

JENNIFER ROWE,	*	IN THE
<i>Petitioner,</i>	*	COURT OF APPEALS
v.	*	OF MARYLAND
MARYLAND COMMISSION ON CIVIL	*	September Term 20 <u>22</u>
RIGHTS	*	Petition Docket No. <u>133</u>
<i>Respondent.</i>	*	
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# PETITION FOR WRIT OF CERTIORARI

In 1982, the General Assembly amended the Maryland Commission on Civil Rights (MCCR) statute to apply judicial review under the Maryland APA to the agency’s no-probable-cause findings, just like the rest of MCCR’s final orders. Soon after, the Court of Special Appeals applied that amendment to exercise jurisdiction, and the State never challenged its determination.

Forty years later, the Court of Special Appeals now misreads the statute to reverse course on this pure legal question—of first impression for this Court—contrary to its own binding precedent and decades of accepted practice. The lower court’s opinion (“the Opinion”) misconstrues the statute and ignores evidence of contrary legislative intent. Because the Opinion unsettles Maryland law and degrades civil rights protections, this Court’s review is desirable and in the public interest. *See* Md. Rule 8-303.

## **QUESTION PRESENTED<sup>1</sup>**

1. Does the Court of Special Appeals have jurisdiction over appeals from circuit courts on petitions for judicial review of MCCR no-probable-cause findings in public accommodations discrimination cases?

## **PERTINENT STATUTES**

Md. Code, State Gov't § 10-222

Md. Code, State Gov't § 10-223(b)(1)

Md. Code, State Gov't § 20-1005(d)(2)

## **STATEMENT OF FACTS AND PROCEEDINGS**

This appeal arises from an MCCR administrative proceeding resolving a disability-based public accommodations discrimination complaint. Ms. Rowe—who suffers from PTSD—was a member of Krav Maga Maryland (“KMMD”), a martial arts gym. Ms. Rowe was active in KMMD’s Facebook group, and she complained to management when disability-related comments she contributed to the group page were deleted. After exchanging emails about the issue—with Ms. Rowe repeatedly referencing her disability, raising her legal rights, and requesting accommodations—KMMD terminated her membership.

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<sup>1</sup> This question presents the only issue decided below. Ms. Rowe does not intend to forfeit or waive the merits arguments she raised in the lower courts, recognizing that the relief ordinarily available from this Court would be a remand for a merits decision. *See, e.g., Kumar v. State*, 477 Md. 45, 74–75 (2021) (Biran, J., concurring) (“[I]n the absence of unusual circumstances,” “we generally remand to the Court of Special Appeals to decide a question that it previously did not decide[.]”).

Ms. Rowe filed a complaint with MCCR, alleging discrimination and retaliation. In the proceedings that followed, MCCR violated its own regulations and provided inadequate procedural due process. At the outset, MCCR failed to authorize Ms. Rowe's plausibly alleged retaliation claim. Then, it botched the scheduling of the fact-finding conference—the primary opportunity for the complainant to be heard—by giving the parties different times for the conference at which they were both to appear. MCCR repeatedly represented to Ms. Rowe that both parties would be present—as required by regulation—and that she would have the opportunity to hear the Respondent's case. Nevertheless, MCCR's investigator met with the Respondent first and in Ms. Rowe's absence, effectively barring Ms. Rowe from hearing and meaningfully addressing the Respondent's presentation in this burden-shifting case.

MCCR issued a finding of no probable cause. Ms. Rowe filed a request for reconsideration, which MCCR denied. Ms. Rowe then petitioned for judicial review in the Circuit Court for Baltimore City. The Circuit Court affirmed (Nugent, J.).

Ms. Rowe then appealed to the Court of Special Appeals. The parties briefed the statutory and constitutional inadequacy of MCCR's process and the merits of MCCR's no-probable-cause finding.<sup>2</sup> At oral argument, the court questioned its jurisdiction *sua*

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<sup>2</sup> The questions presented below were: 1. "Was the Commission's final decision the result of unlawful procedure because there were substantial, prejudicial errors in the administrative process afforded to Ms. Rowe, requiring remand?" and 2. "Was the Commission's conclusion that KMMD had a legitimate nondiscriminatory business reason for terminating Ms. Rowe's membership arbitrary or capricious and unsupported by substantial evidence?" *But see* n.1.

*sponte*. At the court’s request, the parties provided supplemental briefing on the issue, where the State for the first time argued that the court lacked jurisdiction.

The court dismissed the appeal for lack of jurisdiction, *In re Petition of Jennifer Rowe*, CSA-REG-0354-2021 (Md. Ct. Spec. App. Apr. 25, 2022), issuing its mandate on May 31 2022.

## **REASONS FOR GRANTING REVIEW**

### **I. The Opinion wrongly strips public accommodations claims of full judicial review under the Maryland APA, contrary to legislative intent and binding precedent.**

#### **A. The Court of Special Appeals had jurisdiction over this appeal.**

In general, MCCR proceedings are governed by the APA. *Kohli v. LOOC, Inc.*, 103 Md. App. 694, 708 (1995) (“[T]he standard of review that applies to the actions of covered State agencies (of which the Commission is one), . . . is set forth in [the APA].”). MCCR’s process is broken up into two phases, an investigative phase followed by a hearing phase. *See generally* COMAR 14.03.01 *et seq.* After investigating, MCCR decides whether there is probable cause to believe a violation took place. COMAR 14.03.01.08. If so, the case proceeds to the quasi-judicial hearing process; if not, MCCR issues a no-probable-cause finding, dismissing the complaint. COMAR 14.03.01.08–14.03.01.11.

The APA’s judicial review provisions apply to “contested cases,” which are generally quasi-judicial proceedings. *See* Md. Code, State Gov’t (“SG”) §§ 10-200 *et seq.* Because MCCR’s no-probable-cause findings arise from investigations, before any hearing or other quasi-judicial protections, they are not “contested cases.” *Parlato v.*

*Comm’n on Hum. Rels.*, 76 Md. App. 695, 702–04 (1988). Thus, absent statutory intervention, MCCR’s no-probable-cause findings would be judicially unreviewable.

In 1982, the General Assembly recognized this problem. It amended MCCR’s statute to add the following provision: “Unless the U.S. Equal Employment Opportunity Commission has jurisdiction over the subject matter of the complaint, a denial of a request for reconsideration of a finding of no probable cause by the Commission is a final order appealable to the circuit court as provided in § 10-222 of this article.”

SG § 20-1005(d)(2). Section 10-222 governs judicial review of contested cases under the APA. *See* SG §§ 10-222 *et seq.* The next section of the APA then authorizes Court of Special Appeals review: “A party who is aggrieved by a final judgment of a circuit court under this subtitle may appeal to the Court of Special Appeals in the manner that law provides for appeal of civil cases.” SG § 10-223(b)(1). Thus, read together, SG §§ 20-1005(d)(2), 10-222, and 10-223 expressly authorize Court of Special Appeals review of MCCR no-probable-cause findings.

First, the plain language: SG § 20-1005(d)(2) provides that “a finding of no-probable-cause by the Commission *is a final order **appealable*** to the circuit court *as **provided in** § 10-222.*” The language in that sentence operates on the *nature of the order*. The legislature specified that these orders—while not “contested cases”—are treated *as if they were* orders that are “appealable” under the APA’s contested case provisions. That language is distinct from provisions that simply create a limited right to judicial review. *Cf.* Op. at 13–14 (quoting statutes with phrases like: “. . . may take an appeal as allowed in . . .”; “[a]n appeal . . . shall be taken . . . in accordance with”; “. . . may obtain judicial

review of the order in accordance with . . .”). Those provisions do not operate by specifying what kind of order the decision at issue “is.”

The plain language of § 10-223 then provides that a party “aggrieved by a final judgment of a circuit court *under this subtitle*” can appeal to the Court of Special Appeals. Together, these provisions expressly authorize jurisdiction: § 20-1005(d)(2) makes no-probable-cause orders “appealable” *under* § 10-222, and § 10-223 makes circuit court orders “under this subtitle” appealable to the Court of Special Appeals.

This reading is not mere sleight of hand; it aligns with § 20-1005(d)(2)’s purpose in the statutory framework. The legislature’s line-drawing between EEOC and non-EEOC cases reflects its purpose of “insur[ing] that discrimination complainants could obtain review.” *Parlato*, 76 Md. App. at 704–05. Because employment discrimination claims within the EEOC’s jurisdiction have procedural protections at the federal level, “a full panoply of procedural safeguards at the state level is unnecessary to guarantee the protection of those rights.” *Id.* “Recognizing this scheme, the General Assembly quite appropriately chose not to provide judicial review where other mechanisms to enforce anti-discrimination legislation were available.”<sup>3</sup> *Id.* By contrast, for public accommodations claims—alleging discrimination based on race, sex, age, color, creed, national origin, marital status, sexual orientation, gender identity, or

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<sup>3</sup> Notably, in *Parlato*—an employment case—the court found that it lacked jurisdiction by applying § 20-1005(d)(2)’s EEOC-clause, rather than broadly holding the Court of Special Appeals lacks jurisdiction over appeals from *all* no-probable-cause findings. 76 Md. App. at 702–04; *see also A.C. v. Md. Comm’n on Civil Rights*, 232 Md. App. 558, 572–73 (2017) (same).

disability—MCCR is the end of the line. Therefore, conversely, because there are *not* other mechanisms to enforce those claims, the General Assembly *did* choose to “provide judicial review.” And it chose to do so by bringing the claims under the state APA.

This purpose is also evident in the legislative history. There is evidence from the history of § 20-1005(d)(2) that the Legislature understood its language would bring no-probable-cause orders under the APA. There is also evidence that the Bill was introduced to legislatively reverse recent judicial decisions holding that no-probable-cause orders were unreviewable because they were not “contested cases.” Altogether, the history shows the General Assembly cross-referenced § 10-222 to invoke the APA’s coverage, not merely to authorize circuit court review.<sup>4</sup>

Finally, the Court of Special Appeals recognized the Legislature’s intent shortly after the provision was enacted. In 1985, the court exercised jurisdiction to review a no-probable-cause finding arising from a disability complaint, the exact same posture as this case. *Vavasori v. Comm’n Hum. Rels.*, 65 Md. App. 237, 251–52 (1985). The *Rowe* Opinion utterly disregards this precedent, concluding—in a footnote—that “*Vavasori* did not address this Court’s jurisdiction.” *See Op.* at 18 n.14. But that is wrong. While *Vavasori* did not conduct a statutory analysis, it did acknowledge the jurisdictional issue and then exercised jurisdiction.

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<sup>4</sup> The Opinion finds that “the legislative history creating SG § 20-1005(d)(2) does not reveal that the General Assembly intended for Commission’s no probable cause finding be treated as a contested case [sic].” *Op.* at 17. But it never actually discusses any legislative history. *See id.* at 11–18. This Court should grant the Petition to fully review the legislative history that contradicts the lower court’s conclusion.

*Vavasori* explained: “This is the second time the appellant has brought his claim of discrimination to this Court,” because the circuit court dismissed his first attempt—prior to the enactment of § 20-1005(d)(2)—“*on the basis that the court had no jurisdiction*” because there was no contested case. 65 Md. App. at 240 (emphasis added). The petitioner appealed, and while the case was pending, § 20-1005(d)(2) took effect. The Court of Special Appeals then remanded the case because the appellant was now “entitled to his day in court.” *Id.* at 241. On remand, the circuit court affirmed the no-probable-cause finding on the merits, the petitioner appealed again, and the *Vavasori* court exercised jurisdiction and reversed on the merits. *Id.* at 241, 243–52. Thus, after explicitly acknowledging the prior jurisdictional defect, *Vavasori* found jurisdiction following § 20-1005(d)(2)’s enactment.

*Vavasori* alone warrants granting the Petition and reversing the lower court’s violation of binding precedent. But even aside from its precedential authority, *Vavasori* shows that the Legislature adopted § 20-1005(d)(2) to make no-probable-cause findings equivalent to “contested cases” for purposes of APA judicial review, triggering § 10-223.

#### **B. The Opinion’s contrary conclusion is unsubstantiated.**

The Opinion disregards the foregoing analysis in favor of a shallower reading: The statute provides that no-probable-cause findings are “appealable to *the circuit court* as provided in § 10-222,” and that express reference to “the circuit court” means *only* those courts have jurisdiction.

The Opinion relies entirely on negative inferences to support this conclusion. First, it compares to other statutes that use other language to create a right to APA



judicial review in the Court of Special Appeals, and it concludes, since that language is not present here, there is no jurisdiction here. *See Op.* at 11–18.

But none of those statutes are prohibitive of the language in § 20-1005(d)(2) *also* giving rise to jurisdiction. They only show that the Legislature knows how to authorize such review, and it has done so in various ways. This kind of negative inference might carry the day in the absence of any positive indication of legislative intent. Here, though, the plain language, statutory framework, and legislative history all indicate that the Legislature enacted § 20-1005(d)(2) to bring no-probable-cause findings under the APA’s judicial review provisions, triggering § 10-223. Because courts must interpret statutes to effectuate the actual intent of the General Assembly, the Opinion’s authorities are too weak to control here. Section 20-1005(d)(2)’s use of the phrase “appealable to the circuit court” does not require jurisdiction to be *exclusive* there.

By the same token, the Legislature knows how to create a limited right to circuit court review *without* triggering the APA’s contested case provisions. *See, e.g.,* Lab. & Empl. § 9-737 (authorizing circuit court review by cross-referencing Chapter 200, Title 7 of the Maryland Rules); Cts. & Jud. Proc. § 5-403 (same); Land Use § 4-401 (same); Pub. Utils. § 25-106 (same). Here, the Legislature instead chose to authorize judicial review via the APA, which has legal consequence. When the Legislature enacted the APA, it intended for cases appealable to the circuit court under § 10-222 to be appealable to the Court of Special Appeals under § 10-223. By incorporating § 10-222, the MCCR statute triggers that intent.

But the Opinion treats the statute’s incorporation of the APA as merely incidental. Indeed, the Opinion puts MCCR’s no-probable-cause orders on an island among agency decisions, subject to APA judicial review under § 10-222 but not under § 10-223. Counsel could find no other context in which APA review is authorized in the circuit court but not in the Court of Special Appeals, and the Opinion did not identify any. Section 20-1005(d)(2) should not be read in a vacuum to reach this idiosyncratic result.

The Opinion counters that Ms. Rowe argues for an *implied* right to Court of Special Appeals review, and jurisdictional grants must be *express*. Op. at 16. But that misunderstands the argument: Ms. Rowe does not argue that § 20-1005(d)(2)’s language *impliedly* incorporates § 10-223 when it refers to § 10-222. Rather, Ms. Rowe argues that § 20-1005(d)(2) makes MCCR’s no-probable-cause orders appealable *under* § 10-222, like contested cases, and § 10-223 *expressly* provides that a party “aggrieved by a final judgment of a circuit court *under this subtitle*” may appeal to the Court of Special Appeals. There are two legislative intents in play here: the intent of the Legislature in amending MCCR’s statute to bring no-probable-cause findings under § 10-222, and the intent of the Legislature in enacting § 10-223 to authorize Court of Special Appeals review of such circuit court rulings.

Finally, the Opinion discusses two cases, again for negative inferences. Op. at 14–18. In each case, a statute that only referenced circuit court review nevertheless gave rise to Court of Special Appeals review. The Opinion reasons that the dispositive factors in those cases do not apply here, so, here, review must be limited to the circuit court. This weak inference crumbles under scrutiny because both cases are readily distinguishable.

First, in *Department of General Services v. Harmans*, a statute referred exclusively to § 10-222, but a prior reference to § 10-223 had been dropped only because of a “Code Revision error,” so the court held that it still had jurisdiction. 98 Md. App. 535, 543 (1993). The *Rowe* Opinion reasons: there is no comparable “statutory glitch” here, so the explicit reference to the circuit court must be limiting. Op. at 15.

That logical leap is unsubstantiated. In *Harmans*, the underlying proceeding was a *contested case*, meaning the APA’s judicial review provisions presumptively attached. 98 Md. App. at 542. The court only considered whether the exclusive reference to § 10-222 limited jurisdiction because Court of Special Appeals jurisdiction was *already* available. *Id.* at 543–46 (considering whether the Legislature “intended to *abrogate* the right of appeal to this Court”) (emphasis added). Here, § 20-1005(d)(2) *creates* a right to APA review where none existed by bringing these non-contested cases under § 10-222, thereby triggering § 10-223. And while there is not a “statutory glitch” here showing that jurisdiction is authorized, there is plain language, statutory purpose, and legislative history supporting that reading.

Second, in *WSSC v. LaFarge North America*, another statute specifically referenced the circuit court alone. 443 Md. 265, 275 (2015). *LaFarge* decided that the underlying proceeding was a contested case, triggering appellate jurisdiction under the APA. *Id.* at 278. The *Rowe* Opinion points to *LaFarge* to say: there, the contested case finding was necessary to create jurisdiction, and here, the proceeding is *not* a contested case; therefore, here, the specific reference to the circuit court alone must limit jurisdiction. Op. at 15–16.

This is another unsupported leap in logic. The statute in *LaFarge* authorized circuit court review by cross-referencing *Title 7, Chapter 200 of the Maryland Rules*. 443 Md. at 280. The *LaFarge* court’s contested case finding was the *only* trigger for the APA. Here, by contrast, the Legislature chose to cross-reference § 10-222, thereby triggering § 10-223. The *Rowe* Opinion’s analogy is not instructive.

Ultimately, *Harmans* and *LaFarge* support Ms. Rowe’s argument. Both cases find the Court of Special Appeals had jurisdiction even though authorizing statutes referred to the circuit courts alone. And while there is no “statutory glitch” here, and no “contested case” here, there *is* plain language, statutory purpose, and legislative intent that show § 20-1005(d)(2) triggers § 10-223. *Harmans* provides this apt guidance: “[A]lthough the words actually used in the statute are normally the best indicator of [legislative] intent, sometimes they are not. The ‘plain meaning’ rule is not rigid and may, as circumstances require, have to yield to other ‘external manifestations’ or ‘persuasive evidence’ of a contrary legislative intent.” 98 Md. App. at 545 (quoting *Kaczorowski v. City of Baltimore*, 309 Md. 505, 514–15 (1987)). By treating the phrase “appealable to the circuit court” as dispositive, the *Rowe* Opinion takes a rigid approach to plain meaning that ignores persuasive evidence of broader legislative intent.

## **II. The Opinion disrupts settled law and erodes civil rights protections, warranting this Court’s review.**

The legal question presented here—of first impression for this Court—is of significant public interest. Under Maryland law, MCCR is the exclusive pathway to relief for public accommodations claims for all protected classes. When MCCR

dismisses on probable cause, the administrative process amounts to an investigation without formal protections or a hearing. At the outset, MCCR gets to decide whether to authorize the claims in the complaint. In this case, where Ms. Rowe challenges MCCR's arbitrary decision not to authorize one of her central, plausibly-alleged claims, MCCR has argued it has complete discretion over authorizations and, essentially, that there is no legal standard for reviewing its decisions. MCCR then has complete discretion over the investigation, with no mandatory opportunity for the complainant to present evidence or hear and respond to the respondent's evidence. MCCR gets to decide whether to interview the parties, interview witnesses, and hold a fact-finding conference. Here, as just one example, MCCR has leaned on this discretion to argue its blatant errors in scheduling Ms. Rowe's fact-finding conference were harmless.

If a case proceeds from the investigative phase to the hearing phase, MCCR's statute and regulations then provide far more protection. In theory, this two-phase process could be fair and efficient: the authorization and investigation powers allow MCCR to filter out meritless claims before the more resource-intensive, quasi-judicial process. *See Parlato*, 76 Md. App. at 147 ("The Commission investigation is conducted to protect the respondent against frivolous charges by insuring the reliability of the information in the complaint."); *Banach v. Comm'n Hum. Rels.*, 277 Md. 502, 514 (1976) ("[T]he investigative process [was designed to] flesh out the charges made by the individual before the respondent was called upon to answer them.").

But that theory is not playing out in practice. MCCR uses the investigative phase for *far* more than "protecting against frivolous charges" or "fleshing out the charges" in

the complaint. In reality, only a tiny minority of MCCR complainants ever reach the hearing phase to receive formal procedural protections. In 2020, MCCR dismissed at least 80% of complaints during the investigation. *See* MCCR, Annual Report 14 (2020), [https://mccr.maryland.gov/Documents/MCCR\\_AnnualReport2020\\_Digital\\_FINAL.pdf](https://mccr.maryland.gov/Documents/MCCR_AnnualReport2020_Digital_FINAL.pdf) (46% by no-probable-cause finding, 26% by administrative closure, and 8% by settlement during investigation).<sup>5</sup> Of the remainder, MCCR resolved only .1% via its “conciliation” process after finding probable cause, and it resolved *zero* cases via hearing. *Id.* And 2020 was not an outlier: from 2016 through 2019, MCCR resolved at least 83% of cases during the investigation—42% by no-probable-cause finding.<sup>6</sup> Out of 3,082 cases, only 1 case is listed as an unsuccessful conciliation, meaning it should have proceeded to the hearing process, though the data do not indicate whether a hearing took place.

In sum, MCCR dismisses more than four-out-of-five complaints during its investigations, finding no probable cause in almost-half. That is a far cry from filtering out only frivolous claims while the rest receive a quasi-judicial process to determine their merits. And MCCR’s unfair process in this case exemplifies the overreach that results from its unchecked discretion. Further, because MCCR virtually never holds formal

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<sup>5</sup> The last resolution-category in MCCR’s data is “Withdrawn with Benefits,” referring to private settlements. MCCR does not indicate when these settlements occur. Presumably, some withdrawals happen during the investigation, meaning more than 80% of cases did not reach the hearing phase in 2020, up to as high as 99.9%.

<sup>6</sup> The reports used to calculate these statistics are available at MCCR, *Publications Available for Download*, <https://mccr.maryland.gov/Pages/Publications.aspx> (click “Annual Fiscal Year Reports”).

hearings, no-probable-cause orders are its primary means for explaining its reasoning and justifying its rejection of nearly half its caseload. Thus, no-probable-cause orders are the most consequential legal decisions MCCR issues, and they should be subject to as much judicial review as final orders from the hearing phase. Otherwise, the agency will continue to operate below the radar and above the law.

The Legislature recognized the need for judicial oversight when it enacted § 20-1005(d)(2), making no-probable-cause orders reviewable under the APA. That has been the status quo in Maryland since 1982, as confirmed by *Vavasori* in 1985, with the State never arguing otherwise until the lower court reversed course in this case.

There is extraordinary public interest in Maryland's civil rights agency adequately performing its mission under appropriate judicial oversight. The Legislature intended to apply that oversight via the APA. This Court's review is warranted to ensure that MCCR is sufficiently supervised when handling complaints like Ms. Rowe's, for which MCCR is the sole gatekeeper.

Finally, the Opinion's unreported status does not counsel against review. Instead, review is necessary in part because the unreported opinion will confuse future litigants. The Opinion does not have precedential authority but decides a jurisdictional question, leaving litigants uncertain about whether they have a right to appellate review. The Court should take the opportunity presented by this Petition to provide clear guidance.

## **CONCLUSION**

For these reasons, the Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

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### **CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112**

1. This Petition contains 3,900 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

Michael R. Abrams  
Michael R. Abrams

### **CERTIFICATE OF SERVICE**

I hereby certify that on June 15, 2022 two copies of the foregoing Petition for Writ of Certiorari were served via first class mail, postage pre-paid, on:

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Circuit Court for Baltimore City  
Case No. 24-C-20-003503

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0354

September Term, 2021

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IN THE MATTER OF THE PETITION  
OF JENNIFER ROWE

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Nazarian,  
Friedman,  
Ripken,

JJ.

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Opinion by Ripken, J.

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Filed: April 25, 2022

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

**EXHIBIT A**

Asserting a claim for disability discrimination in a place of public accommodation, Jennifer Rowe (“Rowe”) filed a complaint with the Maryland Commission on Civil Rights (“the Commission”). Rowe alleged that Krav Maga Maryland, LLC (“Krav Maga”) discriminated against her based on her disability. After investigating Rowe’s complaint, the Commission found that there was no probable cause to believe that Krav Maga discriminated against Rowe. Rowe timely requested the Commission to reconsider its no probable cause finding. The Commission denied Rowe’s request, and Rowe petitioned for judicial review in the Circuit Court for Baltimore City. The circuit court affirmed the Commission’s decision, and Rowe noted a timely appeal to this Court.

On appeal, Rowe raises issues concerning the procedure and the substance of the Commission’s no probable cause finding. During oral argument before this Court, questions arose about this Court’s jurisdiction to consider Rowe’s appeal, and we subsequently permitted the parties additional briefing on the issue. For the reasons to follow, we conclude that Rowe’s appeal to this Court is not authorized by statute. Nor is it a common law mandamus action giving rise to jurisdiction in this Court. Thus, we shall dismiss this appeal for a lack of jurisdiction.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Rowe suffers from anxiety, depression, and post-traumatic stress disorder (“PTSD”). In December 2016, Rowe became a member of Krav Maga—a gym that offers mixed-martial arts instruction and training. From the time she joined, Krav Maga had been advised of Rowe’s mental health disabilities. Jeff Mount (“Mount”) and Elisabeth Green (“Green”) are employees of Krav Maga. Mount is the chief instructor and director of

operations, and Green is the general manager. In connection with its martial arts programs, Krav Maga maintains a private group on Facebook<sup>1</sup> where its gym members can post a message or comment on a posted message in the group.<sup>2</sup> Per Krav Maga, group members who wish to post or comment in the Facebook group must do so in accordance with the group's posting policies. One policy in particular requires the members' posts or comments to "be kind and positive."<sup>3</sup> Green is the moderator of the group and is responsible for enforcing the group's posting policies.

On February 19, 2019, a member of the Krav Maga Facebook group posted a message, which was described later in the Commission's findings as "questioning the negative attitudes of people with full use of their extremities." Rowe commented responsively to the message: "[b]ecause some of us have mental/emotional disabilities." Green and Mount determined that Rowe's comment violated Krav Maga's Facebook group posting policies. Green then deleted Rowe's comment and posted an announcement in the group stating that any posts or comments not on topic for the group would be deleted.

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<sup>1</sup> Facebook is a social networking website and social media platform, where users can virtually interact with other users by creating online profiles to share information about themselves. *Sublet v. State*, 442 Md. 632, 636, n.1–2, 637 n.5 (2015); *Griffin v. State*, 419 Md. 343, 354 n.9 (2011). Within Facebook, a Facebook group is a private group involving limited access to a select group of people. *See id.* at 637 n.5; *Vigna v. State*, 470 Md. 418, 430 (2020) (discussing a Facebook group for the alumni of a school).

<sup>2</sup> A post can be in the form of a written message, photo, video, other forms of media, or combination thereof; and a comment on a post can take the same form as a post. *See Griffin*, 419 Md. at 354 n.9; *Sublet*, 442 Md. at 637 n.5, n.9.

<sup>3</sup> The other policies of the group are not relevant in this appeal.

Later that day, Green sent a private Facebook message<sup>4</sup> and an email to Rowe communicating the reason for the deletion of Rowe's comment. Green explained that while Rowe could discuss her mental health and her disability in the group, her comment violated the group's policy requiring posts to be kind and encourage a positive environment. Green noted that Rowe often comments negatively and aggressively on other member's posts instead of writing about her personal journey. In response to Green's email, Rowe claimed that Green's deletion of her comment discriminated against her for her disability. Green responded that she did not discriminate against Rowe, that she deleted Rowe's post because it violated the rules of the group, and that Mount was willing to meet with her to discuss her concerns. On March 20, Mount met with Rowe and explained to her why her post was deleted. Per Mount, the meeting ended amicably, and Rowe understood why her February 19 Facebook comment was deleted.

During May and June 2019, Rowe, Green, and Mount exchanged a series of emails that prompted another discussion of the deletion of Rowe's Facebook comment. Rowe sent an email to Mount on May 10 and a follow-up email to Mount on June 17, discussing her concerns with Krav Maga instructors.<sup>5</sup> Mount did not initially respond to Rowe's emails. On June 19, Rowe sent an email to Mount to ask if he had received her June 17 email. On June 20, Mount responded to Rowe's prior emails and addressed her concerns. Mount

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<sup>4</sup> Facebook users can also send private messages on Facebook that are akin to text messages between two cellphones. *See Sublet*, 442 Md. at 638 n.10.

<sup>5</sup> The content and substance of these emails did not concern the deletion of Rowe's February 19 Facebook comment.

apologized for the delay in his responses and explained that he had been on vacation without access to work e-mail and that he returned from his trip on June 19. Apparently, before reading Mount's responses, Rowe sent an email to Green stating that she thought Mount may have been deliberating ignoring her and that she was dissatisfied with the lack of responsiveness from Krav Maga employees. After reading Mount's replies, Rowe subsequently sent an email to Mount thanking him for his responses and asking him to disregard her recent email to Green because "[her] anxiety was getting intense." Mount responded that he could not simply ignore Rowe's email to Green: "I have done everything I know how to so as to go above and beyond to support you in your training. I'm not really sure what to do with your ongoing disappointment in our efforts."

Rowe then exchanged several emails with Mount and Green concerning the deletion of her February 19 Facebook comment. Rowe revealed that she still felt "hurt and angry" about the deletion of her Facebook comment and felt stigmatized when Green posted the announcement requiring group members to stay on topic.<sup>6</sup> Green maintained that Rowe's post was deleted because it violated the group's posting policies and stated that Rowe was not singled out as she was not named in the subsequent announcement or in any of the group's policies. Rowe responded that she still did not understand why her post violated the group's rules. Mount then sent Rowe a final email on the matter, stating that Rowe's membership was canceled and that she would not be welcome on the premises of the gym's

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<sup>6</sup> Rowe also stated that she thought Mount might have been ignoring her because Green never responded to an email Rowe sent to Green in November 2018. In response, Green stated that she did not see Rowe's November 2018 email because it was not sent to Green's personal work email account.

three locations in Maryland. Mount communicated that Rowe’s membership was being terminated because she violated her gym membership agreement due to her “disruptive, slanderous, [and] harassing” behavior.

On June 28, 2019, Rowe filed a complaint with the Commission asserting a disability discrimination claim against Krav Maga.<sup>7</sup> Rowe alleged that Krav Maga discriminated against her on the basis of her disability when it deleted her February 19 Facebook comment and when it terminated her gym membership, banning her from the premises. The Commission commenced an investigation into the complaint and accepted evidence from Rowe and Krav Maga. On May 20, 2020, the Commission concluded its investigation and issued a written finding that there was no probable cause to believe that Krav Maga discriminated against Rowe on the basis of her disability. The Commission found that Krav Maga “had a legitimate non-discriminatory business reason, not based on [Rowe’s] disability, for terminating her membership because she ‘fail[ed] to conform to the usual and regular requirements, standards, and regulations of [Krav Maga’s] establishment.’” Rowe filed a timely request for reconsideration of the Commission’s no probable cause finding, which the Commission denied. Rowe then petitioned for judicial review in the Circuit Court for Baltimore City. The circuit court affirmed the Commission’s decision, and Rowe’s timely appeal followed.

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<sup>7</sup> Rowe’s preliminary questionnaire and complaint also included a retaliation claim against Krav Maga. When the Commission received the complaint, it was suggested to Rowe that the retaliation claim be removed to streamline her complaint. Rowe amended her complaint accordingly, and the Commission noted that “[a]t this time, [Rowe] is satisfied with current charge and does not wish to add any additional protected classes or issues.”

On appeal, Rowe argues that the Commission’s finding of no probable cause was (1) the result of unlawful procedure and (2) unsupported by substantial evidence. In the initial briefing, the parties noted different bases for this Court’s jurisdiction. During oral argument, questions arose as to this Court’s authority to consider Rowe’s appeal. Following oral argument, this Court ordered supplemental briefing on the jurisdiction of this Court to review the Commission’s decision on appeal from the circuit court.

### **ISSUE PRESENTED FOR REVIEW**

While Rowe presents two issues for review,<sup>8</sup> we must first address the question of this Court’s jurisdiction: Whether there is a statute authorizing an appeal to this Court from the judgment of the circuit court in a petition for judicial review of the Commission’s no probable cause finding.

For the reasons discussed below, we answer this question in the negative and hold that this Court does not have jurisdiction to review Rowe’s appeal. Because this Court does not have jurisdiction, we do not reach the claimed errors with the Commission’s decision.

### **DISCUSSION**

The Maryland Human Relations statute prohibits discrimination in employment, housing, commercial leasing, state contracts, and places of public accommodation. Md.

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<sup>8</sup> Rowe presented two questions:

- I. Was the Commission’s final decision the result of unlawful procedure because there were substantial, prejudicial errors in the administrative process afforded to Ms. Rowe, requiring remand?
- II. Was the Commission’s conclusion that [Krav Maga] had a legitimate non-discriminatory business reason for terminating Ms. Rowe’s membership arbitrary or capricious and unsupported by substantial evidence?

Code, State Government Article (“SG”) § 20-101(d) (2021 Repl. Vol.).<sup>9</sup> The Commission receives and investigates complaints arising under the statute. SG §§ 20-1004, 20-1005. After the Commission concludes its investigation, the Commission shall “issue the results of the investigation as written findings,” SG § 20-1005(a)(3), which include a determination of whether probable cause exists “to believe that a discriminatory act has been or is being committed,” COMAR 14.03.01.08(B); SG § 20-1005(b). If the Commission renders a finding of no probable cause, “the complainant may file a request for reconsideration of the finding[.]”<sup>10</sup> SG § 20-1005(d)(1). If the Commission denies the request for reconsideration, the denial is “a final order appealable to the circuit court as provided in § 10-222 of this article.”<sup>11</sup> SG § 20-1005(d)(2). *See A.C. v. Maryland Comm’n on Civ. Rts.*, 232 Md. App. 558, 573–74 (2017).

Rowe argues in her supplemental brief that this Court has jurisdiction to consider her appeal because SG § 20-1005(d)(2) authorizes a right of appeal to this Court from the circuit court. In the alternative, Rowe argues that a common law mandamus action serves as the appropriate basis for this Court’s jurisdiction. The Commission responds that neither

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<sup>9</sup> The Human Relations statute was formerly contained in Article 49B of the Maryland Code and was recodified in Title 20 of State Government Article. Acts 2009, c. 120. Prior to October 2011, the Commission was known as the Maryland Commission on Human Relations. Acts 2011, c.580.

<sup>10</sup> The complainant must file the request for reconsideration within fifteen days from the date that the findings were mailed to the complainant. COMAR 14.03.01.08(C). Here, Rowe’s request for reconsideration was timely.

<sup>11</sup> The statute further provides that the final order is appealable to the circuit court provided that the United States Equal Employment Opportunity Commission does not have jurisdiction over the subject matter of the complaint. This limitation is not applicable here.



SG § 20-1005(d)(2) nor a common law mandamus action grants this Court jurisdiction to review Rowe’s appeal. We take each argument in turn and conclude that Rowe’s appeal must be dismissed.

**I. THIS COURT LACKS JURISDICTION TO CONSIDER ROWE’S APPEAL.**

The issue of subject matter jurisdiction may be raised at any time by any party or by the court, *Miseveth v. Aelion*, 235 Md. App. 250, 256 (2017), and “[u]pon a finding that this Court does not have jurisdiction, we must dismiss the case *sua sponte*[.]” *Madison Park N. Apartments, L.P. v. Comm’r of Hous. & Cmty. Dev.*, 211 Md. App. 676, 690 (2013). We begin the analysis discussing the applicable statutes providing for judicial review in the Commission’s no probable cause finding. We then explain the reason those statutes do not provide an avenue for appeal here.

**A. Statutory Authorization of Appeal.**

“It is an often stated principle of Maryland Law that appellate jurisdiction, except as constitutionally authorized, is determined entirely by statute, and that, therefore, a right of appeal must be legislatively granted.” *Gisriel v. Ocean City Bd. of Supervisors of Elections*, 345 Md. 477, 485 (1997). The right to appeal to this Court from the judgment of a circuit court generally arises under Maryland Code, Courts & Judicial Proceedings Article (“CJP”) § 12-301 (2020 Repl. Vol.). CJP § 12-301 provides that “the right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction[.]”

Section 12-302 imposes a limitation on that general right of appeal to this Court. CJP § 12-302 states the following:

*Unless a right to appeal is expressly granted by law, § 12-301 of this subtitle does not permit an appeal from a final judgment of a court entered or made in the exercise of appellate jurisdiction in reviewing the decision of the District Court, an administrative agency, or a local legislative body.*

CJP § 12-302(a) (emphasis added). *See Ross Contracting, Inc. v. Frederick Cnty.*, 221 Md. App. 564, 576 (2015) (stating that a circuit court “exercises ‘appellate jurisdiction’ when it reviews an administrative agency’s decision pursuant to statutory authorization.”); *see generally Gisriel*, 345 Md. at 491–93, 496 (explaining that while a circuit court technically exercises original jurisdiction and not “appellate jurisdiction” when it reviews an agency’s decision, CJP § 12-302(a) is nonetheless applicable).

CJP § 12-302(a) dictates that there is no general right of appeal to this Court from the final judgment of a circuit court in an action for judicial review of an agency’s decision. CJP § 12-302(a); *Dep’t of Gen. Servs. v. Harmans Assocs. Ltd. P’ship*, 98 Md. App. 535, 542 (1993). “[W]hen a circuit court reviews a decision of an administrative agency pursuant to CJP § 12-302(a), any right of appeal to this Court must arise under a statute other than CJP § 12-301.” *Ross Contracting, Inc.*, 221 Md. App. at 576. *See generally Mayor & City Council of Baltimore v. ProVen Mgmt., Inc.*, 472 Md. 642, 671–85 (2021) (discussing the applicability of CJP § 12-302). “If no statutory authorization exists, this Court does not have jurisdiction[.]” *Ross Contracting, Inc.*, 221 Md. App. at 576 (internal quotation marks omitted) (quoting *Madison Park*, 211 Md. App. at 690).

Where CJP § 12-302 applies, the right of appeal to this Court is generally authorized by the contested case subtitle of the Administrative Procedure Act (“APA”).<sup>12</sup> *Murrell v. Mayor & City Council of Baltimore*, 376 Md. 170, 190 (2003); *Harmans*, 98 Md. App. at 542. Pursuant to the APA, “any party who is aggrieved by the final decision in a contested case is entitled to judicial review of the decision [in the circuit court],” through SG § 10-222, and a party “who is aggrieved by a final judgment of a circuit court under this subtitle may appeal to [this Court] in the manner that law provides for appeal of civil cases” through SG § 10-223(b). Of note, “[o]nly a decision in a *contested case* can be challenged through judicial review under the APA.” *Reese v. Dep’t of Health & Mental Hygiene*, 177 Md. App. 102, 145 (2007) (emphasis in original).

Here, the circuit court reviewed and affirmed the Commission’s finding of no probable cause pursuant to SG § 20-1005(d)(2), a statutory right to judicial review. Thus, CJP § 12-302(a) applies and there is no general right of appeal to this Court from the circuit court. SG § 20-1005(d)(2) authorizes judicial review in the circuit court, but the statute is silent on a right of appeal to this Court. Furthermore, the contested case subtitle of the APA does not authorize judicial review of the Commission’s no probable cause finding. *Parlato v. State Comm’n on Hum. Rels.*, 76 Md. App. 695, 701–03 (1988), *cert. denied*, 314 Md. 497 (1989). In *Parlato*, this Court held that “the investigation of [a] complaint of

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<sup>12</sup> A contested case is “a proceeding before an agency to determine: (i) a right, duty, statutory entitlement, or privilege of a person that is required by statute or constitution to be *determined only after an opportunity for an agency hearing*; or (ii) the grant, denial, renewal, revocation, suspension, or amendment of a license that is required by statute or constitution to be determined only after an opportunity for an agency hearing.” SG § 10-202 (emphasis added).

discrimination which resulted in [the Commission’s] no probable cause finding was not [] a contested case.” *Id.* at 701. We turn to address whether SG § 20-1005(d)(2) provides a right of appeal to this Court in conjunction with SG § 10-223—the issue addressed in supplemental briefing.

**B. SG § 20-1005(d)(2) Does Not Authorize an Appeal to this Court.**

Rowe contends that because the Commission’s no probable cause finding is subject to judicial review in “the *circuit court* as provided in [SG] § 10-222,” she may further appeal to this Court under SG § 10-223 as “a party aggrieved by a final judgment of a circuit court under [the contested case] subtitle.” Rowe reasons that the General Assembly intended for the Commission’s no probable cause finding to be treated as if it were a contested case. Rowe further asserts that the General Assembly could have authorized judicial review in the circuit court without referencing the APA. The Commission responds that the General Assembly, had it intended do to so, would have referenced the entire contested case subtitle or specifically described a right of appeal to this Court. Returning to the language of CJP § 12-302, the Commission posits that, in any event, the right of appeal to this Court cannot be implied and must be expressly granted.

“The cardinal rule of statutory construction is to ascertain and effectuate the real and actual intent of the Legislature.” *Lockshin v. Semsker*, 412 Md. 257, 274 (2010). The analysis begins with “the plain language [of the statute] to ascertain the General Assembly’s purpose and intent.” *Andrews & Lawrence Pro. Servs., LLC v. Mills*, 467 Md. 126, 161 (2020); *see Stracke v. Estate of Butler*, 465 Md. 407, 428 (2019). The Court of

Appeals recently summarized the contextual considerations in interpreting the plain language of a statute:

When the statute to be interpreted is part of a statutory scheme, it must be interpreted in that context. That means that, when interpreting any statute, the statute as a whole must be construed, interpreting each provision of the statute in the context of the entire statutory scheme. Thus, statutes on the same subject are to be read together and harmonized to the extent possible, reading them so as to avoid rendering either of them, or any portion, meaningless, surplusage, superfluous or nugatory.

*Mills*, 467 Md. at 149. With the tools of statutory interpretation in mind, the General Assembly's creation of SG § 20-1005(d)(2), the statutory scheme of SG § 20-1005(d)(2) and of the APA, and the applicable case law elucidate the plain meaning of SG § 20-1005(d)(2).

The General Assembly's creation of SG § 20-1005(d)(2) did not indicate an intent to create a right of appeal to this Court. Prior to 1982, the Commission's no probable cause finding was not subject to judicial review under any circumstances. *See* 1982 Md. Laws, Ch. 129 (S.B. 419). In 1982, the General Assembly recognized the lack of judicial review of the Commission's no probable cause finding. *Id.* In enacting SG § 20-1005(d)(2), the Legislature provided specifically for review in the circuit courts and did not refer to an appeal to this Court. *Id.* The Legislature further did not express an intent that the Commission's no probable cause finding be treated as a contested case.

Turning to the statutory context, our interpretation of SG § 20-1005(d) is guided by several observations about the judicial review provisions in other statutes. First, providing for this Court's review of decisions of state agencies, the General Assembly has explicitly referred to SG § 10-223—the APA provision authorizing an appeal to this Court. By way

of example, the statute governing the State Board of Public Accountancy provides the following:

Any person aggrieved by a final decision of the Board in a contested case, as defined in § 10-202 of the State Government Article, may take an appeal as allowed in §§ 10-222 *and* 10-223 of the State Government Article.

Md. Code, Business Occupations & Professions § 2-210 (2018 Repl. Vol.) (emphasis added). Such express references are found throughout the Maryland code. *E.g.*, Business Regulation § 4-312 (2015 Repl. Vol.); Criminal Procedure § 11-815(c) (2018 Repl. Vol.); Environment § 4-412(b) (2014 Repl. Vol.); Health—General (“HG”) § 7-407 (2019 Repl. Vol.); Health Occupations § 21-314 (2021 Repl. Vol.); Labor & Employment (“LE”) § 3-906(j) (2016 Repl. Vol.); Natural Resources § 5-608(c)(3) (2018 Repl. Vol.); Public Safety (“PS”) § 3-212(c) (2018 Repl. Vol.); Tax—General § 13-532(a) (2016 Repl. Vol.); Tax Property § 8-215(e) (2019 Repl. Vol.). In other instances, the General Assembly has specifically referred to an appeal to this Court with express language. Correctional Services (“CS”) § 10-910 (2017 Repl. Vol.) is demonstrative:

(a) An appeal from a decision made under § 10-910 of this subtitle shall be taken to the circuit court for the county in accordance with Maryland Rule 7-202.

(b) A party aggrieved by a decision of a court under this subtitle *may appeal to the Court of Special Appeals*.

CS § 10-910 (emphasis added). *E.g.*, PS § 3-109; LE § 4-602.

Our second observation is that the General Assembly has provided for this Court’s review of agency decisions by reference to the entire contested case subtitle, which includes SG § 10-223. Within the Human Relations statute, the enforcement subpart

governing a complaint alleging discriminatory housing practices authorizes judicial review with the following language:

Any party aggrieved by a final order for relief under § 20-1029 of this subtitle may obtain judicial review of the order in accordance with the provisions for judicial review under Title 10, Subtitle 2 of this article.

SG § 20-1030; *see State Comm’n on Hum. Rels. v. Anne Arundel Cnty.*, 106 Md. App. 221, 226 (1995) (reviewing a final order pursuant to SG § 20-1030). The general reference to the contested case subtitle occurs in a number of statutes concerning judicial review. *E.g.*, Criminal Law (“CL”) § 4-107(i) (2021 Repl. Vol.); State Finance & Procurement (“SFP”) § 15-223 (2021 Repl. Vol.); HG § 19-330(a).

Our third observation is that the General Assembly has specified, where so intended, that a judicial review action is to be treated as if it were a contested case. To illustrate, HG § 19-345.1 provides:

“[a] decision by an administrative law judge on a proposed discharge or transfer of a resident . . . [m]ay be appealed in accordance with § 10-222 of the State Government Article as if it were a contested case[.]”

HG § 19-345.1. *See also* CL § 13-2434 (“[T]he determination of the administrative law judge is a final decision for purposes of judicial review in the same manner as a final decision in a contested case under § 10-222 of the State Government Article.”).

By contrast, we observe that where a statute specifically refers to judicial review in the circuit under SG § 10-222 and is silent on a right of appeal to this Court, *Department of General Services v. Harmans* is instructive. In *Harmans*, a contractor and the Department of General Services (“DGS”) were involved in a contract dispute before the Board of Contract Appeals (“the Board”). 98 Md. App. at 540–41. After a lengthy dispute,

the Board entered a final decision in favor of the contractor. *Id.* at 541. DGS then sought judicial review of the Board’s decision pursuant to SFP § 15-223. *Id.* at 541, 544. The circuit court entered a judgment in favor of the contractor, and DGS appealed to this Court. *Id.* at 541. Before this Court, the contractor filed a motion to dismiss the appeal due to a lack of jurisdiction. *Id.* The motion posited that SFP § 15-223 made reference to APA judicial review in only the circuit court. *Id.* at 544.

We denied that motion and held that this Court had jurisdiction for two reasons. *Id.* at 545–46. First the administrative proceeding at issue was, by definition, a contested case as contemplated under the APA. *Id.* at 542, 545–46. Second, the legislative history supported that SFP § 15-223 indicated an intent to provide judicial review in the circuit court and a right of appeal to this Court. *Id.* at 545–46. An examination of the legislative history of section 15-223 revealed that when the statute was recodified, its general reference to the contested case subtitle was narrowed to a specific reference to only the circuit court provision. *Id.* We reasoned that because the statute was recodified without substantive change, the legislature’s apparent drafting error did not abrogate the right of appeal to this Court. *Id.* The exclusive reference to the circuit court was the result of an “evident Code Revision error.”<sup>13</sup> *Id.* at 542–43.

The specific statutory reference to the circuit court without a reference to a right of appeal to this Court was similarly addressed in *Washington Suburban Sanitary Commission v. Lafarge North America, Inc.*, 443 Md. 265 (2015). In *Lafarge North*

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<sup>13</sup> Following this Court’s opinion, the General Assembly amended SFP § 15-223 in 1994 to reflect a general reference to the APA’s contested case subtitle. Acts 1994, c.3, § 1.



*America, Inc.*, a concrete plant—Lafarge—petitioned for judicial review of the Sanitary Commission’s decision. *Id.* at 271. The circuit court entered a judgment in favor of Lafarge, and the Sanitary Commission appealed to this Court. *Id.* at 272. Notably, the statute providing for judicial review in the circuit court was silent on an appeal to this Court. *Id.* at 275. The case ultimately came before the Court of Appeals. Addressing the issue of jurisdiction, the Court of Appeals held that the Sanitary Commission’s decision was a contested case, thus giving rise to a right of appeal to this Court under SG § 10-223 of the APA. *Id.* at 278. The Court of Appeals did not decide that the text of the statute implicitly granted a right of appeal to this Court. *Id.* at 276. The Court did acknowledge that the legislative history indicated the Legislature’s intent to authorize an appeal to this Court. *Id.* at 275–76.

Turning to the plain and ordinary language of SG § 20-1005(d)(2), the statute contemplates a right to judicial review in the circuit court and does not contain express language concerning a right of appeal to this Court. When viewing this absence of express language in contrast to judicial review statutes with an express reference, SG § 20-1005(d)(2) does not explicitly refer to this Court or to SG § 10-223. SG § 20-1005(d)(2) also does not generally refer to the entire contested case subtitle of the APA. Of significance, the discriminatory housing practices enforcement subpart of the Human Relations statute refers to the entire contested case subtitle:

Any party aggrieved by a final order for relief under § 20-1029 of this subtitle may obtain judicial review of the order in accordance with the provisions for judicial review under Title 10, Subtitle 2 of this article.

SG § 20-1030. Whereas here, the narrower reference to SG § 10-222 in SG § 20-1005(d)(2) suggests an intentional limit. This distinction is further present in comparison with the judicial review statutes of other state agencies referring to the entire contested case subtitle. Moreover, SG § 20-1005(d)(2) does not include language that the Commission's no probable cause finding be treated as a contested case. Contrary to Rowe's position, the legislative history creating SG § 20-1005(d)(2) does not reveal that the General Assembly intended for Commission's no probable cause finding be treated as a contested case.

SG § 20-1005(d)(2)'s specific cross-reference to circuit court is distinguishable from the circumstances in *Harman*. Unlike in *Harman*, here, there is no legislative history to support that SG § 20-1005(d)(2)'s exclusive reference to SG § 10-222 necessarily included a reference to SG § 10-223. There is no recodification error such as the one in *Harman*. In contrast with *Harman*, SG § 20-1005(d)(2) (originally codified as Art. 49B, § 10(d)) was drafted with the exclusive reference to the circuit court, as then provided in Art. 41, § 255. 1982 Md. Laws, Ch. 129 (S.B. 419).

SG § 20-1005(d)(2)'s exclusive reference to the circuit court is further dissimilar from the contested case proceedings in both *Harman* and *Lafarge*. To be clear, *Parlato* instructs that the Commission's investigation and determination of probable cause is not a contested case as defined under the APA. 76 Md. App. at 701–03. Contrary to Rowe's characterization of *Lafarge*, the Court of Appeals did not hold that the text of the judicial review statute implicitly granted a right of appeal to this Court from the circuit court. *Lafarge*, 443 Md. at 276. The Court held that we had jurisdiction under the APA because

the administrative proceeding was a contested case. *Id.* at 278. Here, the administrative proceeding before the Commission was not a contested case. *Parlato*, 76 Md. App. at 701.

Applying the observations from our review of the state administrative agency judicial review statutes and the applicable case law to SG § 20-1005(d)(2), the statute does not authorize an appeal to this Court. SG § 20-1005(d)(2)'s plain language, legislative purpose, context within the Human Relations statute, and comparison with the judicial review statutes of other state administrative agencies all support our conclusion.

Therefore, in contrast to Rowe's assertion, we hold the circuit court's final judgment in a petition for judicial review taken under SG § 20-1005(d)(2) is not a judgment under the contested case subtitle. In the absence of a specific reference to SG § 10-223 or an express reference to an appeal to this Court, the absence of a general reference to the entire contested case subtitle, the absence of legislative history to support an intended appeal under SG § 10-223, and the absence of a contested case, SG § 20-1005(d)(2) does not authorize an appeal to this Court. As a result, the judicial review of the Commission's no probable cause finding is limited to the circuit court.<sup>14</sup> *See, e.g., Prince George's Cnty. v. Beretta U.S.A. Corp.*, 358 Md. 166, 169, 174 (2000); *Dvorak v. Anne Arundel Cnty. Ethics Comm'n*, 400 Md. 446, 458–59 (2007) (holding judicial review did not extend to this Court where the statute authorized judicial review only in the circuit court).

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<sup>14</sup> This Court reviewed the denial of a no probable cause for substantial evidence in *Vavasori v. Comm'n on Human Relations*, 65 Md. App. 237, 251–52 (1985). However, the opinion in *Vavasori* did not address this Court's jurisdiction.

**II. A MANDAMUS ACTION DOES NOT GRANT THIS COURT JURISDICTION TO REVIEW ROWE’S APPEAL.**

In the absence of statutory authorization, Rowe argues that this Court has jurisdiction because her action in the circuit court was equivalent to a writ of common law mandamus.<sup>15</sup> We disagree.

A common law mandamus action “seeks the judicial enforcement of ministerial non-discretionary acts.” *ProVen Mgmt., Inc.*, 472 Md. at 669 n.9. Ministerial acts “are duties in respect to which nothing is left to discretion and are distinguished from those allowing freedom and authority to make decisions and choices.” *Id.* at 670 (quoting *Talbot County v. Miles Point Prop., LLC*, 415 Md. 372, 397 (2010)). Notwithstanding the limitation in CJP § 12-302(a), a common law mandamus action is appealable to this Court under the general appeals statute, CJP § 12-301. *See Murrell*, 376 Md. at 193.

The distinction between common law mandamus and a statutory judicial review action is that “common law mandamus relief arises from an official’s failure to perform the duty at all, whereas in a statutory judicial review action, relief may include a remand for further proceedings before the administrative agency arising from the agency’s failure to perform the duty well.” *Id.* at 671. Thus, in a common law mandamus action, there must be a failure to perform a required duty. *Id.* A statutory petition for judicial review is not

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<sup>15</sup> Rowe concedes that because the Human Relations statute authorizes a right to judicial review in the circuit court, administrative mandamus is not an avenue of appeal to this Court. *See Mayor & City Council of Baltimore v. ProVen Mgmt., Inc.*, 472 Md. 642, 669 n.9 (2021) (“Administrative mandamus is a remedy that authorizes judicial review of administrative decisions “where there is both *a lack of an available procedure for obtaining review* and an allegation that the action complained of is illegal, arbitrary, capricious or unreasonable.”) (emphasis added) (quoting *Wilson v. Simms*, 380 Md. 206, 228 (2004)).

converted into “a common law mandamus action simply because the petitioner has included due process assertions or allegations of procedural deficiencies.” *Id.* at 685.

We conclude that a common law mandamus action is not applicable here. Rowe seeks relief from discretionary acts involved in the Commission’s no probable cause determination, of which SG § 20-1005(d)(2) provides statutory judicial review. Rowe asserts that the Commission (1) failed to investigate her retaliation claim; (2) held an unlawful fact-finding conference; and (3) withheld evidence that Krav Maga submitted to the Commission. Of the procedural violations that Rowe alleges, none concern a ministerial act or duty that the Commission was required to perform in its investigation of her complaint. *See Parlato*, 76 Md. App. at 702–03 (“In view of this statutory scheme, it is clear that the [L]egislature intended to vest within the *sound discretion of the Commission* the decision of whether to prosecute a discrimination claim.”) (emphasis added). The alleged violations center around Rowe’s claim that the Commission did not perform a duty well as opposed to the utter failure to perform a required duty. Therefore, Rowe cannot rely on a common law mandamus action as a right to appeal the circuit court’s judgment to this Court.

**APPEAL FROM THE JUDGMENT OF THE  
CIRCUIT COURT FOR BALTIMORE  
CITY DISMISSED. COSTS TO BE PAID BY  
APPELLANT.**

IN THE MATTER OF THE PETITION OF  
JENNIFER ROWE

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE MARYLAND  
COMMISSION ON CIVIL RIGHTS

IN THE CASE OF JENNIFER ROWE v.  
KRAV MAGA MARYLAND  
MCCR NO. 1907-0369

\* \* \* \* \*

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

CASE NO. 24-C-20-003503

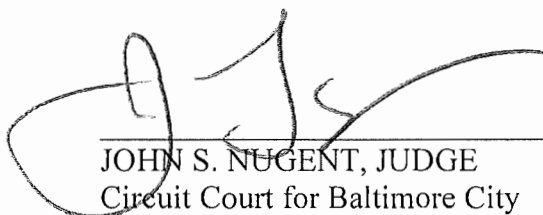
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ORDER

In accordance with the foregoing Memorandum, it is this 5<sup>th</sup> day of February  
2021, hereby

**ORDERED** that Petitioner's motion to offer additional evidence is **DENIED**;  
and it is further

**ORDERED** that the decision of the Maryland Commission on Civil Rights is  
**AFFIRMED**.

  
\_\_\_\_\_  
JOHN S. NUGENT, JUDGE  
Circuit Court for Baltimore City

Circuit Court of Maryland

[Go Back Now](#)**Case Information**

**Court System:** Circuit Court for Baltimore City - Civil System  
**Case Number:** 24C20003503  
**Title:** In the Matter of the Petition of Jennifer Rowe  
**Case Type:** Administrative Agency Appeal **Filing Date:** 08/14/2020  
**Case Status:** Reopened/Active

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**Plaintiff/Petitioner Information***(Each Plaintiff/Petitioner is displayed below)*

**Party Type:** Petitioner **Party No.:** 1  
**Name:** Rowe, Jennifer  
**Address:** 1010 Saint Paul Street, #5L  
**City:** Baltimore **State:** MD **Zip Code:** 21202

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**Court Scheduling Information**

**Event Type:** Civil Trial - Fast Track **Notice Date:** 01/21/2021  
**Event Date:** 02/02/2021 **Event Time:** 10:30 AM  
**Result:** Cancelled/Vacated **Result Date:** 02/09/2021

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**Related Persons Information***(Each Related person is displayed below)*

**Party Type:** Administrative Agency **Party No.:** 1  
**Business or Organization Name:** Maryland Commission On Civil Rights  
**Address:** William Donald Schafer Tower  
**City:** Baltimore **State:** MD **Zip Code:** 21202

**Attorney(s) for the Related Persons**

**Name:** Fine, Esq, Justin E  
**Practice Name:** Office Of The Attorney General, Civil Division  
**Address:** 200 St. Paul Street  
 20th Floor  
**City:** Baltimore **State:** MD **Zip Code:** 21202  
**Name:** Artis, Esq, Terrence J  
**Practice Name:** Assistant General Counsel St. Of Md Commission On Civil Rights  
**Address:** 6 Saint Paul Street  
 9th Floor  
**City:** Baltimore **State:** MD **Zip Code:** 21201

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**Party Type:** Interested Party **Party No.:** 1  
**Business or Organization Name:** Krav Maga Maryland  
**Address:** Address Unknown  
**City:** **State:** **Zip Code:**

**Attorney(s) for the Related Persons**

**Name:** Marinello, Esq, Michael Joseph  
**Practice Name:** Kagan Law Group, LLC  
**Address:** 238 West Street

**EXHIBIT C**

City: **Annapolis** State: **MD** Zip Code: **21401**  
 Name: **Borgerson, Esq, Meagan C**  
 Practice Name: **Kagan Stern Marinello & Beard, LLC**  
 Address: **238 West Street**  
 City: **Annapolis** State: **MD** Zip Code: **21401**

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**Document Tracking**

*(Each Document listed. Documents are listed in Document No./Sequence No. order)*

Doc No./Seq No.: **1/0**  
 File Date: **08/14/2020** Entered Date: **08/17/2020** Decision:  
 Party Type: **Petitioner** Party No.: **1**  
 Document Name: **Petition for Judicial Review**

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Doc No./Seq No.: **1/1**  
 File Date: **10/21/2020** Entered Date: **10/23/2020** Decision:  
 Party Type: **Interested Party** Party No.: **1**  
 Document Name: **Response to Petition for Judicial Review**

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Doc No./Seq No.: **2/0**  
 File Date: **08/17/2020** Entered Date: **08/17/2020** Decision:  
 Document Name: **Notice of Petition for Judicial Review**

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Doc No./Seq No.: **3/0**  
 File Date: **09/02/2020** Entered Date: **09/02/2020** Decision:  
 Party Type: **Administrative Agency** Party No.: **1**  
 Document Name: **Correspondence**

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Doc No./Seq No.: **4/0**  
 File Date: **09/22/2020** Entered Date: **09/23/2020** Decision:  
 Party Type: **Petitioner** Party No.: **1**  
 Document Name: **Certificate of Compliance**  
**Filed by PET001-Rowe, ADA001-Maryland Commission On Civil Rights, ITP001-Krav Maga Maryland**

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Doc No./Seq No.: **5/0**  
 File Date: **11/04/2020** Entered Date: **11/06/2020** Decision: **Denied**  
 Party Type: **Petitioner** Party No.: **1**  
 Document Name: **Motion to Strike the Response**

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Doc No./Seq No.: **5/1**  
 File Date: **11/20/2020** Entered Date: **11/25/2020** Decision:  
 Party Type: **Interested Party** Party No.: **1**  
 Document Name: **Opposition to Petitioner's Motion to Strike**

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Doc No./Seq No.: **5/2**  
 File Date: **01/08/2021** Entered Date: **01/08/2021** Decision:  
 Document Name: **Order of Court**  
**It is the 5th day of January 2021, hereby ORDERED that the Motion is DENIED. Please order for details. Judge Ausby**

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Doc No./Seq No.: **5/3**  
 File Date: **01/08/2021** Entered Date: **01/08/2021** Decision:



Document Name: **Copies Mailed**

Doc No./Seq No.: **6/0**

File Date: **11/09/2020** Entered Date: **11/10/2020** Decision:

Party Type: **Administrative Agency** Party No.: **1**

Document Name: **Administrative Agency Record Received**

Doc No./Seq No.: **6/1**

File Date: **12/03/2020** Entered Date: **12/03/2020** Decision:

Party Type: **Administrative Agency** Party No.: **1**

Document Name: **DOCUMENT TO BE INCLUDED IN THE RECORD**

Doc No./Seq No.: **6/2**

File Date: **12/04/2020** Entered Date: **12/07/2020** Decision:

Party Type: **Administrative Agency** Party No.: **1**

Document Name: **Supplement to Agency Record**

Doc No./Seq No.: **7/0**

File Date: **11/10/2020** Entered Date: **11/10/2020** Decision:

Party Type: **Administrative Agency** Party No.: **1**

Document Name: **Notice of Record Received**

Doc  
No./Seq  
No.: **8/0**

File Date: **11/10/2020** Entered Date: **11/10/2020** Decision:

Document  
Name: **Expedited Track Scheduling Order Sent**

**Event: CTFT Block Date: 02/02/21 Facility: 403FPARTIES : Maryland Commission On Civil Rights, William Donald Schafer Tower 6 Saint Paul Street, Suite 900, Baltimore, MD, 21202Marinello, Michael 238 West Street , Annapolis, MD, 21401Borgerson, Meagan 238 West Street , Annapolis, MD, 21401Rowe, Jennifer 1010 Saint Paul Street, #5L , Baltimore, MD, 21202**

Doc No./Seq No.: **9/0**

File Date: **12/11/2020** Entered Date: **12/18/2020** Decision:

Party Type: **Petitioner** Party No.: **1**

Document Name: **Memorandum in Support of Appropriate Relief on Judicial Review**

Doc No./Seq No.: **9/1**

File Date: **01/12/2021** Entered Date: **01/13/2021** Decision:

Party Type: **Interested Party** Party No.: **1**

Document Name: **Krav Maga Maryland, LLC's Response to Petitioner's Memorandum in Support of Relief on Judicial Review**

Doc No./Seq No.: **9/2**

File Date: **01/27/2021** Entered Date: **01/29/2021** Decision:

Party Type: **Petitioner** Party No.: **1**

Document Name: **Reply to Krav Maga Maryland LLC's Response to Memorandum in Support of Appropriate Relief on Judicial Review, with Exhibits**

Doc No./Seq No.: **10/0**

File Date: **12/29/2020** Entered Date: **12/30/2020** Decision:

Party Type: **Administrative Agency** Party No.: **1**

Document Name: **Attorney Appearance Filed**

Doc No./Seq No.: **11/0**

**EXHIBIT C**

File Date: 01/12/2021 Entered Date: 01/13/2021 Decision:  
 Party Type: Administrative Agency Party No.: 1  
 Document Name: State of Maryland Commission on Civil Rights' Memorandum of Law in Response to Petition for Judicial Review

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Doc No./Seq No.: 11/1  
 File Date: 02/02/2021 Entered Date: 02/09/2021 Decision:  
 Party Type: Petitioner Party No.: 1  
 Document Name: Opposition to State of Maryland Commission on Civil Rights' Motion

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Doc No./Seq No.: 12/0  
 File Date: 01/19/2021 Entered Date: 01/19/2021 Decision:  
 Document Name: Order for Remote Electronic Hearing  
 ...ORDERED that the matter will be heard by a remote electronic hearing conducted on the record pursuant to Maryland Rule 2-802 at the following date and time: Date: February 2, 2021 Time: 10:30 a.m....etc. Fletcher-Hill, Judge

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Doc No./Seq No.: 12/1  
 File Date: 01/19/2021 Entered Date: 01/19/2021 Decision:  
 Document Name: Copies Mailed

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Doc No./Seq No.: 13/0  
 File Date: 01/19/2021 Entered Date: 01/19/2021 Decision:  
 Document Name: Batch Hearing Notice Sent  
 Event: CTFT Block Date: 02/02/21 Facility: 403FPARTIES : Artis, Terrence 6 Saint Paul Street 9th Floor, Baltimore, MD, 21201 Marinello, Michael 238 West Street, Annapolis, MD, 21401 Borgerson, Meagan 238 West Street, Annapolis, MD, 21401 Rowe, Jennifer 1010 Saint Paul Street, #5L, Baltimore, MD, 21202

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Doc No./Seq No.: 14/0  
 File Date: 01/21/2021 Entered Date: 01/21/2021 Decision:  
 Document Name: Batch Hearing Notice Sent  
 Event: CTFT Block Date: 02/02/21 Facility: 403FPARTIES : Artis, Terrence 6 Saint Paul Street 9th Floor, Baltimore, MD, 21201 Marinello, Michael 238 West Street, Annapolis, MD, 21401 Borgerson, Meagan 238 West Street, Annapolis, MD, 21401 Rowe, Jennifer 1010 Saint Paul Street, #5L, Baltimore, MD, 21202

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Doc No./Seq No.: 15/0  
 File Date: 01/27/2021 Entered Date: 01/29/2021 Decision:  
 Party Type: Petitioner Party No.: 1  
 Document Name: Motion (To Strike Response)

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Doc No./Seq No.: 16/0  
 File Date: 01/27/2021 Entered Date: 01/29/2021 Decision:  
 Party Type: Petitioner Party No.: 1  
 Document Name: Motion (For Permission to Present New Evidence)

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Doc No./Seq No.: 17/0  
 File Date: 02/02/2021 Entered Date: 02/02/2021 Decision:  
 Document Name: Open Court Proceeding  
 2/2/2021 Case submitted to the court for determination without the aid of a jury. (Nugent, J) 2/2/2021 Petitioner Jennifer Rowe's motion to present new evidence is hereby heard and

EXHIBIT C

held sub curia. (Nugent, J)2/2/2021 The decision of the Maryland Commission on Civil Rights is hereby held sub curia. (Nugent, J)2/2/2021 Order to be filed. (Nugent, J)

Doc  
No./Seq No.: **18/0**

File Date: **02/09/2021** Entered Date: **02/09/2021** Decision:

Document Name: **Memorandum and Order of Court**

**ORDERED that Petitioner's motion to offer additional evidence is DENIED; and it is further ORDERED that the decision of the Maryland Commission on Civil Rights is AFFIRMED.** Judge Nugent.

Doc No./Seq No.: **18/1**

File Date: **02/09/2021** Entered Date: **02/09/2021** Decision:

Document Name: **Copies Mailed**

Doc No./Seq No.: **19/0**

File Date: **03/02/2021** Entered Date: **03/05/2021** Decision:

Party Type: **Petitioner** Party No.: **1**

Document Name: **Motion to Alter/Amend Judgment Issued on February 8, 2021**

Doc No./Seq No.: **20/0**

File Date: **03/12/2021** Entered Date: **03/12/2021** Decision:

Party Type: **Petitioner** Party No.: **1**

Document Name: **Appeal Order to COSA**

Doc No./Seq No.: **21/0**

File Date: **03/22/2021** Entered Date: **03/25/2021** Decision:

Party Type: **Interested Party** Party No.: **1**

Document Name: **Krav Maga Maryland LLC's Opposition to Motion for Reconsideration (Original Motion not yet Docketed)**

Doc No./Seq No.: **21/1**

File Date: **04/06/2021** Entered Date: **04/08/2021** Decision:

Party Type: **Petitioner** Party No.: **1**

Document Name: **Reply to Opposition to Motion for Consideration**

Doc No./Seq No.: **22/0**

File Date: **04/09/2021** Entered Date: **04/13/2021** Decision:

Party Type: **Administrative Agency** Party No.: **1**

Document Name: **Attorney Appearance Filed (Justin E. Fine)**

Doc No./Seq No.: **23/0**

File Date: **05/28/2021** Entered Date: **06/03/2021** Decision:

Document Name: **Order of COSA to Proceed**

**No. 0360, september term 2021 due date 7/26/2021 Assign to J. Fortune for preparation**

Doc No./Seq No.: **24/0**

File Date: **07/13/2021** Entered Date: **07/14/2021** Decision:

Document Name: **Transcript of Testimony Held before Judge John S Nugent on Feb. 2, 2021 costs: \$135**

Doc No./Seq No.: **25/0**

File Date: **07/16/2021** Entered Date: **07/16/2021** Decision:

Document Name: **Record on Appeal Forwarded to COSA**

**Three red volumes and one transcript forward to COSA, via Fed Ex #8130-3451-6128**

**EXHIBIT C**

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Doc No./Seq No.: **25/1**

File Date: **07/16/2021** Entered Date: **07/16/2021** Decision:

Document Name: **Copies Mailed**

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