAT ACTION IS NOT PUNITIVE IN NATURE; AND

(2) THE CHIEF DETERMINES THAT ACTION TO BE IN THE BEST INTEREST OF THE INTERNAL MANAGEMENT OF THE LAW ENFORCEMENT AGENCY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § § 734B and 728 (c).

In subsection (a) of this section, the former specific references to any "ordinance" and "regulation" are deleted as included in the general reference to "law".

In subsection (b) of this section, the reference to any local "law" is substituted for the former reference to local "legislation" for consistency with subsection (a) of this section.

Defined terms: "Chief" § 3-101

"County" § 1-101

§ 3-103. RIGHTS OF LAW ENFORCEMENT OFFICERS GENERALLY

RIGHT TO ENGAGE IN POLITICAL ACTIVITY

(a) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A LAW ENFORCEMEN[T] OFFICER HAS THE SAME RIGHTS TO ENGAGE IN POLITICAL ACTIVITY AS A STATE EMPLOYEE.

(2) THIS RIGHT TO ENGAGE IN POLITICAL ACTIVITY DOES NOT APPLY WHEN THE LAW ENFORCEMENT OFFICER IS ON DUTY OR ACTING IN AN OFFICIA[L] CAPACITY.

REGULATION OF SECONDARY EMPLOYMENT

(b) A LAW ENFORCEMENT AGENCY:

(1) MAY NOT PROHIBIT SECONDARY EMPLOYMENT BY LAW ENFORCEMENT OFFICERS; BUT

(2) MAY ADOPT REASONABLE REGULATIONS THAT RELATE TO SECONDARY EMPLOYMENT BY LAW ENFORCEMENT OFFICERS.

DISCLOSURE OF PROPERTY, INCOME, AND OTHER INFORMATION

(c) A LAW ENFORCEMENT OFFICER MAY NOT BE REQUIRED OR REQUESTED TO DISCLOSE AN ITEM OF THE LAW ENFORCEMENT OFFICER'S PROPERTY, INCOM[E], ASSETS, SOURCE OF INCOME, DEBTS, OR PERSONAL OR DOMESTIC EXPENDITURES, INCLUDING THOSE OF A MEMBER OF THE LAW ENFORCEMENT OFFICER'S FAMILY OR HOUSEHOLD, UNLESS:

(1) THE INFORMATION IS NECESSARY TO INVESTIGATE A POSSIBLE CONFLICT OF INTEREST WITH RESPECT TO THE PERFORMANCE O[F] THE LAW ENFORCEMENT OFFICER'S OFFICIAL DUTIES; OR

(2) THE DISCLOSURE IS REQUIRED BY FEDERAL OR STATE LAW.

RETALIATION

(d) A LAW ENFORCEMENT OFFICER MAY NOT BE DISCHARGED, DISCIPLINED, DEMOTED, OR DENIED PROMOTION, TRANSFER, OR REASSIGNMENT, OR OTHERWISE DISCRIMINATED AGAINST IN REGARD TO THE LAW ENFORCEMENT OFFICER'S EMPLOYMENT OR BE THREATENED WITH THAT TREATMENT BECAUS[E] THE LAW ENFORCEMENT OFFICER:

(1) HAS EXERCISED OR DEMANDED THE RIGHTS GRANTED BY THIS SUBTITLE, OR

(2) HAS LAWFULLY EXERCISED CONSTITUTIONAL RIGHTS.

RIGHT TO SUE

(e) A STATUTE MAY NOT ABRIDGE AND A LAW ENFORCEMENT AGENCY MAY NOT ADOPT A REGULATION THAT PROHIBITS THE RIGHT OF A LAW ENFORCEMENT OFFICER TO BRING SUIT THAT ARISES OUT OF THE LAW ENFORCEMENT OFFICER'S DUTIES AS A LAW ENFORCEMENT OFFICER.

WAIVER OF RIGHTS

(f) A LAW ENFORCEMENT OFFICER MAY WAIVE IN WRITING ANY AND ALL RIGHTS GRANTED BY THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § § 729, 729A, 733, 734D, and 728(a) and (b)(11).

In subsection (a)(1) of this section, the introductory phrase "subject to paragraph 2 of this subsection" is added to clarify that the right to engage in political activity is limited by subsection (a)(2) of this section.

In subsection (f) of this section, the defined term "law enforcement officer" is substituted for the former term "officer" for consistency with terminology used throughout this subtitle.

Also in subsection (f) of this section, the reference to rights "granted" by this subtitle is substituted for the former reference to rights "provided" in this subtitle for consistency with subsection (d)(1) of this section.

Defined term: "Law enforcement officer" § 3-101

SEE CASES

21. *Moats v. City of Hagerstown*, 325 Md. 519, 597 A.2d 972 (1991).

22. *Montgomery County v. FOP*, 147 Md. App. 659, 810 A.2d 519 (2002).

60. *Fraternal Order of Police, Montgomery County Lodge No. 35 v. Mehrling*, 343 Md. 155, 680 A.2d 1052 (1990).

§ 3-104. INVESTIGATION OR INTERROGATION OF LAW ENFORCEMENT OFFICER

IN GENERAL

(a) THE INVESTIGATION OR INTERROGATION BY A LAW ENFORCEMENT AGENCY OF A LAW ENFORCEMENT OFFICER FOR A REASON THAT MAY LEAD TO DISCIPLINARY ACTION, DEMOTION, OR DISMISSAL SHALL BE CONDUCTED IN ACCORDANCE WITH THIS SECTION.

INTERROGATING OR INVESTIGATING OFFICER

(b) FOR PURPOSES OF THIS SECTION, THE INVESTIGATING OFFICER OR INTERROGATING OFFICER SHALL BE:

(1) A SWORN LAW ENFORCEMENT OFFICER; OR

(2) IF REQUESTED BY THE GOVERNOR, THE ATTORNEY GENERAL OR ATTORNEY GENERAL'S DESIGNEE.

COMPLAINT THAT ALLEGES BRUTALITY

(c) (1) A COMPLAINT AGAINST A LAW ENFORCEMENT OFFICER THAT ALLEGES BRUTALITY IN THE EXECUTION OF THE LAW ENFORCEMENT OFFICER'S DUTIES MAY NOT BE INVESTIGATED UNLESS THE COMPLAINT IS SWORN TO, BEFORE AN OFFICIAL AUTHORIZED TO ADMINISTER OATHS, BY:

(i) THE AGGRIEVED INDIVIDUAL;

(ii) A MEMBER OF THE AGGRIEVED INDIVIDUAL'S IMMEDIATE FAMILY;

(iii) AN INDIVIDUAL WITH FIRSTHAND KNOWLEDGE OBTAINED BECAUSE THE INDIVIDUAL WAS PRESENT AT AND OBSERVED THE ALLEGED INCIDENT; OR

(iv) THE PARENT OR GUARDIAN OF THE MINOR CHILD IF THE ALLEGED INCIDENT INVOLVES A MINOR CHILD.

(2) UNLESS A COMPLAINT IS FILED WITHIN 90 DAYS AFTER THE ALLEGED BRUTALITY, AN INVESTIGATION THAT MAY LEAD TO DISCIPLINARY ACTION UNDER THIS SUBTITLE FOR BRUTALITY MAY NOT BE INITIATED AND AN ACTION MAY NOT BE TAKEN.

DISCLOSURES TO LAW ENFORCEMENT OFFICER UNDER INVESTIGATION

(d) (1) THE LAW ENFORCEMENT OFFICER UNDER INVESTIGATION SHALL BE INFORMED OF THE NAME, RANK, AND COMMAND OF:

(i) THE LAW ENFORCEMENT OFFICER IN CHARGE OF THE INVESTIGATION;

(ii) THE INTERROGATING OFFICER; AND

(iii) EACH INDIVIDUAL PRESENT DURING AN INTERROGATION.

(2) BEFORE AN INTERROGATION, THE LAW ENFORCEMENT OFFICER UNDER INVESTIGATION SHALL BE INFORMED IN WRITING OF THE NATURE OF THE INVESTIGATION.

DISCLOSURES TO LAW ENFORCEMENT OFFICER UNDER ARREST

(e) IF THE LAW ENFORCEMENT OFFICER UNDER INTERROGATION IS UNDER ARREST, OR IS LIKELY TO BE PLACED UNDER ARREST AS A RESULT OF THE INTERROGATION, THE LAW ENFORCEMENT OFFICER SHALL BE INFORMED COMPLETELY OF ALL THE LAW ENFORCEMENT OFFICER'S RIGHTS BEFORE THE INTERROGATION BEGINS.

TIME OF INTERROGATION

(f) UNLESS THE SERIOUSNESS OF THE INVESTIGATION IS OF A DEGREE THAT AN IMMEDIATE INTERROGATION IS REQUIRED, THE INTERROGATION SHALL BE CONDUCTED AT A REASONABLE HOUR, PREFERABLY WHEN THE LAW ENFORCEMENT OFFICER IS ON DUTY.

PLACE OF INTERROGATION

(g) (1) THE INTERROGATION SHALL TAKE PLACE:

(i) AT THE OFFICE OF THE COMMAND OF THE INVESTIGATING OFFICER AT THE OFFICE OF THE LOCAL PRECINCT OR POLICE UNIT IN WHICH THE INCIDENT ALLEGEDLY OCCURRED, AS DESIGNATED BY THE INVESTIGATING OFFICER; OR

(ii) AT ANOTHER REASONABLE AND APPROPRIATE PLACE.

(2) THE LAW ENFORCEMENT OFFICER UNDER INVESTIGATION MAY WAIVE THE RIGHT DESCRIBED IN PARAGRAPH (1)(I) OF THIS SUBSECTION.

CONDUCT OF INTERROGATION

(h) (1) ALL QUESTIONS DIRECTED TO THE LAW ENFORCEMENT OFFICER UNDER INTERROGATION SHALL BE ASKED BY AND THROUGH ONE INTERROGATING OFFICER DURING ANY ONE SESSION OF INTERROGATION CONSISTENT WITH PARAGRAPH (2) OF THIS SUBSECTION.

(2) EACH SESSION OF INTERROGATION SHALL:

(i) BE FOR A REASONABLE PERIOD; AND

(ii) ALLOW FOR PERSONAL NECESSITIES AND REST PERIODS AS REASONABLY NECESSARY.

THREAT OF TRANSFER, DISMISSAL, OR DISCIPLINARY ACTION PROHIBITED

(i) THE LAW ENFORCEMENT OFFICER UNDER INTERROGATION MAY NOT BE THREATENED WITH TRANSFER, DISMISSAL, OR DISCIPLINARY ACTION.

RIGHT TO COUNSEL

(j) (1) (i) ON REQUEST, THE LAW ENFORCEMENT OFFICER UNDER INTERROGATION HAS THE RIGHT TO BE REPRESENTED BY COUNSEL OR ANOTHER RESPONSIBLE REPRESENTATIVE OF THE LAW ENFORCEMENT OFFICER'S CHOICE WHO SHALL BE PRESENT AND AVAILABLE FOR CONSULTATION AT ALL TIMES DURING THE INTERROGATION.

(ii) THE LAW ENFORCEMENT OFFICER MAY WAIVE THE RIGHT DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH.

(2) (i) THE INTERROGATION SHALL BE SUSPENDED FOR A PERIOD NOT EXCEEDING 10 DAYS UNTIL REPRESENTATION IS OBTAINED.

(ii) WITHIN THAT 10-DAY PERIOD, THE CHIEF FOR GOOD CAUSE SHOWN MAY EXTEND THE PERIOD FOR OBTAINING REPRESENTATION.

(3) DURING THE INTERROGATION, THE LAW ENFORCEMENT OFFICER'S COUNSEL OR REPRESENTATION MAY:

(i) REQUEST A RECESS AT ANY TIME TO CONSULT WITH THE LAW ENFORCEMENT OFFICER;

(ii) OBJECT TO ANY QUESTION POSED; AND

(iii) STATE ON THE RECORD OUTSIDE THE PRESENCE OF THE LAW ENFORCEMENT OFFICER THE REASON FOR THE OBJECTION.

RECORD OF INTERROGATION

(k) (1) A COMPLETE RECORD SHALL BE KEPT OF THE ENTIRE INTERROGATION, INCLUDING ALL RECESS PERIODS, OF THE LAW ENFORCEMENT.

(2) THE RECORD MAY BE WRITTEN, TAPED OR TRANSCRIBED.

(3) ON COMPLETION OF THE INVESTIGATION, AND ON REQUEST OF THE LAW ENFORCEMENT OFFICER UNDER INVESTIGATION OR THE LAW ENFORCEMENT OFFICER'S COUNSEL OR REPRESENTATIVE, A COPY OF THE RECORD OF THE INTERROGATION SHALL BE MADE AVAILABLE AT LEAST 10 DAYS BEFORE A HEARING.

TESTS AND EXAMINATIONS - IN GENERAL

(l) (1) THE LAW ENFORCEMENT AGENCY MAY ORDER THE LAW ENFORCEMENT OFFICER UNDER INVESTIGATION TO SUBMIT TO BLOOD ALCOHOL TESTS, BLOOD, BREATH OR URINE TESTS FOR CONTROLLED DANGEROUS SUBSTANCES, POLYGRAPH EXAMINATIONS, OR INTERROGATIONS THAT SPECIFICALLY RELATE TO THE SUBJECT MATTER OF THE INVESTIGATION.

(2) IF THE LAW ENFORCEMENT AGENCY ORDERS THE LAW ENFORCEMENT OFFICER TO SUBMIT TO A TEST, EXAMINATION, OR INTERROGATION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION AND THE LAW ENFORCEMENT OFFICER REFUSES TO DO SO, THE LAW ENFORCEMENT AGENCY MAY COMMENCE AN ACTION THAT MAY LEAD TO A PUNITIVE MEASURE AS A RESULT OF THE REFUSAL.

(3) IF THE LAW ENFORCEMENT AGENCY ORDERS THE LAW ENFORCEMENT OFFICER TO SUBMIT TO A TEST, EXAMINATION, OR INTERROGATION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, THE RESULTS OF THE TEST, EXAMINATION, OR INTERROGATION ARE NOT ADMISSIBLE OR DISCOVERABLE IN A CRIMINAL PROCEEDING AGAINST THE LAW ENFORCEMENT OFFICER.

SAME - POLYGRAPH EXAMINATIONS

(m) (1) IF THE LAW ENFORCEMENT AGENCY ORDERS THE LAW ENFORCEMENT OFFICER TO SUBMIT TO A POLYGRAPH EXAMINATION, THE RESULTS OF THE POLYGRAPH EXAMINATION MAY NOT BE USED AS EVIDENCE IN AN ADMINISTRATIVE HEARING UNLESS THE LAW ENFORCEMENT AGENCY AND THE LAW ENFORCEMENT OFFICER AGREE TO THE ADMISSION OF THE RESULTS.

(2) THE LAW ENFORCEMENT OFFICER'S COUNSEL OR REPRESENTATIVE NEED NOT BE PRESENT DURING THE ACTUAL ADMINISTRATION OF A POLYGRAPH EXAMINATION BY A CERTIFIED POLYGRAPH EXAMINER IF:

(i) THE QUESTIONS TO BE ASKED ARE REVIEWED WITH THE LAW ENFORCEMENT OFFICER OR THE COUNSEL OR REPRESENTATIVE BEFORE THE ADMINISTRATION OF THE EXAMINATION;

(ii) THE COUNSEL OR REPRESENTATIVE IS ALLOWED TO OBSERVE THE ADMINISTRATION OF THE EXAMINATION; AND

(iii) A COPY OF THE FINAL REPORT OF THE EXAMINATION BY THE CERTIFIED POLYGRAPH EXAMINER IS MADE AVAILABLE TO THE LAW ENFORCEMENT OFFICER OR THE COUNSEL OR REPRESENTATIVE WITHIN A REASONABLE TIME, NOT EXCEEDING 10 DAYS, AFTER COMPLETION OF THE EXAMINATION.

INFORMATION PROVIDED ON COMPLETION OF INVESTIGATION

(n) (1) ON COMPLETION OF AN INVESTIGATION AND AT LEAST 10 DAYS BEFORE A HEARING, THE LAW ENFORCEMENT OFFICER UNDER INVESTIGATION SHALL BE:

(i) NOTIFIED OF THE NAME OF EACH WITNESS AND OF EACH CHARGE AND SPECIFICATION AGAINST THE LAW ENFORCEMENT OFFICER; AND

(ii) PROVIDED WITH A COPY OF THE INVESTIGATORY FILE AND ANY EXCULPATORY INFORMATION, IF THE LAW ENFORCEMENT OFFICER AND THE LAW ENFORCEMENT OFFICER'S REPRESENTATIVE AGREE TO:

1. EXECUTE A CONFIDENTIALITY AGREEMENT WITH THE LAW ENFORCEMENT AGENCY NOT TO DISCLOSE ANY MATERIAL CONTAINED IN THE INVESTIGATORY FILE AND EXCULPATORY INFORMATION FOR ANY PURPOSE OTHER THAN TO DEFEND THE LAW ENFORCEMENT OFFICER; AND

2. PAY A REASONABLE CHARGE FOR THE COST OF REPRODUCING THE MATERIAL.

(2) THE LAW ENFORCEMENT AGENCY MAY EXCLUDE FROM THE EXCULPATORY INFORMATION PROVIDED TO A LAW ENFORCEMENT OFFICER UNDER THE SUBSECTION:

(i) THE IDENTITY OF CONFIDENTIAL SOURCES;

(ii) NONEXCULPATORY INFORMATION; AND

(iii) RECOMMENDATIONS AS TO CHARGES, DISPOSITION, OR PUNISHMENT.

ADVERSE MATERIAL

(o) (1) THE LAW ENFORCEMENT AGENCY MAY NOT INSERT ADVERSE MATERIAL INTO A FILE OF THE LAW ENFORCEMENT OFFICER, EXCEPT THE FILE OF THE INTERNAL INVESTIGATION OR THE INTELLIGENCE DIVISION, UNLESS THE LAW ENFORCEMENT OFFICER HAS AN OPPORTUNITY TO REVIEW, SIGN, RECEIVE A COPY OF, AND COMMENT IN WRITING ON THE ADVERSE MATERIAL.

(2) THE LAW ENFORCEMENT OFFICER MAY WAIVE THE RIGHT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § § 727(h) and 728 (b)(1) through (10), (12) (i), and (14).

In subsection (a) of this section, the former reference to conducting an investigation or interrogation under "the following conditions" is deleted as implicit in the reference to the investigation and interrogation being conducted in accordance with this section.

Subsection (b) of this section is revised to incorporate the substance of the former definitions of "interrogating officer" and "investigating officer". The former defined terms appeared only in former Art. 27, § 728(b)(2) and (3), which are revised in subsection (d)(1) and (g) of this section. The former defined terms listed the qualifications of an individual who may conduct an interrogation or investigation and are revised as a substantive provision for purposes of this section. Consequently, the former phrase "all other forms of those terms" is deleted as unnecessary.

In subsections (c)(1)(i), and (iii) and (d)(1)(iii) of this section, the reference to an "individual" is substituted for the former reference to a "person" because only an individual, and not the other entities included in the defined term "person", may be aggrieved by an alleged incident, swear to complaints, and be present during an interrogation. See § 1-101 of this article for the definition of "person".

In subsection (c)(1)(iv) of this section, the phrase "if the alleged incident involves" a minor child is substituted for the former phrase "in the case of" a minor child for clarity.

In subsection (f) of this section, the former phrase "at a time" is deleted as redundant of the word "when".

In subsection (h)(1) of this section, the reference to an "interrogating officer" is substituted for the former reference to an "interrogator" for consistency with terminology used in subsection (b) of this section.

In subsection (k)(1) of this section, the reference to the "entire" interrogation is substituted for the former reference to the "complete" interrogation because in the context of this provision the adjective "entire" seemed to the Public Safety Article Review Committee to be a better word choice.

In subsection (k)(2) of this section, the reference to the law enforcement officer's "representative" is added for consistency with subsection (j) of this section.

In subsection (m)(2) of this section, the references to the law enforcement officer's "counsel" is added for consistency with subsection (j) of this section.

Defined terms: "Chief" § 3-101

"Hearing" § 3-101

"Person" § 1-101

SEE CASES

1. *Widomski v. Chief of Police of Baltimore County,* 41 Md. App. 361, 397 A.2d 222 (1979).

2. *Nicholas v. Baltimore Police Department,* 53 Md. App. 623, 455 A.2d 446 (1983).

3. *Ocean City Police Department v. Marshall,* 158 Md. App. 115, 854 A.2d 299 (2004).

4. *Bray v. Aberdeen Police Dept.,* 190 Md. App. 414, 918 A.2d 1106 (2010).

5. *Miller v. Baltimore County Police Dept.,* 179 Md. App. 370, 946 A.2d 1 (2007).

7. *Chief of Montgomery County Police Department v. Jacocks,* 50 Md. App. 132, 436 A.2d 930 (1981).

61. *Vandevander v. Voorhaar,* 136 Md. App. 621, 767 A.2d 339 (1999).

62. *Maryland State Police v. Resh,* 65 Md. App. 167, 499 A.2d 1303 (1985).

63. *Walker v. Lindsey,* 65 Md. App. 402, 500 A.2d 1061 (1985).

64. *Balt. City Police Dep't v. Andrew,* 318 Md. 3, 566 A.2d 755 (1989).

§ 3-105. APPLICATION FOR SHOW CAUSE ORDER

IN GENERAL

(a) A LAW ENFORCEMENT OFFICER WHO IS DENIED A RIGHT GRANTED BY THIS SUBTITLE MAY APPLY TO THE CIRCUIT COURT OF THE COUNTY WHERE THE LAW ENFORCEMENT OFFICER IS REGULARLY EMPLOYED FOR AN ORDER THAT DIRECTS THE LAW ENFORCEMENT AGENCY TO SHOW CAUSE WHY THE RIGHT SHOULD NOT BE GRANTED.

CONDITIONS

(b) THE LAW ENFORCEMENT OFFICER MAY APPLY FOR THE SHOW CAUSE ORDER.

(1) EITHER INDIVIDUALLY OR THROUGH THE LAW ENFORCEMENT OFFICER'S CERTIFIED OR RECOGNIZED EMPLOYEE ORGANIZATION; AND

(2) AT ANY TIME PRIOR TO THE BEGINNING OF A HEARING BY THE HEARING BOARD.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 734.

In subsection (a) of this section, the references to a right "granted" by this subtitle are substituted for the former references to a right "afforded" for consistency with language used throughout this subtitle.

Defined terms" "County" § 1-101
"Hearing" § 3-101

"Hearing board" § 3-101

"Law enforcement officer" § 3-101

SEE CASES

9. *Mass Transit Administration v. Hayden,* 141 Md. App. 100, 784 A.2d 627 (2001).

§ 3-106. LIMITATION ON ADMINISTRATIVE CHANGES

IN GENERAL

(a) SUBJECT TO SUBSECTION (B) OF THIS SECTION, A LAW ENFORCEMENT AGENCY MAY NOT BRING ADMINISTRATIVE CHARGES AGAINST A LAW ENFORCEMENT OFFICER UNLESS THE AGENCY FILES THE CHARGES WITHIN 1 YEAR AFTER THE ACT THAT GIVES RISE TO THE CHARGES COMES TO THE ATTENTION OF THE APPROPRIATE LAW ENFORCEMENT AGENCY OFFICIAL.

EXCEPTION

(b) THE 1-YEAR LIMITATION OF SUBSECTION (A) OF THIS SECTION DOES NOT APPLY TO CHARGES THAT RELATE TO CRIMINAL ACTIVITY OR EXCESSIVE FORCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 730(b).

Subsection (a) of this section is revised in the active voice to clarify that a law enforcement agency files administrative charges against a law enforcement officer.

Defined term: "Law enforcement officer" § 3-101

SEE CASES

16. *Wilson v. Balt. Police Dep't,* 91 Md. App. 436, 604, A.2d 942 (1992).

17. *Balt. Police Dep't v. Etting,* 326 Md. 132, 604 A.2d 59 (1992).

18. *Prince George's County Police Dep't v. Zarragoitia,* 139 Md. App. 168, 775 A.2d 395 (2001).

61. *Vandevander v. Voorhaar,* 136 Md. App. 621, 767 A.2d 339 (1999).

§ 3-107. HEARING BY HEARING BOARD

RIGHT TO HEARING

(a) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION AND § 3-111 OF THIS SUBTITLE, IF THE INVESTIGATION OR INTERROGATION OF A LAW ENFORCEMENT OFFICER RESULTS IN A RECOMMENDATION OF DEMOTION, DISMISSAL, TRANSFER, LOSS OF PAY, REASSIGNMENT, OR SIMILAR ACTION THAT IS CONSIDERED PUNITIVE, THE LAW ENFORCEMENT OFFICER IS ENTITLED TO A HEARING ON THE ISSUES BY A HEARING BOARD BEFORE THE LAW ENFORCEMENT AGENCY TAKES THAT ACTION.

(2) A LAW ENFORCEMENT OFFICER WHO HAS BEEN CONVICTED OF A FELONY IS NOT ENTITLED TO A HEARING UNDER THIS SECTION.

NOTICE OF HEARING

(b) (1) THE LAW ENFORCEMENT AGENCY SHALL GIVE NOTICE TO THE LAW ENFORCEMENT OFFICER OF THE RIGHT TO A HEARING BY A HEARING BOARD UNDER THIS SECTION.

(2) THE NOTICE REQUIRED UNDER THIS SUBSECTION SHALL STATE THE TIME AND PLACE OF THE HEARING AND THE ISSUES INVOLVED.

MEMBERSHIP OF HEARING BOARD

(c) (1) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION AND IN § 3-111 OF THIS SUBTITLE, THE HEARING BOARD AUTHORIZED UNDER THIS SECTION SHALL CONSIST OF AT LEAST THREE MEMBERS WHO:

(i) ARE APPOINTED BY THE CHIEF AND CHOSEN FROM LAW ENFORCEMENT OFFICERS WITHIN THAT LAW ENFORCEMENT AGENCY, OR FROM LAW ENFORCEMENT OFFICERS OF ANOTHER LAW ENFORCEMENT AGENCY WITH THE APPROVAL OF THE CHIEF OF THE OTHER AGENCY; AND

(ii) HAVE HAD NO PART IN THE INVESTIGATION OR INTERROGATION OF THE LAW ENFORCEMENT OFFICER.

(2) AT LEAST ONE MEMBER OF THE HEARING BOARD SHALL BE OF THE SAME RANK AS THE LAW ENFORCEMENT OFFICER AGAINST WHOM THE COMPLAINT IS FILED.

(3) (i) IF THE CHIEF IS THE LAW ENFORCEMENT OFFICER UNDER INVESTIGATION, THE CHIEF OF ANOTHER LAW ENFORCEMENT AGENCY IN THE STATE SHALL FUNCTION AS THE LAW ENFORCEMENT OFFICER OF THE SAME RANK ON THE HEARING BOARD.

(ii) IF THE CHIEF OF A STATE LAW ENFORCEMENT AGENCY IS UNDER INVESTIGATION, THE GOVERNOR SHALL APPOINT THE CHIEF OF ANOTHER LAW ENFORCEMENT AGENCY TO FUNCTION AS THE LAW ENFORCEMENT OFFICER OF THE SAME RANK ON THE HEARING BOARD.

(iii) IF THE CHIEF OF A LAW ENFORCEMENT AGENCY OF A COUNTY OR MUNICIPAL CORPORATION IS UNDER INVESTIGATION, THE OFFICIAL AUTHORIZED TO APPOINT THE CHIEF'S SUCCESSOR SHALL APPOINT THE CHIEF OF ANOTHER LAW ENFORCEMENT AGENCY TO FUNCTION AS THE LAW ENFORCEMENT OFFICER OF THE SAME RANK ON THE HEARING BOARD.

(iv) IF THE CHIEF OF A STATE LAW ENFORCEMENT AGENCY OR THE CHIEF OF A LAW ENFORCEMENT AGENCY OF A COUNTY OR MUNICIPAL CORPORATION IS UNDER INVESTIGATION, THE OFFICIAL AUTHORIZED TO APPOINT THE CHIEF'S SUCCESSOR, OR THAT OFFICIAL'S DESIGNEE, SHALL FUNCTION AS THE CHIEF FOR PURPOSES OF THIS SUBTITLE.

(4) (i) A LAW ENFORCEMENT AGENCY OR THE AGENCY'S SUPERIOR GOVERNMENTAL AUTHORITY THAT HAS RECOGNIZED AND CERTIFIED AN EXCLUSIVE COLLECTIVE BARGAINING REPRESENTATIVE MAY NEGOTIATE WITH THE REPRESENTATIVE AN ALTERNATE METHOD OF FORMING A HEARING BOARD.

(ii) A LAW ENFORCEMENT OFFICER MAY ELECT THE ALTERNATIVE METHOD OF FORMING A HEARING BOARD IF:

1. THE LAW ENFORCEMENT OFFICER WORKS IN A LAW ENFORCEMENT AGENCY DESCRIBED IN SUBPARAGRAPH (1) OF THIS PARAGRAPH.

2. THE LAW ENFORCEMENT OFFICER IS INCLUDED IN THE COLLECTIVE BARGAINING UNIT.

(iii) THE LAW ENFORCEMENT AGENCY SHALL NOTIFY THE LAW ENFORCEMENT OFFICER IN WRITING BEFORE A HEARING BOARD IS FORMED THAT THE LAW ENFORCEMENT OFFICER MAY ELECT AN ALTERNATIVE METHOD OF FORMING A HEARING BOARD IF ONE HAS BEEN NEGOTIATED UNDER THIS PARAGRAPH.

(iv) IF THE LAW ENFORCEMENT OFFICER ELECTS THE ALTERNATIVE METHOD, THAT METHOD SHALL BE USED TO FORM THE HEARING BOARD.

(v) AN AGENCY OR EXCLUSIVE COLLECTIVE BARGAINING REPRESENTATIVE MAY NOT REQUIRE A LAW ENFORCEMENT

OFFICER TO ELECT AN ALTERNATIVE METHOD OF FORMING A HEARING BOARD.

(vi) IF THE LAW ENFORCEMENT OFFICER HAS BEEN OFFERED SUMMARY PUNISHMENT, AN ALTERNATIVE METHOD OF FORMING A HEARING BOARD MAY NOT BE USED.

(vii) IF AUTHORIZED BY LOCAL LAW, THIS PARAGRAPH IS SUBJECT TO BINDING ARBITRATION.

SUBPOENAS

(d) (1) IN CONNECTION WITH A DISCIPLINARY HEARING, THE CHIEF OR HEARING BOARD MAY ISSUE SUBPOENAS TO COMPEL THE ATTENDANCE AND TESTIMONY OF WITNESSES AND THE PRODUCTION OF BOOKS, PAPERS, RECORDS, AND DOCUMENTS AS RELEVANT OR NECESSARY.

(2) THE SUBPOENAS MAY BE SERVED WITHOUT COST IN ACCORDANCE WITH THE MARYLAND RULES THAT RELATE TO SERVICE OF PROCESS ISSUED BY A COURT.

(3) EACH PARTY MAY REQUEST THE CHIEF OR HEARING BOARD TO ISSUE A SUBPOENA OR ORDER UNDER THIS SUBTITLE.

(4) IN CASE OF DISOBEDIENCE OR REFUSAL TO OBEY A SUBPOENA SERVED UNDER THE SUBSECTION, THE CHIEF OR HEARING BOARD MAY APPLY WITHOUT COST TO THE CIRCUIT COURT OF A COUNTY WHERE THE SUBPOENAED PARTY RESIDES OR CONDUCTS BUSINESS, FOR AN ORDER TO COMPEL THE ATTENDANCE AND TESTIMONY OF THE WITNESS OR THE PRODUCTION OF THE BOOKS, PAPERS, RECORDS AND DOCUMENTS.

(5) ON A FINDING THAT THE ATTENDANCE AND TESTIMONY OF THE WITNESS OR THE PRODUCTION OF THE BOOKS, PAPERS, RECORDS, AND DOCUMENTS IS RELEVANT OR NECESSARY:

(i) THE COURT MAY ISSUE WITHOUT COST AN ORDER THAT REQUIRES THE ATTENDANCE AND TESTIMONY OF WITNESSES OR THE PRODUCTION OF BOOKS, PAPERS, RECORDS, AND DOCUMENTS; AND

(ii) FAILURE TO OBEY THE ORDER MAY BE PUNISHED BY THE COURT AS CONTEMPT.

CONDUCT OF HEARING

(e) (1) THE HEARING SHALL BE CONDUCTED BY A HEARING BOARD.

(2) THE HEARING BOARD SHALL GIVE THE LAW ENFORCEMENT AGENCY AND LAW ENFORCEMENT OFFICER AMPLE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ABOUT THE ISSUES INVOLVED.

(3) THE LAW ENFORCEMENT AGENCY AND LAW ENFORCEMENT OFFICER MAY BE REPRESENTED BY COUNSEL.

(4) EACH PARTY HAS THE RIGHT TO CROSS-EXAMINE WITNESSES WHO TESTIFY AND EACH PARTY MAY SUBMIT REBUTTAL EVIDENCE.

EVIDENCE

(f) (1) EVIDENCE WITH PROBATIVE VALUE THAT IS COMMONLY ACCEPTED BY REASONABLE AND PRUDENT INDIVIDUALS IN THE CONDUCT OF THEIR AFFAIRS IS ADMISSIBLE AND SHALL BE GIVEN PROBATIVE EFFECT.D

(2) THE HEARING BOARD SHALL GIVE EFFECT TO THE RULES OF PRIVILEGE RECOGNIZED BY LAW AND SHALL EXCLUDE INCOMPETENT, IRRELEVANT, IMMATERIAL, AND UNDULY REPETITIOUS EVIDENCE.

(3) EACH RECORD OR DOCUMENT THAT A PARTY DESIRES TO USE SHALL BE OFFERED AND MADE A PART OF THE RECORD.

(4) DOCUMENTARY EVIDENCE MAY BE RECEIVED IN THE FORM OF COPIES OR EXCERPTS, OR BY INCORPORATION BY REFERENCE.

JUDICIAL NOTICE

(g) (1) THE HEARING BOARD MAY TAKE NOTICE OF:

(1) JUDICIALLY COGNIZABLE FACTS; AND

(2) GENERAL, TECHNICAL, OR SCIENTIFIC FACTS WITHIN ITS SPECIALIZED KNOWLEDGE.

(2) THE HEARING BOARD SHALL:

(i) NOTIFY EACH PARTY OF THE FACTS SO NOTICED EITHER BEFORE OR DURING THE HEARING, OR BY REFERENCE IN PRELIMINARY REPORTS OR OTHERWISE; AND

(ii) GIVE EACH PARTY AN OPPORTUNITY AND REASONABLE TIME TO CONTEST THE FACTS SO NOTICED.

(3) THE HEARING BOARD MAY UTILIZE ITS EXPERIENCE, TECHNICAL COMPETENCE, AND SPECIALIZED KNOWLEDGE IN THE EVALUATION OF THE EVIDENCE PRESENTED.

OATHS

(h) (1) WITH RESPECT TO THE SUBJECT OF A HEARING CONDUCTED UNDER THE SUBTITLE, THE CHIEF SHALL ADMINISTER OATHS OR AFFIRMATIONS AND EXAMINE INDIVIDUALS UNDER OATH.

(2) IN CONNECTION WITH A DISCIPLINARY HEARING, THE CHIEF OR A HEARING BOARD MAY ADMINISTER OATHS.

WITNESS FEES AND EXPENSES

(i) (1) WITNESS FEES AND MILEAGE, IF CLAIMED, SHALL BE ALLOWED THE SAME AS FOR TESTIMONY IN A CIRCUIT COURT.

(2) WITNESS FEES, MILEAGE, AND THE ACTUAL EXPENSES NECESSARILY INCURRED IN SECURING THE ATTENDANCE OF WITNESSES AND THEIR TESTIMONY SHALL BE ITEMIZED AND PAID BY THE LAW ENFORCEMENT AGENCY.

OFFICIAL RECORD

(j) AN OFFICIAL RECORD, INCLUDING TESTIMONY AND EXHIBITS, SHALL BE KEPT OF THE HEARING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27 § § 727(d)(1) and (2), 728(B)(13), and 730(a) and (c) through (j).

Subsection (a)(1) of this section is revised to state explicitly what was implicit in the former law, i.e. that the law enforcement officer is entitled to a hearing on the issues by a hearing board under this section.

In subsection (a)(2) of this section, the former reference to being "charged" with a felony is deleted as implicit in the reference to being "convicted" of a felony. Throughout subsection (c)(4) of this section, references to an "alternative" method of forming a hearing board are
substituted for the former references to an "alternate" method to use the proper word in the context of this provision.

In subsection (c)(4)(ii) of this section, the former phrase "instead of the method described in paragraph (1) of this subsection" is deleted as surplusage.

Throughout subsection (d) of this section, references to "subpoenas" are substituted for the former references to "summonses" for consistency with Maryland Rule 2-510 and similar provisions of the Code.

In subsection (h)(1) of this section, the former reference to an "officer designated by the chief" is deleted as surplusage in light of the defined term "chief", which includes a designee of the chief.

Defined terms: "Chief" § 3-101

"County" § 1-101

"Hearing" § 3-101

"Hearing board" § 3-101

"Law enforcement officer" § 3-101

SEE CASES

57. *Maryland State Police v. Zeigler,* 330 Md. 540, 625 A.2d 914 (1993).

10. *Mayor and Commissioners of Westernport v. Duckworth,* 49 Md. App. 236, 431 A.2d 709 (1981).

11. *Jones v. Balt. City Police Dep't,* 326 Md. App. 480, 606 A.2d 214 (1991).

14. *Sewell v. Norris,* 148 Md. App. 122, 811 A.2d 349 (2002).

15. *Bray v. Aberdeen Police Dept.,* 190 Md. App. 414, 918 A.2d 1106 (2010)

23. *Sheetz v. Mayor & City Council of Baltimore,* 315 Md. 208, 553 A.2d 1281 (1989).

24. *Travers v. Balt. City Police Dep't,* 115 Md. App. 395, 693 A.2d 378 (1996).

25. *Balt. City Police Department v. State,* 158 Md. App. 274, 857 A.2d 148 (2004).

55. *Reed v. Mayor and City Council of Balt.,* 323 Md. 175, 592 A.2d 173 (1990).

§ 3-108. DISPOSITION OF ADMINISTRATIVE ACTION

IN GENERAL

(a) (1) A DECISION, ORDER, OR ACTION TAKEN AS A RESULT OF A HEARING UNDER § 3-107 OF THIS SUBTITLE SHALL BE IN WRITING AND ACCOMPANIED BY FINDINGS OF FACT.

(2) THE FINDINGS OF FACT SHALL CONSIST OF A CONCISE STATEMENT ON EACH ISSUE IN THE CASE.

(3) A FINDING OF NOT GUILTY TERMINATES THE ACTION.

(4) IF THE HEARING BOARD MAKES A FINDING OF GUILT, THE HEARING BOARD SHALL:

(i) RECONVENE THE HEARING;

(ii) RECEIVE EVIDENCE; AND

(iii) CONSIDER THE LAW ENFORCEMENT OFFICER'S PAST JOB PERFORMANCE AND OTHER RELEVANT INFORMATION AS FACTORS BEFORE MAKING RECOMMENDATIONS TO THE CHIEF.

(5) A COPY OF THE DECISION OR ORDER, FINDINGS OF FACT, CONCLUSIONS, AND WRITTEN RECOMMENDATIONS FOR ACTION SHALL BE DELIVERED OR MAILED PROMPTLY TO:

(i) THE LAW ENFORCEMENT OFFICER OR THE LAW ENFORCEMENT OFFICER'S COUNSEL OR REPRESENTATIVE OF RECORD; AND

(ii) THE CHIEF.

RECOMMENDATIONS OF PENALTY

(b) (1) AFTER A DISCIPLINARY HEARING AND A FINDING OF GUILT, THE HEARING BOARD MAY RECOMMEND THE PENALTY IT CONSIDERS APPROPRIATE UNDER THE CIRCUMSTANCES, INCLUDING DEMOTION, DISMISSAL, TRANSFER, LOSS OF PAY, REASSIGNMENT, OR OTHER SIMILAR ACTION THAT IS CONSIDERED PUNITIVE.

(2) THE RECOMMENDATION OF A PENALTY SHALL BE IN WRITING.

FINAL DECISION OF HEARING BOARD

(c) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, THE DECISION OF THE HEARING BOARD AS TO FINDINGS OF FACT AND ANY PENALTY IS FINAL IF:

(i) A CHIEF IS AN EYEWITNESS TO THE INCIDENT UNDER INVESTIGATION; OR

(ii) A LAW ENFORCEMENT AGENCY OR THE AGENCY'S SUPERIOR GOVERNMENTAL AUTHORITY HAS AGREED WITH AN EXCLUSIVE COLLECTIVE BARGAINING REPRESENTATIVE RECOGNIZED OR CERTIFIED UNDER APPLICABLE LAW THAT THE DECISION IS FINAL.

(2) THE DECISION OF THE HEARING BOARD THEN MAY BE APPEALED IN ACCORDANCE WITH § 3-109 OF THIS SUBTITLE.

(3) IF AUTHORIZED BY LOCAL LAW, PARAGRAPH (1)(ii) OF THIS SUBSECTION IS SUBJECT TO BINDING ARBITRATION.

REVIEW BY CHIEF AND FINAL ORDER

(d) (1) WITHIN 30 DAYS AFTER THE RECEIPT OF THE RECOMMENDATIONS OF THE HEARING BOARD, THE CHIEF SHALL:

(i) REVIEW THE FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF THE HEARING BOARD; AND

(ii) ISSUE A FINAL ORDER.

(2) THE FINAL ORDER AND DECISION OF THE CHIEF IS BINDING AND THEN MAY BE APPEALED IN ACCORDANCE WITH § 3-109 OF THIS SUBTITLE.

(3) THE RECOMMENDATION OF A PENALTY BY THE HEARING BOARD IS NOT BINDING ON THE CHIEF.

(4) THE CHIEF SHALL CONSIDER THE LAW ENFORCEMENT OFFICER'S PAST JOB PERFORMANCE AS A FACTOR BEFORE IMPOSING A PENALTY.

(5) THE CHIEF MAY INCREASE THE RECOMMENDED PENALTY OF THE HEARING BOARD ONLY IF THE CHIEF PERSONALLY:

(i) REVIEWS THE ENTIRE RECORD OF THE PROCEEDINGS OF THE HEARING BOARD;

(ii) MEETS WITH THE LAW ENFORCEMENT OFFICER AND ALLOWS THE LAW ENFORCEMENT OFFICER TO BE HEARD ON THE RECORD;

(iii) DISCLOSES AND PROVIDES IN WRITING TO THE LAW ENFORCEMENT OFFICER, AT LEAST 10 DAYS BEFORE THE MEETING, ANY ORAL OR WRITTEN COMMUNICATION NOT INCLUDED IN THE RECORD OF THE HEARING BOARD ON WHICH THE DECISION TO CONSIDER INCREASING THE PENALTY IS WHOLLY OR PARTLY BASED; AND

(iv) STATES ON THE RECORD THE SUBSTANTIAL EVIDENCE RELIEF ON TO SUPPORT THE INCREASE OF THE RECOMMENDED PENALTY.

REVISOR'S NOTE: This section is new language derived without substantive change from the former Art.27, § 731. In subsection (b)(1) and (2), (c)(1), and (d)(3) of this section, the reference to a "penalty" is substituted for the former reference to a "punishment" for consistency throughout this section.

In subsection (d)(4) of this section, the reference to the "chief" is substituted for the former reference to the "person who may take any disciplinary action following any hearing in which there is a finding of guilt" for specificity and to use the defined term.

Defined terms: "Chief" § 3-101

"Hearing" § 3-101

"Hearing board" § 3-101

"Law enforcement officer" § 3-101

SEE CASES

61. *VanDevander v. Voorhaar,* 136 Md. App. 621, 767 A.2d 339 (1999).

BY CIRCUIT COURT

(a) AN APPEAL FROM A DECISION MADE UNDER § 3-108 OF THIS SUBTITLE SHALL BE TAKEN TO THE CIRCUIT COURT FOR THE COUNTY IN ACCORDANCE WITH MARYLAND RULE 7-202.

COURT OF SPECIAL APPEALS

(b) A PARTY AGGRIEVED BY A DECISION OF A COURT UNDER THIS SUBTITLE MAY APPEAL TO THE COURT OF SPECIAL APPEALS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 732.

Defined term: "County" § 1-101

SEE CASES

67. *United Steel Workers of America v. Bethlehem Steel Corp.*, 298 Md. 665, 472 A.2d 62 (1983).

68. *State of Maryland Commission on Human Relations v. Malakoff,* 273 Md. 214, 329 A.2d 8 (1974).

69. *Rouse-Fairwood, L.P. v. Supervisor of Assessments of Prince George's County,* 120 Md. App. 667, 708 A.2d 19 (1998).

70. *Dep't of Economic and Employment Development v. Propper,* 108 Md. App. 595, 673 A.2d 713 (1995).

71. *State Insurance Commissioner v. National Bureau of Casualty Underwriters,* 248 Md. 292, 236 A.2d 282 (1967).

72. *VanDevander v. Voorhaar,* 136 Md. App. 621, 767 A.2d 339 (1999).

73. *Moose v. Fraternal Order of Police, Montgomery County Lodge 35, et al.*, 369 Md. 476, 800 A.2d 790 (2002).

74. *Bray v. Aberdeen Police Dept.*, 190 Md. App. 414, 918 A.2d 1106 (2010).

75. *Maryland-National Capital Park and Planning Commission v. Anderson,* 2005 Md. App. LEXIS 250 (2005).

76. *Cave v. Elliott,* 190 Md. App. 65, 988 A.2d 1 (2010).

77. *Bray v. Aberdeen Police Dept.*, 190 Md. App. 414, 988 A.2d 1106 (2010).

§ 3-110. EXPUNGEMENT OF RECORD OF FORMAL COMPLAINT

(a) ON WRITTEN REQUEST, A LAW ENFORCEMENT OFFICER MAY HAVE EXPUNGED FROM ANY FILE THE RECORD OF A FORMAL COMPLAINT MADE AGAINST THE LAW ENFORCEMENT OFFICER IF:

(1) (i) THE LAW ENFORCEMENT AGENCY THAT INVESTIGATED THE COMPLAINT:

1. EXONERATED THE LAW ENFORCEMENT OFFICER OF ALL CHARGES IN THE COMPLAINT; OR

2. DETERMINED THAT THE CHARGES WERE UNSUSTAINED OR UNFOUNDED; OR

(ii) A HEARING BOARD ACQUITTED THE LAW ENFORCEMENT OFFICER, DISMISSED THE ACTION, OR MADE A FINDING OF NOT GUILTY; AND

(2) AT LEAST 3 YEARS HAVE PASSED SINCE THE FINAL DISPOSITION BY THE LAW ENFORCEMENT AGENCY OR HEARING BOARD.

(b) EVIDENCE OF A FORMAL COMPLAINT AGAINST A LAW ENFORCEMENT OFFICER IS NOT ADMISSIBLE IN AN ADMINISTRATIVE OR JUDICIAL PROCEEDING IF THE COMPLAINT RESULTED IN AN OUTCOME LISTED IN SUBSECTION (a)(1) OF THIS SECTION.

REVISOR'S NOTE: This section is new language without substantive change from former Art. 27, § 728(b)(12)(ii).

In item (2) of this section, the reference to the "final disposition" by the law enforcement agency or hearing board is substituted for the former reference to "findings" for clarity because the law enforcement agency or hearing board do more than make "findings" in this situation.

Defined terms: "Hearing board" § 3-101

"Law enforcement officer" § 3-101

§ 3-111. SUMMARY PUNISHMENT

AUTHORIZED

(a) THIS SUBTITLE DOES NOT PROHIBIT SUMMARY PUNISHMENT BY HIGHER RANKING LAW ENFORCEMENT OFFICERS AS DESIGNATED BY THE CHIEF.

IMPOSITION

(b) (1) SUMMARY PUNISHMENT MAY BE IMPOSED FOR MINOR VIOLATIONS OF LAW ENFORCEMENT AGENCY RULES AND REGULATIONS IF:

(i) THE FACTS THAT CONSTITUTE THE MINOR VIOLATION ARE NOT IN DISPUTE;

(ii) THE LAW ENFORCEMENT OFFICER WAIVES THE HEARING PROVIDED UNDER THIS SUBTITLE; AND

(iii) THE LAW ENFORCEMENT OFFICER ACCEPTS THE PUNISHMENT IMPOSED BY THE HIGHEST RANKING LAW ENFORCEMENT OFFICER, OR INDIVIDUAL ACTING IN THAT CAPACITY, OF THE UNIT TO WHICH THE LAW ENFORCEMENT OFFICER IS ATTACHED.

(2) SUMMARY PUNISHMENT IMPOSED UNDER THIS SUBSECTION MAY NOT EXCEED SUSPENSION OF 3 DAYS WITHOUT PAY OR A FINE OF $150.

REFUSAL

(c) (1) IF A LAW ENFORCEMENT OFFICER IS OFFERED SUMMARY PUNISHMENT IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION AND REFUSES:

(i) THE CHIEF MAY CONVENE A HEARING BOARD OF ONE OR MORE MEMBERS; AND

(ii) THE HEARING BOARD HAS ONLY THE AUTHORITY TO RECOMMEND THE SANCTIONS PROVIDED IN THIS SECTION FOR SUMMARY PUNISHMENT.

(2) IF A SINGLE MEMBER HEARING BOARD IS CONVENED:

(i) THE MEMBER NEED NOT BE OF THE SAME RANK AS THE LAW ENFORCEMENT OFFICER; BUT

(ii) ALL OTHER PROVISIONS OF THIS SUBTITLE APPLY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § § 727(d)(3) and (f) and 734A (1) and, as it related to summary suspension, the first sentence of § 734A.

In subsection (a) of this section, the defined term "chief" is substituted for the former reference to the "head of a law enforcement agency" for consistent use of the defined term throughout this subtitle.

In the introductory language of subsection (b)(1) of this section, the reference to "law enforcement agency" rules and regulations is substituted for the former reference to "departmental" rules and regulations for consistency with terminology used throughout

this subtitle.

Defined terms: "Chief" § 3-101

"Hearing" § 3-101

"Hearing board" § 3-101

"Law enforcement officer" § 3-101

SEE CASES

13. *Blondell v. Balt. City Police Dep't,* 341 Md. 680, 672 A.2d 639 (1995).

§ 3-112. EMERGENCY SUSPENSION.

AUTHORIZED

(a) THIS SUBTITLE DOES NOT PROHIBIT EMERGENCY SUSPENSION BY HIGHER RANKING LAW ENFORCEMENT OFFICERS AS DESIGNED BY THE CHIEF.

IMPOSITION - WITH PAY

(b) (1) THE CHIEF MAY IMPOSE EMERGENCY SUSPENSION WITH PAY IF IT APPEARS THAT THE ACTION IS IN THE BEST INTEREST OF THE PUBLIC AND THE LAW ENFORCEMENT AGENCY.

(2) IF THE LAW ENFORCEMENT OFFICER IS SUSPENDED WITH PAY, THE CHIEF MAY SUSPEND THE POLICE POWERS OF THE LAW ENFORCEMENT OFFICER AND REASSIGN THE LAW ENFORCEMENT OFFICER TO RESTRICTED DUTIES PENDING.

(i) A DETERMINATION BY A COURT WITH RESPECT TO A CRIMINAL VIOLATION; OR

(ii) A FINAL DETERMINATION BY A HEARING BOARD WITH RESPECT TO A LAW ENFORCEMENT AGENCY VIOLATION.

(3) A LAW ENFORCEMENT OFFICER WHO IS SUSPENDED UNDER THIS SUBSECTION IS ENTITLED TO A PROMPT HEARING.

IMPOSITION - WITHOUT PAY

(c) (1) IF A LAW ENFORCEMENT OFFICER IS CHARGED WITH A FELONY, THE CHIEF MAY IMPOSE AN EMERGENCY SUSPENSION OF POLICE POWERS WITHOUT PAY.

(2) A LAW ENFORCEMENT OFFICER WHO IS SUSPENDED UNDER PARAGRAPH (1) OF THIS SUBSECTION IS ENTITLED TO A PROMPT HEARING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 734A(2), (3), and, as it related to emergency suspension, the first sentence of § 734A.

In subsection (a) of this section, the defined term "chief" is substituted for the former reference to the "head of a law enforcement agency" for consistent use of the defined term throughout this subtitle.

In subsection (b)(2)(i) of this section, the former reference to a court "of competent jurisdiction" is deleted as surplusage.

In subsection(b)(2)(ii) of this section, the reference to a "law enforcement agency" violation is substituted for the former reference to a "departmental" violation for consistency with
terminology used throughout this subtitle.

Defined terms: "Chief" § 3-101

"Hearing" § 3-101

"Hearing board" § 3-101

"Law enforcement officer" § 3-101

§ 3-113. FALSE STATEMENT, REPORT, OR COMPLAINT

PROHIBITED

(a) A PERSON MAY NOT KNOWINGLY MAKE A FALSE STATEMENT, REPORT, OR COMPLAINT DURING AN INVESTIGATION OR PROCEEDING CONDUCTED UNDER THE SUBTITLE.

PENALTY

(b) A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO THE PENALTIES OF § 9-501 OF THE CRIMINAL LAW ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 734C.

A. Internal Affairs Interrogation

1. ***Widomski v. Chief of Police of Baltimore County,*** 41 Md. App. 361, 397 A.2d 222 (1979): The appellant was interviewed in connection with an investigation, but was not then a suspect. After a polygraph test, the department concluded that appellant had been untruthful and was interrogated by a different officer than had conducted the initial interview. The appellant argued that the department violated § 3-104(h)(1) by conducting an interrogation with two interrogators rather than one as required. The Court of Special Appeals concluded that the interrogation of the appellant was conducted within the framework of the LEOBR, reasoning that the statute providing that the law enforcement officer under investigation shall be questioned by one interrogator was enacted to avoid use of the so-called Mutt and Jeff or Good Guy, Bad Guy approach to interrogating a suspect. The section thus means that, at a particular interrogation session, only one person may conduct the interrogation. The appellant also contended that no record was taken of the dialogue which prompted him to waive his right to a lawyer in violation of § 3-104(k) which requires that a complete record be kept. The Court concluded that the language of § 3-104(k) that a complete record, either written, taped, or transcribed, shall be kept of the complete interrogation means that the record may be wholly written, or wholly taped, or wholly transcribed, or a combination of any two or more of the three methods, so long as there is a complete and preserved record for review by counsel and by a court if there is an appeal. Dicta implies that a compelled interrogation may be excluded at a trial board, but no cases have ever so held.

2. ***Nichols v. Baltimore Police Department,*** 53 Md. App. 623, 455 A.2d 446 (1983): The appellant, a Baltimore City police officer, was notified that a complaint had been filed against him with the Internal Investigation Division (IID) of the department. The IID requested the officer to submit to interrogation, upon which he invoked § 3-104(j) of the LEOBR, which provides that a law-enforcement officer shall have the right to counsel or other representative when under interrogation unless he chooses to waive that right. The officer and his attorney, however, were advised that the lawyer was there only as an observer and that the officer could not consult with his lawyer once the investigation began. The Court of Appeals construed § 728(b)(10) to mean that counsel or other representative may interpose objection to questions put to the officer by the interrogator and, further, may consult with the officer only to the extent necessary to make a particular objection. All other consultation, if any, should occur prior to the interrogation. The interrogation does not differ from the taking of a deposition in a civil case. The appellant also argued that his 14th Amendment Due Process rights had been violated because counsel or the representative can do no more than object. The Court concluded that although the appellant likens the IID to a grand jury, the analogy fails because the IID interrogation is, in appellants case, strictly non-criminal. So long as no criminal charge emanates from the interrogation, there is no violation of the officers 14th Amendment Due Process Right. The case resulted in a legislative amendment to § 3-104(j)(3), allowing consultation at all times during the interrogation.

3. *Ocean City Police Department v. Marshall,* 158 Md. App. 115, 854 A.2d 299 (2004): An Ocean City police officer received a notice that he was under investigation for his "actions prior to and after the capture" of a bank robber. During the course of his scheduled interrogations, the officer refused to answer certain questions because the police department would not provide him with additional information regarding the charges alleged in the complaint. The police department suspended the officer for sixty-four hours without pay for violating departmental rules on professional courtesy. The officer sought review of the decision in the Circuit Court for Worcester County, which held that the notification the officer had received was insufficient under the LEOBR provision requiring that an officer be informed of the "nature of the investigation" prior to an interrogation. see § 3-104(d)(2) The Court of Special Appeals affirmed, holding that the notification was legally insufficient because it did not specify the time or place of the incident in question, whether the complaint related to on or off duty conduct, or the nature of any alleged wrongdoing.

4. ***Bray v. Aberdeen Police Dept.,*** 190 Md. App. 414, 918 A.2d 1106 (2010): A police officer under investigation was advised that he was under investigation for failing to report to juvenile court on May 8, 2007. The officer was ultimately charged with additional violations of not appearing in traffic court on the same date, submitting false overtime requests and other documents related to attending court, and lying to the internal affairs investigator. The officer argued that he was not put on notice of the other allegations, but it was established that the investigator was not aware of the other allegations until after the interview, when he continued with follow-up investigations. The Court found that the notice regarding the May 8 juvenile court allegation was sufficient, and the investigatory notice was not improper.

5. ***Miller v. Baltimore County Police Dept.,*** 179 Md. App. 370, 946 A.2d 1 (2007): An officer under investigation discovered that, during an internal investigation governed by Section 3-104 of the Law Enforcement Officers' Bill of Rights, the Department had issued a subpoena of his cell phone records. Officer Miller filed a show cause petition, arguing there was no authority to issue a subpoena as part of an investigation. The Court of Special Appeals agreed, holding that a Police Department has no independent power to issue administrative subpoenas. The Court further stated that because Section 3-107 of the LEOBR provides for issuance of subpoenas to appear at trial boards, but no such provision exists in Section 3-104 of the LEOBR, dealing with investigations, this indicated a legislative intent not to allow the issuance of subpoenas in furtherance of an investigation. The Court did, however, find there was no exclusionary rule to prevent use of subpoenaed documents at a trial board. However, if it can be shown that a charge was based on illegally subpoenaed records, the Court implied the charge may be invalid. Hopefully, now that this issue has been clarified in a reported decision, Departments will act in good faith and not issue illegal subpoenas.

6. ***Bray v. Aberdeen Police Dept.,*** 190 Md. App. 414, 918 A.2d 1106 (2010): A police officer raised an argument on appeal that he had not been provided with the internal investigator's investigative report upon request by the officer. The issue had not been preserved for appeal at the trial board, but the Court of Special Appeals addressed the question despite that fact. The Aberdeen Police Department had responded to the request by stating that an investigative report had not been written. This was not true; a report had been drafted but would not be completed until after the trial board.

While noting that the Department had no obligation to explain its theory of the case, the Court was somewhat critical of the Department's response "encouraging the APD to be more fully forthcoming in the future." The Court noted that, had the response been more accurate, it would have put the officer on notice that "additional inquiry was appropriate." It is unclear how the Court would have ruled had there been a challenge to the right to the report. Section 3-103(n) of the LEOBR provides that the officer is entitled to the investigatory file, but then provides as an exception non-exculpatory information, which may create a confusing or contradictory situation. The LEOBR is clear that confidential sources and recommendations as to charges, disposition or punishment need not be provided.

B. Witnesses

7. ***Chief of Montgomery County Police Department v. Jacocks,*** 50 Md. App.132, 436 A.2d 930 (1981): A police officer, charged with conduct unbecoming, sought inspection of statements of all witnesses interviewed by Internal Affairs after Internal Affairs had denied his request, contending that the officer has no right under the LEOBR to inspect statements obtained by the Internal Affairs Division. Citing ***Abbott v. Administrative Hearing Board,*** 33 Md. App. 681, the Court of Special Appeals concluded that the purpose of the LEOBR was to guarantee that certain procedural safeguards be offered to police officers during any investigation and subsequent hearing which could lead to disciplinary action, demotion, or dismissal. The Court held that relevant portions of pre-hearing statements of witnesses called by the department who actually testify against an officer must be produced at the LEOBR hearing.

8. ***Maryland State Police v. Zeigler,*** 330 Md. 540, 625 A.2d 914 (1993): The state police filed disciplinary charges against an officer and the hearing board, after reopening the hearing to take additional testimony from witnesses not previously called, found the officer guilty on one charge. The Court of Special Appeals determined that the hearing board violated due process and fundamental fairness when, after beginning deliberations on disciplinary charges against the state police officer, it reopened the hearing to take additional testimony from witnesses not previously called.

9. ***Mass Transit Administration v. Hayden,*** 141 Md. App. 100, 784 A.2d 627 (2001): Appellee, a transit law enforcement officer, was charged with violating agency policy. The officer's witness list of potential witnesses included a lieutenant who became the hearing officer, and the witness/hearing officer stated that he would remain the hearing officer and that the board would not issue a summons requiring him to testify. The officer filed an order to show cause with the trial court, and the hearing board proceeded with the disciplinary action. The trial court later reversed the decision of the trial board and the Transit Administration appealed. The Court of Special Appeals concluded that because the hearing board denied the officer's request to summon a witness, the officer had standing under the LEOBR § 734 to petition for an order to show cause as to why he should not be afforded his right under the LEOBR to call a witness or his own choice. The Court held that the officer had a statutory right to appeal to a higher authority before the administrative hearing began and that he was not required to request a stay of the administrative action.

10. *Mayor and Commissioners of Westernport v. Duckworth,* 49 Md. App. 236, 431 A.2d 709 (1981): Appellee police officer was subject to emergency suspension pending the outcome of an investigation into an accidental shooting. A routine criminal investigation into the incident was conducted and after the criminal trial, the appellee was acquitted. The appellee subsequently filed a petition pursuant to § 3-107(a)(1) of the LEOBR which alleged that he had not been afforded (1) a hearing pursuant to Section 3-107(a)(1) and (2) notice that he was entitled to a hearing on the issues by a hearing board prior to his dismissal. The Court of Special Appeals held that the appellee was entitled to a hearing under the LEOBR, even though the investigation into the incident was not conducted by the law enforcement agency which terminated him. The Court noted that under the LEOBR, where any disciplinary sanction is contemplated, a hearing is required before that action may be taken.

11. *Jones v. Balt. City Police Dep't,* 326 Md. App. 480, 606 A.2d 214 (1991): Appellant former police officer was found guilty on two felony counts, but then received a probation before judgment. Relying on ***Maryland Code Annotated*** art. 27, § 3-107(a)(2), which waives the requirement of a hearing before punitive action was taken if the law enforcement officer was charged and convicted of a felony, the police department terminated the officer without a hearing. The Court of Appeals held that the preclusive effect of § 3-107(a)(2) operated only when the conviction of a law enforcement officer for a felony was a judgment of conviction and that probation before judgment was not a conviction. Thus, the former employee should not have been discharged without a hearing.

12. *VanDevander v. Voorhaar,* 136 Md. App. 621, 767 A.2d 339 (1999): Appellant, a former sheriffs deputy, appealed from an order of the Circuit Court for St. Marys County upholding the findings of an administrative hearing board that the officer had used excessive force during an off-duty security assignment and had been untruthful in reports and statements regarding the incident. After the hearing board had rendered its decision, the sheriff increased its recommended penalty. The Court of Special Appeals held that the trial court erred when it failed to reverse the sheriff's decision increasing the penalty. According to § 3-108(d) there are mandatory procedures with which police chiefs and sheriffs must comply if they seek to increase the severity of a recommended penalty. Having failed to comply with the procedures, the sheriff inappropriately increased the recommended penalty of the hearing board.

13. *Blondell v. Balt. City Police Dep't,* 341 Md. 680, 672 A.2d 639 (1995): Appellant officer filed a suit against appellee police department to determine whether the LEOBR prohibited the department from adding a second charge after the officer rejected an initial offer of punishment for the original charge. The Court of Special Appeals held that the addition of the new charge did not violate the LEOBR. Section 3-111(c) provides that if a law enforcement officer is offered summary punishment imposed pursuant to § 3-111(c) and refuses, the chief may convene a one-member or more hearing board and the hearing board shall have only the authority to recommend the sanctions as provided in this subtitle for summary punishment. If a single member hearing board is convened, such member need not be of the same rank. If a three person board is provided, there is no restriction on the punishment.

14. *Sewell v. Norris,* 148 Md. App.122, 811 A.2d 349 (2002) (cert. granted, petition withdrawn after settlement): A Baltimore City police officer charged with five departmental violations filed a petition in the Circuit Court for Baltimore City requesting that the officers appointed to his departmental hearing board be members of a law enforcement agency other than his employer. The Circuit Court denied his request. The Court of Special Appeals reversed, holding (1) that the Circuit Court erred in concluding that it did not have authority to grant the officer's request for a hearing board composed of members of another law enforcement agency and (2) that the officer's due process rights were violated when he was deprived of an impartial hearing board. Applying a balancing test, the Court reasoned that there was great value in selecting members from outside of the officer's employment agency, particularly in light of the intense publicity surrounding the charges, while the department did not have a particularly strong interest in trying the officer before members of the Baltimore City Police Department.

15. *Bray v. Aberdeen Police Dept.,* 190 Md. App. 414, 918 A.2d 1106 (2010): A police officer was charged with making false statements during his internal affairs interrogation. The officer challenged the language of the charging document, alleging it gave him no hint of which statements were false. The Court noted that he received all of the documents which allegedly had false information, and that his internal affairs interview was a "scant five pages" and contained very few factual allegations made by the officer. The Court also noted that the officer's attorney was able to present a vigorous defense, and held that the charge's language did not violate the officer's rights.

D. Statute of Limitations

16. *Wilson v. Balt. Police Dep't,* 91 Md. App. 436, 604 A.2d 942 (1992): Appellant, a Baltimore City police officer, filed a complaint because she was not served with the complaint until more than a year after the incident took place. The Court of Special Appeals concluded that to interpret § 3-106(a) it need not go beyond the plain meaning of the statute and held that when charges against a police officer recommending disciplinary actions are presented to and approved by one authorized to initiate formal proceedings against the officer, the charges have been filed, as required by § 3-106(a) of the LEOBR.

17. *Balt. Police Dep't v. Etting,* 326 Md. 132, 604 A.2d 59 (1992): Administrative charges were filed against a police officer more than a year after the event resulting in those charges occurred. Article 27 § 3-106(b) provides an exception to the one year statute of limitations for charges related to criminal activity or excessive force. The Court of Appeals concluded that the legislature intended to exclude from the operation of the one-year limitation all administrative charges arising from an event whenever there exists an objectively reasonable basis to believe that an officer's conduct involved criminal activity and that an investigation to determine whether criminal charges will be filed is either under way or is likely to be initiated within a reasonable time. The Court held that the one-year period of limitations began to run when the Department had knowledge that criminal charges would not be filed, rather than at the time the original incident came to the attention of the department.

18. *Prince George's County Police Dep't v. Zarragoitia,* 139 Md. App. 168, 775 A.2d 395 (2001): A police officer brought an action against the county police department alleging

that the department disciplinary action against him was time-barred under § 3-106(a) of the LEOBR, arguing that issuance of the Disciplinary Action Recommendation (DAR) constituted the filing of administrative charges and that had not occurred until more than one year after the latest time at which the incident had come to the attention of the appropriate law enforcement agency official. The Court of Special Appeals held that an administrative charge, as contemplated by the one-year limitations period of the LEOBR, was not filed against the officer when the commander of the county police department's internal affairs division approved a report of investigation. Rather, charges were filed when the department issued the actual charges. Accordingly, the Court determined that the department's disciplinary proceeding against the officer was time-barred and enjoined the department from pursuing the proceeding.

E. Termination of Proceedings

19. ***Cochran v. Anderson,*** 73 Md. App. 604, 535 A.2d 955 (1988): A law enforcement officer sought termination of proceedings against him under the LEOBR, in reference to charges brought against him of racial and sexual harassment. Termination of the proceedings was granted by the Circuit Court Montgomery County under the mistaken belief that the defendants had failed to comply with a show cause order by failing to file a written response, and an appeal was taken. The Court of Special Appeals of Maryland concluded that the Circuit Court had authority under the LEOBR to order termination of a proceeding involving charges of sexual and racial harassment, but noted that the power of a court to terminate a proceeding under the LEOBR is extraordinary relief that ought not be granted except in the most unusual case. The Court held that the Circuit Court improperly ordered termination of the proceedings based on its mistaken belief regarding the show cause order.

20. ***Steffey v. State,*** 82 Md. App. 647, 573 A.2d 70 (1989): A Prince Georges County grand jury indicted the appellant police officer on six counts, including misconduct in office, and after a jury trial, the appellant was found guilty on the misconduct count. The appellant moved to dismiss the indictments based upon the presentation of tainted evidence to the grand jury. Considering whether a violation of a police officer's immunity under § 3-104(l)(3) of the LEOBR warrants a dismissal of an indictment against the officer, the Court of Special Appeals held that the legislative history of the LEOBR reveals nothing to indicate that a court must dismiss an indictment against a police officer simply because the grand jury heard testimony based on statements the officer was compelled to make under the LEOBR.

F. Waiver of LEOBR Procedures

21. ***Moats v. City of Hagerstown,*** 325 Md. 519, 597 A.2d 972 (1991): Law enforcement officers charged with intentionally misrepresenting facts on an overtime report sought to waive a hearing under the LEOBR § 3-103(f) and a the grievance under a collective bargaining agreement instead. The city argued that the officers could waive the right to a hearing, but, once the right was waived, the officers were not free to pursue a grievance under the collective bargaining agreement. The Court of Appeals concluded that the language and history of the LEOBR demonstrates an intent to establish an exclusive procedural remedy for a police officer in departmental disciplinary matters,

and therefore the officers could not waive procedures under the LEOBR and elect to pursue the grievance under the collective bargaining agreement. Legislatively amended by § 3-103(f).

22. ***Montgomery County v. FOP,*** 147 Md. App. 659, 810 A.2d 519 (2002): A Montgomery County police officer who was suspended without pay was advised that she had a right to an emergency suspension hearing before a board consisting of one member. Fraternal Order of Police Lodge 35 (FOP) filed a grievance against the police department on behalf of the officer pursuant to the terms of a collective bargaining agreement (CBA), asserting that an emergency suspension review must be conducted by a three member board. At the hearing before the arbitrator, the police department argued that the issue in dispute between the parties – the composition of the hearing board – was not arbitrable because it was outside the scope of the CBA and was governed exclusively by the LEOBR. Per the police department's request, the arbitrator decided the issue of arbitrabilty prior to addressing the underlying dispute, and rendered a decision in favor of the FOP. The police department filed a petition to vacate the decision in the Circuit Court for Montgomery County, contending that the arbitrator incorrectly decided the issue of arbitrability. The Circuit Court granted the FOP's motion for summary judgment and remanded the case to the arbitrator for resolution of the underlying dispute. The police department appealed and the Court of Special Appeals held that under § 3-107(c)(4) of the LEOBR, the parties were permitted to negotiate an alternate method of forming a hearing board, but could not utilize arbitration as a remedy to resolve a dispute on that subject matter. Hence, the issue was not arbitrable and the sole methodology for resolving the dispute was that set forth in the LEOBR.

G. Evidence

23. ***Sheetz v. Mayor & City Council of Baltimore,*** 315 Md. 208, 553 A.2d 1281 (1989). A former correctional officer petitioned for a writ of mandamus to challenge his termination of employment in reliance on illegally seized evidence. The Court of Appeals held that evidence seized in violation of the Fourth Amendment is admissible in administrative discharge proceedings, unless it was obtained in bad faith.

24. ***Travers v. Balt. City Police Dep't,*** 115 Md. App. 395, 693 A.2d 378 (1996): A Baltimore City police officer argued that the hearing board improperly allowed a witness' testimony to be given vicariously through other officers, without subjecting the witness to cross-examination, and that the board's findings were not supported by sufficient evidence. The Court of Special Appeals determined that because the officer failed to exercise his right to subpoena witnesses, the officer effectively waived his right to complain about a denial of the opportunity to cross-examine witnesses, and other indicia of reliability existed. The Court noted that while administrative agencies are not constrained by technical rules of evidence, they must observe basic rules of fairness as to the parties appearing before them so as to comport with the requirements of procedural due process afforded by the Fourteenth Amendment. The Court concluded that the hearing board's determinations were not supported by substantial evidence and remanded the case for further proceedings.

25. ***Balt. City Police Department v. State,*** 158 Md. App. 274, 857 A.2d 148 (2004): A defendant in a criminal case sought to obtain certain confidential personnel files of

his arresting officer regarding accusations of dishonesty in an unrelated matter. The Circuit Court for Baltimore City directed that certain portions of the officer's personnel file be disclosed, denying in part and granting in part the police department's motion to quash the subpoena requesting the files. The Court of Special Appeals reversed on the ground that the trial court did not employ the proper test for determining whether the defendant was entitled to disclosure established in ***Reynolds v. State,*** 98 Md. App. 348, 633 A.2d 455 (1993), which held that even documents defined as confidential under the Maryland Public Information Act are subject to disclosure when nondisclosure might undermine confidence in the outcome of a trial. The Court noted that the LEOBR provisions providing for confidentiality of a police officer's internal investigatory file had little bearing on the issue of whether a criminal defendant is entitled to such files as a matter of due process.

26. ***Giglio v. United States,*** 405 U.S. 150 (1972): Giglio is a Supreme Court case dealing with the criminal trial of a Defendant convicted of passing forged money orders. While on appeal, the defense attorney discovered that the Government's key witness had been promised by at least one prosecutor that he would not be prosecuted if he testified for the Government. This was contrary to the testimony of that witness at trial, in which he indicated that no such promise had been made. The Court stated deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice. The case in no way dealt with police officers nor did it directly deal with any prior false or inaccurate statements unrelated to the case. Rather, it dealt with a false statement made to the jury (i.e. the witness testimony that there had been no promise that he would not be prosecuted). In dicta, the Court stated when the reliability of a given witness may well be determinative of guilt or innocence nondisclosure of evidence affecting credibility falls within this general rule that material evidence should not be suppressed. It does not impose a *per se* rule requiring that a defense witness be advised of an officer's internal affairs history, and the case in no way states or even implies that an officer with a prior false statement charge is precluded from testifying.

H. Standard of Proof

27. ***Coleman v. Anne Arundel County Police Department,*** 369 Md. 108, 797 A.2d 770 (2002): An Anne Arundel County police officer sought judicial review of his termination based on a departmental hearing board's finding that he had committed a theft. The officer argued that the hearing board erroneously applied a preponderance of the evidence standard of proof rather than a clear and convincing evidence standard. The Circuit Court affirmed the termination decision, concluding that the preponderance of the evidence standard may be applied by an LEOBR hearing board. The Court of Special Appeals affirmed. The Court of Appeals held that the correct evidentiary standard to be applied under the LEOBR in local police agency cases is the preponderance of the evidence standard. The Court reasoned that the LEOBR provides adequate protections against the deprivation of due process rights and that the preponderance of the evidence standard strikes an appropriate balance between the private interests of the officer and the law enforcement agency's interest in maintaining internal discipline.

I. First Amendment

28. ***Berger v. Battaglia,*** 779 F.2d 992 (4th Cir. 1985): A Baltimore City Police officer

brought an action challenging a departmental order that he cease off-duty public "Al Jolson" performances in blackface. The District Court denied the officer's claim, applying the balancing test set forth in ***Pickering v. Board of Education,*** 391 U.S. 563 (1968). The court held that although the officer's speech involved a matter of "public concern" and was therefore protected under the First Amendment, the officer's private free speech interests were outweighed by the police department's interests in maintaining good relations with the African American community and avoiding the diversion of its resources to cope with potential disruptions. The Court of Appeals for the Fourth Circuit reversed, holding (1) that the speech at issue was protected because it was related to a matter of public concern and (2) that the departmental disciplinary action was not justified on the ground of a perceived threat to departmental operations and community relations.

29. ***Brukiewa v. Police Commissioner of Balt. City,*** 257 Md. 36, 263 A.2d 210 (1970): The appellant publicly criticized the Baltimore City Police Department on local television stating that the reporting system and patrol procedure were problems, that the department's morale had hit its lowest ebb, and that the bottom was going to fall out of the City. The Court of Appeals held that when statements were not directed toward a superior with whom the officer would come into daily or frequent contact and were not shown to have affected discipline or harmony or general efficiency or effectiveness of the police department, they did not go beyond the bounds of permissible free speech under the First Amendment.

30. ***Bruns v. Pomerleau,*** 319 F.Supp.58 (D. Md. 1970): A practicing nudist brought an action in the United States District Court for the District of Maryland alleging that his civil rights were violated when the Baltimore City Police Department refused to accept his application for employment as a probationary patrolman. The Court held that the police department unconstitutionally infringed upon the officer's First Amendment right of association because there was no evidence of any paramount governmental interest that would prevent it from accepting an application from an applicant practicing or associated with nudism.

31. ***Childress v. City of Richmond,*** 134 F.3d 1205 (4th Cir 1998): White male police officers filed an action claiming that they had been retaliated against by their police agency employer after filing a complaint alleging that one of their superiors had made disparaging remarks about black and female officers. The federal district court dismissed the First Amendment claim because the department did not have a policy permitting the superior officer's conduct and the speech in question did not involve a matter of public concern. The Court of Appeals for the Fourth Circuit affirmed on the same grounds.

32. ***Cooper v. Johnson,*** 590 F.2d 559 (4th Cir 1979): A former deputy sheriff filed an action against his employer alleging that he was dismissed for drafting a letter to the editor of a local newspaper criticizing an article that had given credit to a single detective for the solving of a recent burglary case. The officer gave the letter to the sheriff prior to submitting it for publication, who reacted with "shock" and stated that if the letter were to be published, his department would be subject to ridicule. The deputy sheriff was fired the next day. The district court determined that the speech in question was not constitutionally protected. The Court of Appeals for the Fourth Circuit affirmed, reasoning that the letter related to a matter of internal departmental administration rather than to any matter of public debate.

33. *Pruitt v. Howard County Sheriff's Dep't,* 96 Md. App. 60, 623 A.2d 696 (1993) *cert. den.* 510 U.S. 1114 (1994): Sheriff's department officers sought review of a judgment which upheld the county's termination decision, contending they were improperly fired for misconduct. The officers urged that their actions, which included parodies of Hogan's Heroes, exaggerated Germans, and the Hitler hand salute constituted First Amendment free speech. The Court of Special Appeals affirmed the judgment, finding the termination of the officers for such conduct did not infringe upon a public employees' constitutionally protected free speech under the requisite balance between the interests of the public employee as citizen in commenting upon matters of public concern and the interest of the state as an employer in promoting the efficiency of public services.

34. *Edwards v. City of Goldsboro,* 178 F.3d 231 (4th Cir. 1999): A police officer who was suspended for teaching a concealed handgun course to the public after his request to do so had been denied by the chief of police filed an action alleging deprivation of his First Amendment rights. The district court dismissed the officer's First Amendment claims. The Court of Appeals for the Fourth Circuit reversed, holding that the officer's speech involved a matter of public concern and that the officer's interest outweighed the police department's interest in efficiency.

35. *Kirby v. City of Elizabeth,* 388 F.3d 440 (4th Cir. 2004): A police officer brought an action asserting that he was retaliated against by a city police department for statements he made at a hearing before the City Personnel Appeals Committee, which tended to support the position of another officer challenging a departmental disciplinary action imposed against him. The district court ruled that the testimony in question was not protected speech because it related to only one particular employee in a matter that was not of general public concern. The Court of Appeals for the Fourth Circuit affirmed, holding that the officer's testimony, which centered on whether a fellow officer had negligently failed to maintain a vehicle's transmission, did not address a matter of public concern, and thus was not protected under the First Amendment.

36. *Mansoor v. Trank,* 319 F.3d 133 (4th Cir 2003): A police officer brought action against a police chief and other individuals alleging deprivation of his First Amendment rights when a "Plan of Assistance" was created requiring that he refrain from making communications that were critical of departmental management. Three of the individual defendants filed an interlocutory appeal after the district court denied their requests for qualified immunity on the First Amendment claim. The Court of Appeals for the Fourth Circuit reversed, holding (1) a Plan broadly restricting an officer's right to make communications relating to his employment violated the First Amendment because such a restriction would prevent an officer from speaking about matters of public concern (such as racial or gender discrimination within the department) and (2) the officer's right not to be subjected to such a restriction was clearly established.

37. *Mills v. Meadows,* 1 F. Supp. 2d 548 (D. Md. 1998) (affirmed without opinion on appeal): A deputy sheriff brought a First Amendment action alleging that his employment was terminated as a result of his active support of an incumbent Democratic candidate for sheriff, who lost to a Republican challenger. The United States District Court for the District of Maryland concluded that the deputy sheriff's dismissal did not deny him of his constitutional right to freedom of association, applying the so-called *"Elrond-Branti"* exception to the general rule that government employees may not be dismissed

because of political affiliation. (The Supreme Court has held that a newly elected or re-elected sheriff may dismiss deputies because of party affiliation without violating their First Amendment right to freedom of association). The Court also held that the deputy sheriff's speech on behalf of the incumbent Democrat was not protected because, although it undoubtedly involved a matter of public concern, the interests of the public and of the sheriff's department in the effective fulfillment of responsibilities of the sheriff's office outweighed the deputy sheriff's interest in exercising his First Amendment rights. The court reasoned that the sheriff's decision to replace the deputy sheriff was motivated by a desire to fill the position with a loyal individual who would be likely to command the respect of the other deputies, which was "not unreasonable." Accordingly, the court granted the sheriff's motion for summary judgment on the constitutional claims.

38. *Miner v. Novty,* 304 Md. App. 402, 498 A.2d 269 (1985): A deputy sheriff brought a defamation action against a citizen who filed a brutality complaint against him. The Court of Special Appeals concluded that the citizen's brutality complaint was protected by the same absolute privilege as statements made by witnesses in judicial proceedings, and could not, therefore, serve as the basis for the deputy sheriff's defamation suit.

39. *Younkers v. Prince George's County,* 331 Md. 14, 633 A.2d 861 (1993): A sergeant was charged with violations of the department's Manual of Rules and Procedures as a result of two separate incidents. In the first incident, the police officer was alleged to have made inappropriate remarks critical of the department's policy and of higher ranking officers, in the presence of other police officers and a subordinate officer he was supposed to be counseling. In the second incident, the officer was alleged to have acted improperly in directing that a corporal under his command, who had just been involved in a shooting, remain silent. The Court of Appeals held that in the first incident, the employee's speech was inappropriate and censurable because it was made in front of subordinate officers; the officer's speech was not protected under the First Amendment because the interest of the department outweighed the officer's right to make those statements at that time and place. In the second charge, the Court found no substantial evidence that the officer was guilty of giving an inappropriate order to a subordinate officer when he ordered the subordinate officer not to speak to anyone, because the subordinate officer had requested counsel prior to the order. The Court noted that "substantial evidence" is the test for reviewing factual findings of administrative agencies and defined it as "such evidence as a reasonable mind might accept as adequate to support a conclusion." In reaching its decision, the Court reasoned that the order of an administrative agency must be upheld on judicial review if it is not based on an error of law, and if the agency's conclusions reasonably may be based upon the facts proven, but a reviewing court is under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law.

J. Equal Protection and LEOBR Preemption

40. *Abbott v. Administrative Hearing Board of Prince George's County,* 33 Md. App. 681, 366 A.2d 756 (1976): A police officer was disciplined because of unsatisfactory performance during an arrest. According to the LEOBR, an appeal from the decision of a hearing board may be taken to the Circuit Court. The provisions of the Prince Georges County Charter and ordinances governing disciplinary actions involving merit system employees, including police officers, provides for an additional administrative appeal to

the County Personnel Board. The Court of Special Appeals held that the provisions of the countys merit system ordinance and county charter governing employee appeals from administrative disciplinary actions are, when applied to cases involving police officers, preempted by the LEOBR. The Court concluded that where provisions of a locally enacted law and a law enacted by the state legislature are inconsistent and irreconcilable, a conflict exists and the state law preempts the locally enacted law and is controlling. The Equal Protection Clause of the Fourteenth Amendment does not prohibit the state from enacting legislation which affects one group differently than others. If there is a rational basis for the classification to achieve a legitimate state objective, the constitutional safeguard of equal protection of the laws is not offended.

41. *Montgomery County v. FOP,* 147 Md. App. 659, 810 A.2d 519 (2002): See #22

K. Double Jeopardy

42. *Commissioner, Balt. City Police Dep't v. Cason,* 34 Md. App. 487, 368 A.2d 1067 (1977): Police commissioner appealed from an order of the Baltimore City Circuit Court which reversed the commissioner's order dismissing a police officer. The Court of Special Appeals held that the power vested in the police commissioner as the ultimate decision maker was not unconstitutional; that the fact that the police officer had been acquitted on federal conspiracy charges which arose out of the same events which gave rise to the dismissal did not preclude his dismissal under the doctrine of collateral estoppel encompassed in the Fifth Amendment guarantee against double jeopardy; and that the evidence before the departmental board warranted the finding that the police officer had violated regulations. Therefore, the Court sustained the dismissal.

L. Right to Employment

43. *Brady v. Mayor & City Council of Laurel,* 40 Md. App. 373, 329 A.2d 89 (1978): Police officer brought a tort action against the city seeking reimbursement for expenses incurred in his successful defense of a lawsuit which arose out of his employment and also seeking compensatory damages. After a finding that the City was immune from such tort action as a matter of law, the police officer filed an amended declaration grounded in contract claiming that he entered into a written contract with the City by his oath to obey and support the Constitution and Laws of the State of Maryland and uphold the ordinances of Laurel. The Court of Special Appeals concluded that the oath administered to a police officer does not constitute a written contract upon which a police officer could base suit against the City for its failure to defend an officer in civil suit arising out of his employment which the officer successfully defended.

44. *Elliot v. Kupferman,* 58 Md. App. 510, 473 A.2d 960 (1984): The appellant, chief of the town police, was terminated after charges against him were heard by an LEOBR hearing board; he sued alleging an action under 42 U.S.C. § 1983 that he had been deprived of his property interest in his continued employment, which was protected by the Due Process Clause of the Fourteenth Amendment. The Court of Special Appeals held that the officer did not have a property interest in his employment and noted that as a general rule, a non-tenured state or local government employee who serves at will is not regarded as having a property right to continued public employment. Absent some special tenure provision, a police officer does not have a federally protected

right to continued employment. The Court concluded that provisions of the LEOBR setting forth certain procedural requirements in connection with investigations and other proceedings that may lead to disciplinary action do not give a police officer a property right in continued employment.

45. ***Windsor v. Bozman,*** 68 Md. App. 223, 511 A.2d 69 (1986): A former deputy sheriff brought an action against the sheriff and the board of county commissioners, seeking a writ of mandamus and an injunction to compel his reinstatement and seeking damages for an alleged wrongful discharge. Appellee alleged that he had been terminated for disciplinary reasons and that, as a law enforcement officer, sections 730 and 733 of the LEOBR provided him with certain procedural rights that had been violated by his termination. The Court of Special Appeals concluded that although the officer was entitled to the protection of the LEOBR as a deputy sheriff, he enjoyed no tenure in that position and served at the pleasure of the appellant, who appointed him. Nevertheless, the court noted that notwithstanding his lack of tenure as a deputy sheriff, the appellant was still entitled to the protections afforded by the LEOBR, citing *DiGrazia v. County Exec. for Montg. Co.,* 288 Md. 437. Because the officer failed to produce any evidence showing that he was fired for disciplinary reasons, the Court held that the discharge of the deputy sheriff without a hearing did not violate the LEOBR.

46. ***Moore v. Town of Fairmont Heights,*** 285 Md. 578, 403 A.2d 1252 (1979): A dismissed police officer brought an action requesting a show cause order as to why the town should not be required to afford him a hearing under provisions of the LEOBR and requesting an order enjoining the town from discharging him without first holding a hearing. The Court of Appeals held that because of the police officer's failure to successfully complete a training course at the police academy, he was not a permanent officer and was not entitled to a hearing under the LEOBR.

M. Right to a Hearing (Punitive vs. Administrative)

47. ***Cancelose v. City of Greenbelt,*** 316 Md. 275, 542 A.2d 399 (1988): After receiving a notice of termination resulting from unsatisfactory monthly evaluations, a police officer brought a complaint against the city to show cause why he should not receive a hearing under the LEOBR. The Court of Special Appeals concluded that monthly evaluations of a city police officer, using departmental competency standards that were applied consistently to all police officers in evaluating overall job performance, were not investigations and thus the officer was not entitled to a hearing under the LEOBR prior to dismissal based upon unsatisfactory work performance; dismissal was not the result of an investigation or interrogation.

48. ***Leibe v. Police Dep't of the City of Annapolis,*** 57 Md. App. 502, 468 A.2d 1287 (1984): A police officer, whose promotion to the rank of patrolman first class was rescinded after a routine periodic performance evaluation and a tracking of the officers use of sick leave, brought an action seeking reinstatement, back wages, removal of adverse material from his personnel files or, alternatively, the right to a hearing and other procedural safeguards under the LEOBR under Article 27, § 728, 728(c), and 730. The Court of Special Appeals held that the tracking of a police officers use of sick leave is not an investigation triggering protections afforded police officers by the LEOBR.

49. ***Montgomery County Dep't of Police v. Lumpkin,*** 51 Md. App. 557, 444 A.2d 469 (1982): Upon being notified by the police department of reassignment within the department and the loss of a 5% differential in pay, the appellee notified the Chief of Police that he considered these actions punitive in nature and that he desired a hearing before an appropriate board under § 3-107(a) of the LEOBR. The Chief of Police responded that the reassignment of the officer was not a disciplinary action and that the officer was therefore not entitled to a hearing under the LEOBR. The Court of Special Appeals of Maryland held that transfers are not necessarily punitive within the meaning of the LEOBR and thus a hearing before a review board was not an appropriate forum for a determination of the officer's complaint that the selection of those to be transferred was based on an unfair and inappropriate criterion.

50. ***Chief, Balt. County Police Dep't v. Marchsteiner,*** 55 Md. App. 108, 461 A.2d 28 (1983): A law enforcement officer brought an action against the police department chief for an allegedly punitive transfer without the benefit of procedures specified in the LEOBR. The officer failed to resort to grievance procedures provided by a collective bargaining agreement between the Baltimore County Administration and the Fraternal Order of Police, Lodge N. 4 before bringing the action. The Court of Special Appeals held that an officer's access to the court is not barred by the existence of a grievance procedure provided by a collective bargaining agreement which may have provided alternative means of obtaining protections. The Court also concluded that § 3-107(a) includes transfer of a law-enforcement officer as one of the actions that may be considered as a punitive measure, but that every transfer of a law-enforcement officer is not necessarily a punitive measure within the contemplation of the LEOBR. It is not feasible to fashion a litmus test for determining whether any given personnel action of a law-enforcement agency falls within the punitive category. Rather, the Court concluded that the law in this area must be developed on a case-by-case basis, with due regard given to the particular facts of each situation. Accordingly, the Court determined that the purpose of the officer's transfer was to enhance departmental effectiveness and to improve his own performance, not to punish him.

51. ***Allgood v. Somerville,*** 43 Md. App. 187, 403 A.2d 837 (1979): Appellant was a deputy sheriff hired by the appellee and subsequently terminated by him. She was given no reason for her termination other than that her services were no longer needed. The Court of Special Appeals held that the appellant cannot use the LEOBR as a tenure provision, noting that the Legislature had made no reference to it as such. The Court concluded that the LEOBR does not require a law enforcement officer's employer to justify dismissal in court whenever called on to do so.

52. ***Calhoun v. Commissioner, Balt. City Police Dep't,*** 103 Md. App. 660, 654 A.2d 905 (1994): Police officers brought an action against the police department alleging that the Commissioner and the police department had violated their rights to an administrative hearing. The officers contended that the use of routine polygraph examinations by the department constituted an investigation and/or interrogation under the LEOBR and that an involuntary reassignment from those examinations was a punitive measure. The Court of Appeals affirmed a holding by the lower court that the polygraph examinations were not investigations or interrogations sufficient to trigger the protections of the LEOBR. The Court concluded that the reassignment was not a punitive in nature.

53. *Boyle v. Maryland-National Capital Park and Planning Commission,* 385 Md. 142, 867 A.2d 1050 (2005): Two former park police officers were investigated for participating in secondary business activities through a limited liability company that they had formed together. The investigation focused on whether the officers had used their official positions to further conflicting private interests. Both of the officers resigned while the investigation was still pending. Park Police turned over the results of the investigation to the Capital Park and Planning Commission's General Counsel, which filed a petition to debar the former officers from participating in any procurement activity before the Commission. ("Debarment" denotes an order that renders a person or entity ineligible to bid on a public contract by reason of some misconduct). The former officers filed a declaratory judgment action in the Circuit Court for Prince George's County, seeking a judgment that the debarment proceeding conflicted with the LEOBR. The Circuit Court ruled that the officers were entitled to the procedural safeguards of the LEOBR and enjoined the debarment proceedings. The Court of Special Appeals reversed. The Court of Appeals affirmed the ruling of the Court of Special Appeals, holding that the LEOBR was inapplicable to the debarment proceedings because the LEOBR's protections apply only when there is a prospect of disciplinary action or punitive measure within the authority of the Chief of Police to impose.

54. *Cave v. Elliott,* 190 Md. App. 65, 988 A.2d 1 (2010): See #76

N. Due Process

55. *Reed v. Mayor and City Council of Balt.,* 323 Md. 175, 592 A.2d 173 (1990): The commissioner of the police department terminated the employment of a police officer after she failed to warn fellow officers that the person they intended to arrest was armed. The officer contended that she was given no notice by the department of any alleged misconduct on her part and emphasized that the first mention of any such conduct during the proceedings occurred when the chairman of the trial board announced its decision on the charge against her. Consequently, she claimed that her dismissal violated her rights under the Fourteenth Amendment and the LEOBR. The Court of Appeals held that notice issued to the officer did not specifically include mention of failure of the officer to warn arresting officers that the arrestee was armed. Therefore, termination of the officer violated the LEOBR.

56. *Mayor and City Council of Ocean City v. Johnson,* 57 Md. App. 502, 470 A.2d 1308 (1984): The appellee, a lieutenant in the Ocean City police force was dismissed after a hearing board found him guilty of violating city regulations. The appellee appealed the decision to the Circuit Court for Worcester County which ordered the reinstatement of the discharged police officer on the ground that the 1975 regulations under which he was charged were invalid in that they had not received the approval of the mayor and city council as required by the city code. The Court of Special Appeals held that the word "approval" in the city code provision requiring the police chief's regulations to have approval of the mayor and city council, required some affirmative act, and absent the required approval the regulations were invalid and the officer was improperly discharged thereunder. The Court noted that the fact that the police officer may have known about departmental regulations and lived under them for years before he was discharged for violating them, is an insufficient basis for waiver of requiring that the regulations approved by the mayor and city council, as required by the code.

57. *Maryland State Police v. Zeigler,* 85 Md. App. 272, 583 A.2d 1085 (1990): See #8

58. ***Hoyt v. Police Commissioner of Balt. City,*** 279 Md. 74, 367 A.2d 294 (1977): Fifty-five members of the Baltimore City Police Department were dismissed from the department by the police commissioner because of their participation in a strike against the Department. They argued that they were deprived of an impartial decision maker, and thus procedural due process, because there was an impermissible commingling of the investigative, prosecutorial and judicial functions on the part of the police commissioner, and that the police commissioner, because of his personal stake and involvement in the strike and its aftermath, was not capable of judging these cases fairly. The Court of Appeals concluded that the commissioner's only function was that of accepting, modifying or rejecting the recommended dismissal; that there was no evidence that the commissioner played any part in the conduct of the investigations or prosecution; and that the commissioner's involvement in the strike did not render him incapable of fairly judging the cases. The Court noted that a mere showing that the commissioner was involved in the events preceding the decision is not enough to overcome the presumption of honesty and integrity in policymakers with decision making power, and that so long as the punishment meted out is not dictated by capriciousness or arbitrariness, and finds support in the facts, it may be imposed on a case-by-case basis.

59. ***Pruitt v. Howard County Sheriff's Dep't,*** 96 Md. App. 60, 623 A.2d 696 (1993): The fact that an agency head who decided to increase the trial board's recommended punishment has some knowledge of the case does not violate due process or the LEOBR.

O. Secondary Employment

60. ***Fraternal Order of Police, Montgomery County Lodge No. 35 v. Mehrling,*** 343 Md. 155, 680 A.2d 1052 (1990): A police officer challenged a trial board's prohibition from engaging in secondary employment as punishment for violating rules regulating secondary employment. Appellants argued that because the police department failed to promulgate regulations under which secondary employment is prohibited for enumerated reasons, the total prohibition of secondary employment is not a sanction contemplated or authorized by the LEOBR. The Court, relying on § 3-103(b), concluded that unless a law enforcement agency chooses to regulate secondary employment and promulgates regulations for that purpose, including one that authorizes the chief to suspend or prohibit secondary employment as a disciplinary tool, a law enforcement officer, even one who has failed to obtain required approval, may not be barred from engaging in secondary employment.

P. Excessive Force Complaints

61. ***Vandevander v. Voorhaar,*** 136 Md. App. 621, 767 a.2d 339 (1999): Appellant, a former sheriff's deputy, appealed from an order of the Circuit Court for St. Mary's County upholding the findings of an administrative hearing board that the officer had used excessive force during an off-duty security assignment and had been untruthful in reports and statements regarding the incident. The Court of Special Appeals concluded that in evaluating claims that an officer used excessive force, the reviewing court's focus should be on the circumstances at the moment force was used and on the fact that officers on

the beat are not often afforded the luxury of armchair reflections. Factors that might enlighten the court as to the officer's circumstances at the moment include the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. The Court noted that the standard for measuring claims that an officer used excessive force is that of objective reasonableness under the Fourth Amendment. *See also Graham v. Connor,* 490 U.S. 386 (1989).

62. ***Maryland State Police v. Resh,*** 65 Md. App.167, 499 A.2d 1303 (1985): The Maryland State Police initiated an investigation into brutality on the part of a police officer in effecting an arrest in which the prisoner was injured, and charges against the officer were subsequently brought. Prior to administrative adjudication of such charges, the officer filed a complaint seeking a permanent injunction against the state police from proceeding on such charges, citing § 3-104(c) of the LEOBR. The LEOBR provides that a complaint against a law enforcement officer, alleging brutality in execution of duties, may not be investigated unless the complaint is duly sworn to by the aggrieved person, his family, or a person with firsthand knowledge of the incident. The Court of Special Appeals concluded that the LEOBR has no application where the investigation is generated by a police agency to determine whether its rules and regulations governing the conduct of its officers in the performance of their sworn duties have been observed. Accordingly, the Court held that the LEOBR did not bar the initiation of an investigation into brutality on the part of a law enforcement officer by the law enforcement agency which employed him.

63. ***Walker v. Lindsey,*** 65 Md. App. 402, 500 A.2d 1061 (1985): A police officer filed a complaint, citing § 3-104(c) of the LEOBR, seeking to enjoin any further investigation by the county police department and police trial board into charges that he used excessive force in the arrest of a minor. The appellant asserted that the hearing board was without jurisdiction to hear the matter because the complaint of brutality was initiated and signed by the minor himself and that this is contrary to the provisions of § 3-104(c). The Court of Special Appeals construed § 3-104(c) to mean that a minor could swear to a complaint of brutality against a law enforcement officer. By specifying that a complaint be duly sworn to by a parent or guardian in the case of a minor, the legislature did not necessarily intend to preclude a minor from filing his own complaint.

64. ***Balt. City Police Dep't v. Andrew,*** 318 Md. 3, 566 A.2d 755 (1989): An altercation occurred between a bus driver and an off-duty police officer at a football game in which the bus driver made a complaint against the officer for brutality. The Court of Appeals held that while § 3-104(c) did not require further investigation or proceedings in a brutality matter at the behest of the complainant, if the complaint was not filed within 90 days of the alleged brutality, it did not bar further proceedings if the police agency, on its own initiative, decided to conduct an investigation or press charges.

Q. Probationary Status

65. ***Cheverly Police Department v. Day,*** 135 Md. App. 384, 762 A.2d 981 (2000): A police officer employed by the University of Maryland, Baltimore Police Department (UMPD) filed an application for employment with the Town of Cheverly Police Department. The Cheverly Department conducted a background check on the officer and aided him in

obtaining a new certification card from the Maryland Police Training Commission (MPTC). Before the officer had officially resigned from the UMPD, he was informed that he was under investigation and faced possible criminal charges regarding his collection of sick leave pay. The Cheverly Department returned the officer's certification card to the MPTC and suspended him without pay, informing him that because he was a probationary officer he was not entitled to rights under the LEOBR. The officer was subsequently acquitted of the criminal charges brought against him, but the Cheverly Department did not request the return of his certification card from the MPTC, and sent him a letter informing him that he had been terminated because he was no longer certified. The officer brought an action in the Circuit Court for Prince George's County seeking to prevent the Cheverly Department from terminating his employment. The Circuit Court issued an order restoring the officer's employment with the Cheverly Department and requiring the department to comply with the LEOBR in the event of any further disciplinary actions or proceedings against him. The Court of Special Appeals affirmed, reasoning that as of the time the Cheverly Department began its effort to remove the officer from the Department, he had already been sworn in as an officer; accordingly, he was no longer a probationary employee and was entitled to the protections of the LEOBR, including the right to a pre-termination hearing.

66. *Mohan v. Norris,* 386 Md. 63, 871 A.2d 575 (2005): A Maryland State Police probationary officer who had been permanently certified by the MPTC was served with documents informing him that he would be suspended for eleven days. The officer requested a hearing pursuant to the LEOBR and State Police responded that he was not entitled to a hearing or any other LEOBR protections because he was still a probationary employee at the time of the alleged infractions. He filed a Show Cause/Complaint for Injunctive Relief in the Circuit Court for Prince George's County. The Circuit Court ruled that the officer was a probationary employee and therefore was not entitled to the protections of the LEOBR. The Court of Special Appeals affirmed. The Court of Appeals affirmed, holding that a police officer who is in a probationary status with his or her police agency employer is not entitled to the LEOBR's protections, even if the officer has been permanently certified by the MPTC.

R. Judicial Review of Administrative Action

67. *United Steel Workers of America v. Bethlehem Steel Corp.,* 298 Md. 665, 472 A.2d 62 (1983): Judicial review of administrative action differs from appellate review of a trial court judgment. In reviewing a trial court judgment, the appellate court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record, whether or not the reason was expressly relied upon by the trial court. However, in judicial review of agency action the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency.

68. *State of Maryland Commission on Human Relations v. Malakoff,* 273 Md. 214, 329 A.2d 8 (1974): Administrative agencies must resolve all significant conflicts in the evidence and then chronicle, in the record, full, complete and detailed findings of fact and conclusions of law.

69. ***Rouse-Fairwood, L.P. v. Supervisor of Assessments of Prince George's County,*** 120 Md. App. 667, 708 A.2d 19 (1998): Plaintiff partnership challenged the order of the Circuit Court for Prince George's County, which affirmed the tax court's determination in favor of the defendant supervisor of assessments. The Court of Special Appeals held that remand was proper because the agency did not indicate its reasons for requiring an increased tax. The court noted that an agency's decision may be affirmed based only upon the agency's findings of fact and for reasons presented by the agency. The purpose of this requirement is to afford the parties appearing before an administrative agency the right to know the facts relied upon by the agency in reaching its decision as well as to permit meaningful judicial review of the agency's findings. At a minimum, one must be able to discern from the record the facts found, the law applied, and the relationship between the two.

70. ***Dep't of Economic and Employment Development v. Propper,*** 108 Md. App. 595, 673 A.2d 713 (1995): An agency's decision may be affirmed only on the agency's findings and for the reasons stated on the record.

71. ***State Insurance Commissioner v. National Bureau of Casualty Underwriters,*** 248 Md. 292, 236 A.2d 282 (1967): Administrative action may be arbitrary or unreasonable if it is not based on or supported by sufficient facts or proper factual inferences. To refuse to consider evidence introduced, or to make an essential finding without supporting evidence, is arbitrary action. Administrative boards in general may be said to act in quasi-judicial capacity insofar as they have the duty to hear and determine facts and, based on them, make decisions.

72. ***VanDevander v. Voorhaar,*** 136 Md. App. 621, 767 A.2d 339 (1999): Appellant, a former sheriff's deputy, appealed from an order of the Circuit Court for St. Mary's County upholding the findings of an administrative hearing board that the officer had used excessive force during an off-duty security assignment and had been untruthful in reports and statements regarding the incident. The Court of Special Appeals concluded that the appellate court's powers of review are broad and held that the court below erred when it affirmed the hearing board's finding that the appellant was guilty of untruthful statements, because that finding was not supported by substantial evidence. For the court to uphold an administrative hearing board's order, that order must be sustainable on its finding of fact and for the reasons stated the agency.

73. ***Moose v. Fraternal Order of Police, Montgomery County Lodge 35, et al.,*** 369 Md. 476, 800 A.2d 790, (2002): Officers police powers suspended with pay pending internal investigation. After a suspension hearing by a single member board pursuant to Art. 27, Section 3-112(6)(3), Officer thereafter challenged the single member board by filing a Show Cause and/or Complaint for Declaratory Relief. Circuit Court found the hearing had been unfair but did not address issue of a one versus three member board and remanded for a second suspension hearing. Prior to that hearing, the Officer filed a second Show Cause/Declaratory action; Circuit Court ruled a three member board was not required by the LEOBR for a suspension hearing. Court of Special Appeals remanded to determine whether departmental regulations required a three member board. Circuit Court ruled both LEOBR and departmental regulations required a three member board. Moose appealed to the Court of Special Appeals; Court of Appeals took certiorari on its own motion. Court of Appeals dismissed all prior actions for failure

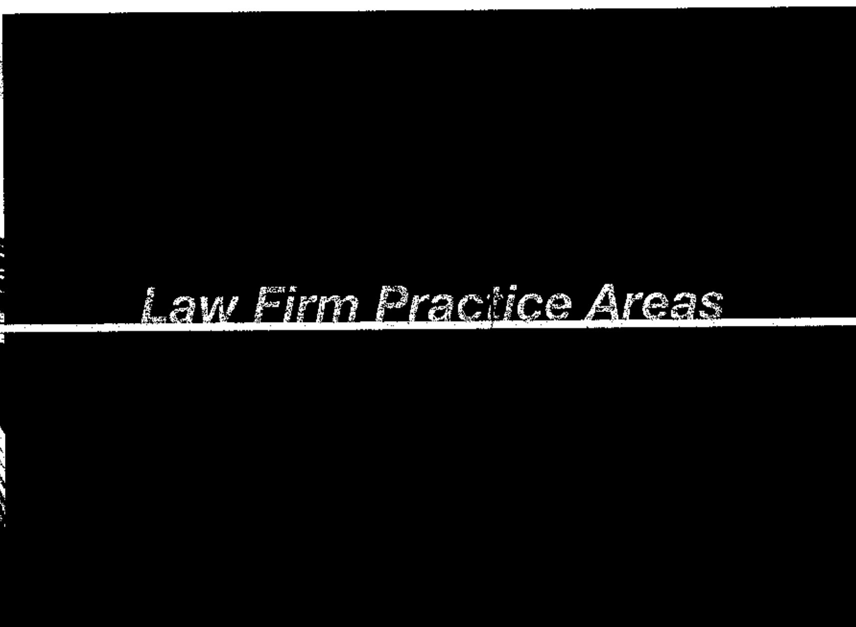
to exhaust administrative remedies. The Court ruled that a Show Cause action should have been filed prior to the first emergency suspension hearing. Declaratory judgment action was inappropriate because there had been no final hearing on the merits. The Officer's remedies were to file a Show Cause action prior to the emergency suspension, or an appeal pursuant to Section 3-109 after the conclusion of a trial board on the merits. The Court did note that the Section 3-105 Show Cause provision is an exception to the general rule of exhaustion. The Court declined to address the issue of whether the LEOBR or departmental regulations required a three member emergency suspension board.

74. ***Bray v. Aberdeen Police Dept.,*** 190 Md. App. 414, 918 A.2d 1106 (2010): In reviewing the sufficiency of the notification of the investigation and ensuing charges, the Court of Special Appeals held that the Court owed no deference to agency conclusions based on errors of law. Review of such issues is *de novo*.

75. ***Maryland-National Capital Park and Planning Commission v. Anderson,*** 395 Md. 172, 909 A.2d 694 (2006): A Park police officer was charged with violating a departmental policy against high-speed chases. A departmental hearing board found her not guilty of any violation. The Maryland-National Capital Park and Planning Commission filed an appeal in the Circuit Court for Prince George's County. The Circuit Court granted the officer's motion to dismiss, concluding that the Commission was not entitled to judicial review. The Court of Special Appeals affirmed, noting a distinction between a departmental hearing board's finding of guilt, which is final and thus appealable under the LEOBR, and a "not guilty" finding, which ends the disciplinary matter but is not appealable. The Court of Appeals upheld the decision of the Court of Special Appeals, stressing that the LEOBR is designed to provide rights to police officers, not the agencies.

76. ***Cave v. Elliott,*** 190 Md. App. 65, 988 A.2d 1 (2010): A deputy sheriff was wrongfully terminated without being afforded his right to a hearing under the Law Enforcement Officers' Bill of Rights. The Court of Special Appeals held that, although the LEOBR did not specifically give the Court he power to order reinstatement with backpay and benefits, in order to vindicate the officer's rights, that power is implicit on the LEOBR. The Court also held that the Court's general equity jurisdiction gives the court the same power. Note that this holding is inconsistent with the Court's ruling in *Miller* (see # 5) that the court had no power to order a remedy for illegally subpoenaed evidence. (While not part of the court's ruling or analysis, it appears that the Sheriff had terminated the deputy for poor performance, not as punishment or discipline. Holding that such an action does trigger LEOBR protections is a departure from the line of cases discussed in subsection M of this section). The Court also noted that Cave had at least eight months to conduct discovery regarding any mitigation of damages by the deputy. This is important because the LEOBR does not address whether discovery is allowed in show cause proceedings; implicit in the Court's decision is that it is permitted.

77. ***Bray v. Aberdeen Police Dept.,*** 190 Md. App. 414, 988 A.2d 1106 (2010): An officer raised various alleged violations regarding his notification of investigation and subsequent trial board charges on appeal after being found guilty at a trial board, rather than by way of a show cause petition before the hearing. The court ruled that it is not necessary to raise an issue in a show cause proceeding in order to raise that issue on appeal. Rather, the officer has the option of pursuing either or both remedies. However, the issue must be raised at the trial board in order to preserve it on appeal to the courts.



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SCHLACHMAN BELSKY & WEINER, P.A.

ATTORNEYS AT LAW

Schlachman, Belsky & Weiner, P.A. is a plaintiff oriented general practice law firm committed to providing exceptional legal representation for the people of Maryland. Founded in 1979, the firm's main office is located in the heart of downtown Baltimore near the Inner Harbor. To serve the people of Maryland the firm has branch offices in Prince Georges County, Easton, and Frederick. With an experienced staff of attorneys, paralegals and administrative assistants, we represent clients in a variety of legal disciplines including:

- Automobile Accidents
- Medical Malpractice
- Nursing Home Malpractice
- Product Liability
- Workers' Compensation Claims
- Law Enforcement Representation
- Divorce and Custody
- Bankruptcy
- Business Litigation
- Trusts and Estates

Schlachman, Belsky & Weiner, P.A. provides 24-hour, around-the-clock access to firm personnel for emergencies. Please don't hesitate to contact us should you need legal assistance.

Automobile/Injury Accidents Collisions occur everyday on our nation's roadways. Unfortunately many of these collisions cause serious injuries. Issues of fault and fair compensation are often confusing and litigation can be complicated. Our professional team has the experience necessary to assess your case and help you obtain the recovery you deserve. Each case is taken on a contingency basis so that no fee is ever owed unless we collect for you.

Medical Malpractice Medical negligence occurs when a trained health care professional fails to provide adequate treatment to a patient which causes injury. When such an injury occurs, a lawyer who understands medical standards can help you understand your legal rights. Trust our trained staff to investigate your claim and help you or your family negotiate a proper resolution. With our help, you can right the wrong.

Nursing Home Malpractice When those who we love require care that we cannot provide, we often turn to nursing homes or long-term care facilities. This decision can be agonizing. While many facilities provide thoughtful and conscientious care, many others do not. Neglected or abused nursing home residents can suffer various physical and emotional injuries. If you fear that your loved one has not been cared for properly in a nursing home or long-term care facility, let us help you.

Product Liability Claims Just like the items that cause them, products liability claims come in all shapes and sizes. Defective products (either in design or manufacture or insufficient warning) can cause substantial injury. The problem for you, the consumer, is that these products are often manufactured by large corporations with substantial resources available to defend themselves and their product. Our team will asses your claim and stand up for your rights. Let our strength work for you.

Workers Compensation When an employee suffers an injury while at work, the injured worker may be entitled to receive compensation. These claims involve a complicated system of rules and regulations which only an experienced attorney will fully understand. Let our qualified staff help you navigate this system to ensure that you receive all the benefits to which you are entitled. There is no charge for your initial consultation.

Law Enforcement Representation For over 30 years, Schlachman, Belsky & Weiner, P.A. has maintained a strong relationship with many of the police unions throughout the State of Maryland. We have handled all disciplines of administrative work for police officers, including trial boards, pensions, disabilities, and administrative hearings. Because of our long standing relationship with Maryland's law enforcement community, we proudly offer discounted rates on all other types of representation to covered members of the police community.

Divorce and Custody The decision to separate and/or divorce from a spouse is always a difficult one. We are experienced, tough and caring attorneys who will guide you through these difficult times. Contact us for a free consultation.

Bankruptcy Federal laws create a maze of obstacles and difficulties in filing a bankruptcy. Let one of our trained attorneys guide you through this maze and provide legal services relating to the filing of Chapter 7 and 13 bankruptcies. We are a debt relief agency. We help people file for bankruptcy under the Bankruptcy Code. Legal services relating to Chapter 13 bankruptcies include assistance in preparation of federally supervised repayment plans.

Business Litigation We practice business litigation covering a wide variety of business disputes. Please contact us for a free consultation.

Trusts and Estates Being protected from any unforeseen illness, accident or death is in the best interests of your loved ones. Contact one of our experienced attorneys to provide you with guidance in creating a trust and/or estate.

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SCHLACHMAN BELSKY & WEINER, P.A.

ATTORNEYS AT LAW

Sidney Schlachman

Admitted to Maryland Bar - 1951Also admitted to: U.S. District Court for the District of Maryland, U.S. Supreme Court.Practice areas: Contracts; real estate law; law enforcement officers' pensions; estates; personal injury law; workers' compensation law

Victor D. Sobotka

Education:B.A. Political Science Loyola College Baltimore, MD 1958J.D. University of Baltimore 1974 (Law Review)Military:MD National Guard 1970-1977Experience:2002 — Present; Schlachman, Belsky & Weiner, P.A.Civil Litigation in the following Areas:Workers" Compensation including appeals to Circuit Court and Courts of Appeal;Personal Injury;Commercial/Contractual Disputes;Business/ Corporate Transactional Matters;Estate and Trust Planning;Real Estate Transactions;Probate Administration1994-2002; City of Baltimore Department of LawChief of Litigation Division;Chief of Workers" Compensation Division;Served on Workers" Compensation Sub-Committee for MD Association of Counties;Engaged in legislative lobbying task force on urban/municipal issues;Served as medical malpractice arbitrator and panel chairman

Members

Henry L. Belsky

A graduate of the University of Baltimore Law School having completed his undergraduate studies at the University of Maryland, Henry L. Belsky, a partner of Schlachman, Belsky & Weiner, P.A., has been practicing law for over 30 years in civil/criminal litigation. Formerly, he was Legislative Counsel for the House Administration Committee in the United States Congress. He is also accredited with writing the "Contested Election Law Procedure." A sustaining member of the American Trial Lawyers Association and Maryland Trial Lawyers Association, Mr. Belsky was admitted to the Bar to practice before all Circuit Courts in the State of Maryland, U.S. District Court for the District of Maryland, U.S. Court of Appeals, and the Supreme Court of the United States. Henry and his wife, Brenda, reside in Baltimore County, Maryland. They have two children, a daughter, Phyllis, who resides in New Jersey and their son, Michael, who is a practicing attorney with his father's firm.

Herbert R. Weiner

Herbert R. Weiner has been a partner in the law firm of Schlachman, Belsky & Weiner, P.A. since 1979 and has served as the Firm's managing partner since 1987. For the past 33 years, Mr. Weiner has defended police officers accused of misconduct. Mr. Weiner has represented police unions in public sector collective bargaining for the past 22 years. Additionally, Mr. Weiner has been general counsel to the Maryland State Lodge of the Fraternal Order of Police for 24 years. He received his Juris Doctor degree from the University of Baltimore Law School Cum Laude and was elected to the Heuisler Honor Society. Mr. Weiner is a member of the Maryland State Bar Association, Bar Association of Baltimore City, Baltimore County Bar Association and the Association of Trial Lawyers of America.

Michael Marshall

Michael L. Marshall practices in the areas of police officers' rights, civil rights, employment law, and bankruptcy. Mr. Marshall received his B.A. degree, with honors, from the University of Oklahoma in 1979, and his J.D. degree from the University of Maryland in 1982. At the University of Maryland Law School he was the Chairperson of the Moot Court Board and a member of the International Moot Court Team, and was a recipient of the Cunningham Award for exceptional achievement and service to the school. He is admitted to practice in Maryland, U.S. District Court, District of Maryland, District of Columbia, U.S. Tax Court, U.S. Court of Appeals, Fourth Circuit, and the U.S. Supreme Court. Mr. Marshall is a member of the Maryland State and American Bar Association and the Association of Trial Lawyers of America. Mr. Marshall authored "Causation in Employment Discrimination Analysis; A Proposed Marriage of the Croson and Wards Cove Rationales," 20 Univ. Balt. L.R. (Spring 1991).

Steven E. Sunday

Mr. Sunday is a Senior Associate practitioner with the firm since 1988. He represents police officers in internal investigations and proceedings under the Law Enforcement Officers" Bill of Rights. He also maintains a general practice in the areas of family law, real estate and consumer rights.Education:Bridgewater College, Bridgewater, Virginia (B.A. 1973)University of Baltimore School of Law (J.D. 1988) Law Forum Staff Member American Jurisprudence Award - Debtor/Creditor Relations Professional Organizations: Maryland State Bar Association Prince George"s County, Bar Association

Lectures: Mr. Sunday has lectured at in-service training for several police agencies on the issues of police disciplinary matters and critical incidents.

Michael J. Belsky

Michael Belsky graduated cum laude with a degree in English Literature from the University of Maryland at College Park. He then went on to graduate in 1995 from the Temple University School of Law, where he was awarded the American Jurisprudence Award in Legal Writing and Research, and won second place in the Polsky Moot Court Competition. Mr. Belsky was an active member of Temple"s nationally renowned trial team, as well as the Moot Court team. Mr. Belsky"s practice focuses on medical malpractice, products liability and automobile negligence. In addition, Mr. Belsky has handled a myriad of high profile criminal cases. He is an active member of the American Trial Lawyer"s Association as well as the Maryland Trial Lawyer"s Association.

Michael E. Davey

Michael E. Davey has been a member of the Baltimore law firm of Schlachman, Belsky & Weiner, P.A. since 1999. He practices in the areas of police misconduct, pension law, and criminal law. Mr. Davey received his B.A. and J.D degree with honors from the University of Baltimore. He is a member of the Maryland State Bar Association and Maryland Trial Lawyers Association. His practice is devoted primarily to the representation of law enforcement officers throughout the State of Maryland. Mr. Davey has represented law enforcement officers for over 6 years in police misconduct cases and represented law enforcement officers involved in over 90 police involved shootings throughout the State of Maryland. Mr. Davey is a retired Captain from the Maryland State Police. During his 20 year career he has been assigned to the Field Operations Bureau, Drug Enforcement Division, Criminal Investigation Division, Communications Division and Human Resources Division. He was also assigned as the agency permanent chairperson of administrative hearings boards.

Associates

Roanne Handler

Ms. Handler has practiced family law exclusively since 1990 and has been employed at Schlachman, Belsky and Weiner, P.A. since 1992. The majority of her cases have involved divorces , custody and support issues separate from divorces.Ms. Handler has volunteered with the Maryland Family Law Hotline, done facilitation for the Circuit Court for Baltimore City and handled cases for the Maryland Volunteer Lawyers Service. Her undergraduate degree is from Goucher College in 1976 and her J.D. Degree is from the University of Baltimore in 1988.One of Ms. Handler's strengths is in negotiating a settlement on behalf of her client that is equitable and child-centered. It is infinitely preferable for the parties to a divorce case to help fashion an agreement with assistance from their attorneys than to litigate in the Court system.

Deborah J. Suess

Deborah J. Suess completed her undergraduate work at Johns Hopkins University, then graduated from the University of Maryland School of Law and was admitted to the Maryland Bar in 1979. She has experience in several areas of civil and administrative law and litigation and has practiced in multiple jurisdictions, including Baltimore City and all surrounding counties. She has also completed training in mediation. Her current practice is limited to the areas of domestic relations and family law, including divorce, custody, child support, name change, CINA and simple adoption matters. She is a member of the Maryland Bar Association, the Bar Association of Baltimore City and the Baltimore County Bar Association.

Daniel E. Udoff

Daniel E. Udoff graduated University of Maryland College Park in 1990 with a degree in Psychology. Mr. Udoff received his Juris Doctor degree from University of Baltimore School of Law in 1993. He joined SBW in 2002 practicing criminal/traffic cases, administrative hearings and civil litigation. Since 2008, Dan has been the managing attorney of SBW's worker's compensation department. Mr. Udoff is also a member of the Maryland Bar Association.

J. Eric Gibson

Eric Gibson graduated from the University of Maryland School of law in 1997. Since being sworn in as a member of the Maryland Bar, he has practiced in the areas of domestic relations, criminal and condumer law. He has litigated cases in the majority of jurisdictions in Maryland. His primary area of practice is domestic relations. He views his role in domestic relations cases as two separate but equal roles: 1) educating his clients so they have the ability to make an informed decision as to reasonable agreements regarding custody, alimony and monetary award issues; and, 2) litigating their cases to obtain a favorable result. He practices out of the Prince George's County office.

Shaun Owens

Shaun Owens graduated with a degree in Political Science at St. Mary's College of Maryland. In 2006 he then went on to graduate from American University, Washington College of Law, Washington, District of Columbia. He began his career at SBW Law in the firm's consumer department, handling landlord-tenant, debt collection, contract and community association matters. He subsequently became a member of SBW Law's litigation team, and is now responsible for defending criminal cases at both the district and Circuit Court level through the State of Maryland. Mr. Owens also focuses on personal injury, medical malpractice and product liability cases. Mr. Owens is a member of the Maryland State Bar Association and the American Bar Association. With all of his cases, he believes that the most important decisions are those made by the client after careful consideration and thorough understanding of all of the options available.

Albert ("Jerry") McCarraher

Albert ("Jerry") McCarraher practices in the areas of consumer law, civil litigation and criminal defense. During law school, Mr. McCarraher spent a year as a student attorney with the Civil Advocacy Clinic representing low-income individuals in consumer, housing, and public benefits matters. Mr. McCarraher graduated from the University of Maryland in 2001 with a degree in Political Science. He then went on to graduate magna cum laude in 2006 from the University of Baltimore School of Law. He was a member of the Heuisler Honor Society and an editor of the Journal of Environmental Law. Upon graduation, he clerked for the Honorable Michael J. Finifter in the Circuit Court for Baltimore County.

Thomas P. Coppinger

Mr. Coppinger is a retired lieutenant colonel from the Maryland State Police, having served as the chief of the investigation bureau prior to his retirement. During his twenty-eight year law enforcement career, Mr. Coppinger served as an investigator for the Maryland Attorney General's Office, Special Investigations and Homicide Unit. He has also commanded the Homicide Unit, the Internal Affairs Unit and the Intelligence Division. Mr. Coppinger graduated in 1993 cum laude with a degree in Jurisprudence from the University of Baltimore. He then went on to graduate in 1997 from the University of Baltimore School of Law. Mr. Coppinger's practice is devoted to the representation of law enforcement and correctional Officers throughout the State of Maryland.

Megan Oleszewski

Megan Oleszewski graduated cum laude with a degree in Government Politics, Criminology and Criminal Justice from the University of Maryland. She then went on to graduated in 2010 from the University of Maryland School of Law. Ms. Oleszewski is a member of Maryland State Bar Association. She joined SBW Law in 2009 as a law clerk in the litigation department. Since her admittance to the Maryland State Bar in December 2010, she has served as an Associate Attorney with SBW focusing on personal injury.

Barbara Gilmore

Barbara Gilmore is an associate attorney focusing her practice on wills, personal injury, family law, and civil litigation. She graduated cum laude from the University of Maryland, College Park. She then graduated from the University of Maryland School of Law where she was an Articles Editor for the Journal of Health Care Law & Policy. Following graduation from law school, Ms. Gilmore practiced at a general practice law firm in southern Maryland. She was chosen as a Fellow in the Maryland State Bar Association's Leadership Academy. Ms. Gilmore is a member of the Prince George's County Bar Association and the Maryland State Bar Association.

Leanne Lauenstein

Leanne Lauenstein is an associate attorney focusing her practice in the area of police civil litigation. She has worked as an Assistant State's Attorney for Baltimore County in the District and Circuit Courts, as well as Juvenile Court. She received her B.A. degree in Government and Politics from the University of Maryland, College Park in 2002 and her J.D. degree from the University of Maryland School of Law in 2005. During approximately 5 years as an attorney with the Baltimore County State's Attorneys Office, she represented the State of Maryland in complex criminal law and has extensive courtroom experience.

NOTES:

Maryland Law Enforcement Officers' Bill of Rights

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