

IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

SEPTEMBER TERM, 2016

No. 1804
MDEC: CSA-REG-1804-2016

JOHN F. McMAHON,
APPELLANT,

v.

WAYNE ROBNEY, *et al.*,
APPELLEES.

On Appeal from the Circuit Court
for Anne Arundel County, Maryland

CASE # C-02-CV-16-001949, below
(William C. Mulford, II, J.),

JOINT RECORD EXTRACT

STUART J. CORDISH
Assistant Attorney General
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Baltimore, MD 21202
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Attorney for Appellees

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Attorney for Appellees

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Law Office of Allen Dyer
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Ellicott City, MD 21042
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aldyer@lawlab.com
Attorney for Appellant

**Joint Record Extract
Table of Contents**

1.	APPEAL RECORD INDEX	E001–E004
2.	CIRCUIT COURT CASE SUMMARY & HISTORY (01/19/17) (R 1–9)	E005–E013
3.	FIRST AMENDED COMPLAINT AND REQUEST FOR LEAVE TO JOIN ADDITIONAL PARTIES AND PLAINTIFF AFFIDAVIT (08/29/16) (R 112–141)	E014–E043
4.	PLAINTIFF AFFIDAVIT (07/12/16) (R 90–92)	E044–E046
5.	PLAINTIFF AFFIDAVIT (10/17/16) (R 230–233)	E047–E050
6.	HEARING SHEET (10/31/16) (R 293)	E051
7.	HEARING TRANSCRIPT (10/31/16) (R 304–324)	E052–E072
	Oral Opinion Judge William C. Mulford, II (T12–T19) .	E063–E070
8.	DECLARATORY JUDGMENT (10/31/16) (R 294–295)	E073–E074
9.	ORDER OF DISMISSAL FIRST AMENDED COMPLAINT with Prejudice (11/03/16) (R 296)	E075
10.	NOTICE OF APPEAL (11/03/16) (R 297–303)	E076–E082

CERTIFICATE OF COMPLIANCE WITH RULE 20-201(f)

This submission does not contain any restricted information.

_____/s/ Allen R. Dyer_____
Allen R. Dyer, Esq.
Counsel for Appellant

John F. McMahon v. WAYNE ROBNEY, *et al.*

Joint Record Extract

1.

APPEAL RECORD INDEX

E001–E004

Appeal Index

John McMahon vs. Wayne Robey, et al.

C-02-CV-16-001949

Document	Date	Volume	Page
Case Summary	01/19/2017	1	1 - 5
Case Transferred from Other Jurisdiction	06/13/2016	1	6 - 41
Receipt of Transferred Case	06/14/2016	1	42 - 42
Order	06/22/2016	1	43 - 43
Proposed Order / Decree	06/27/2016	1	44 - 44
Motion / Request - To Dismiss	06/27/2016	1	45 - 68
Motion / Request - To Dismiss	06/27/2016	1	69 - 69
Line	07/12/2016	1	70 - 70
Response	07/13/2016	1	71 - 94
Proposed Order / Decree	07/13/2016	1	95 - 95
Hearing - Motion	08/09/2016	1	96 - 96
Hearing - Motion	08/09/2016	1	97 - 97
Motion / Request - To Dismiss	08/09/2016	1	98 - 109
Hearing Sheet / Open Court Proceedings	08/09/2016	1	110 - 110
Order - Motion/Request	08/09/2016	1	111 - 111

McMahon E002

Granted			
Complaint - Amended	08/29/2016	1	112 - 141
Proposed Order / Decree	08/29/2016	1	142 - 145
Summons Issued (Service Event)	08/30/2016	1	146 - 147
Summons Issued (Service Event)	08/30/2016	1	148 - 149
Summons Issued (Service Event)	08/30/2016	1	150 - 151
Summons Issued (Service Event)	08/30/2016	1	152 - 153
Return of Service - Served	10/03/2016	1	154 - 157
Return of Service - Served	10/03/2016	1	158 - 161
Return of Service - Served	10/03/2016	1	162 - 165
Return of Service - Served	10/03/2016	1	166 - 169
Motion	10/03/2016	1	170 - 187
Proposed Order / Decree	10/03/2016	1	188 - 188
Supporting Exhibits	10/03/2016	1	189 - 198
Supporting Exhibits	10/03/2016	1	199 - 199
Motion	10/19/2016	1	200 - 237
Motion - Shorten Time	10/19/2016	1	238 - 240
Proposed Order / Decree	10/19/2016	1	241 - 243
Memorandum	10/20/2016	1	244 - 251

McMahon E003

Attorney Appearance - No Fee	10/20/2016	1	252 - 253
Pending Court Order	10/20/2016	1	254 - 254
Opposition / Response	10/20/2016	1	255 - 262
Directive	10/21/2016	1	263 - 263
Opposition / Response	10/24/2016	1	264 - 288
Proposed Order / Decree	10/24/2016	1	289 - 289
Hearing - Motion to Dismiss	10/31/2016	1	290 - 290
Hearing - Motion to Dismiss	10/31/2016	1	291 - 291
Hearing - Motion to Dismiss	10/31/2016	1	292 - 292
Hearing Sheet / Open Court Proceedings	10/31/2016	1	293 - 293
Hearing Sheet / Open Court Proceedings	10/31/2016	1	294 - 295
Pending Court Order	10/31/2016	1	296 - 296
Notice of Appeal Filed	11/02/2016	1	297 - 303
Transcript	11/07/2016	2	1 - 21
Transcript	11/07/2016	2	22 - 22
Acknowledgement of Petition for Writ of Certiorari	11/07/2016	2	23 - 23

McMahon E004

Order - Writ of Certiorari Denied	11/09/2016	2	24 - 24
Order to Proceed	11/28/2016	2	25 - 25

Total Pages: 328

Total Volumes: 2

John F. McMahon v. WAYNE ROBESY, et al.

Joint Record Extract

2.

CIRCUIT COURT CASE SUMMARY & HISTORY

(01/19/17) (R 1–9)

E005–E013

CASE SUMMARY

John McMahon vs. Wayne Robey, et al.

CASE NO. C-02-CV-16-001949

Location: Anne Arundel Circuit Court
Filed on: 06/13/2016

CASE INFORMATION

Related Cases

COA-PET-0452-2016 (Petition Filed)
CSA-REG-1804-2016 (Case Appealed)

Case Type: Miscellaneous (Versus)

Statistical Closures

11/01/2016 After Hearing

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number C-02-CV-16-001949
Court Anne Arundel Circuit Court
Date Assigned 06/13/2016

PARTY INFORMATION

Plaintiff

McMahon, John F
13340 Hunt Ridge
ELLICOTT CITY, MD 21042

Defendant

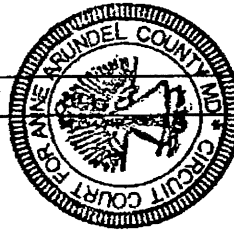
Fitzgerald, James F
personally and official capacity
Holdover Sheriff for Howard County
8360 Court Avenue
Ellicott City, MD 21043

Hogan, Larry
official capacity
Governor of Maryland State
100 State Circle
Annapolis, MD 21401

Lamone, Linda H
official capacity
State Administrator of the Maryland Board of Elections
151 West Street
Suite 200
Annapolis, MD 21401

Robey, Wayne
Clerk Of The Circuit Court For Howard County
Serve on Clerk Wayne Robey
8360 Court Avenue
ELLICOTT CITY, MD 21043

Wobensmith, John C
official capacity
Maryland Secretary of State
Fred L Wineland Building
16 Francis Street
Annapolis, MD 21401



Attorneys

DYER, ALLEN RAY
Retained
410-531-3965(W)

CORDISH, STUART J
Retained
410-576-7934(W)
LEVINE, JASON LEE
Retained
410-576-6388(W)

CORDISH, STUART J
Retained
410-576-7934(W)
LEVINE, JASON LEE
Retained
410-576-6388(W)

CORDISH, STUART J
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Retained
410-576-7934(W)
LEVINE, JASON LEE
Retained
410-576-6388(W)

CORDISH, STUART J
Retained
410-576-7934(W)
LEVINE, JASON LEE
Retained
410-576-6388(W)














I, Robert P. Duckworth, Clerk of the Circuit Court for Anne Arundel County, hereby certify that this is a true copy from the record in this court. Witness the hand and act of the undersigned this 14th day of January 20 17

Robert P. Duckworth

Circuit Court for Anne Arundel County, Maryland

ANNE ARUNDEL CIRCUIT COURT
CASE SUMMARY
CASE NO. C-02-CV-16-001949
EVENTS & ORDERS OF THE COURT


McMahon E006


DATE		INDEX
06/13/2016	 Case Transferred from Other Jurisdiction <i>Original Pleadings Receivd From Circuit Court From Howard County</i> Pln & Def: Plaintiff McMahon, John F	
06/13/2016	Attorney Appearance - Fee Counsel: Attorney DYER, ALLEN RAY For: Plaintiff McMahon, John F	
06/14/2016	 Receipt of Transferred Case <i>Notice of Transferred Case mailed to Atty Dyer John McMahon Wayne Robey and Circuit Court For Howard County</i>	
06/22/2016	 Order (Judicial Officer: Kiessler, Laura S.) <i>Assignment Order. Case is assigned to Hon. William C. Mulford, II. (Copies to Wayne Robey (Clerk, Circuit Court, Howard Co), Allen Dyer, Judge Mulford, Civil Case Management and Assignment).</i>	
06/27/2016	 Motion / Request - To Dismiss <i>Motion to Dismiss or for Summary Judgment</i> Filed by: Defendant Robey, Wayne	
07/12/2016	 Line <i>Line - Complaint Exhibit 2 Misidentified</i> Filed by: Plaintiff McMahon, John F	
07/13/2016	 Response <i>PLAINTIFF S REPLY TO MOTION TO DISMISS OR FOR SUMMARY JUDGMENT AND PLAINTIFF S MOTION FOR SUMMARY JUDGMENT</i> Filed By: Plaintiff McMahon, John F	
08/04/2016	 Order (Judicial Officer: Mulford, William C., II) <i>re: set in motions hearing regarding Defendant's Motion to Dismiss and Plaintiff's Motion for Summary Judgment on 8/9/16 @ 1:30pm (Copies to Atty's Dyer & Cordish)</i>	
08/09/2016	 Motion / Request - To Dismiss <i>Motion to Dismiss or for Summary Judgement</i>	
08/09/2016	 Hearing - Motion (1:30 PM) (Judicial Officer: Mulford, William C., II)	
08/09/2016	 Hearing Sheet / Open Court Proceedings (Judicial Officer: Mulford, William C., II)	
08/09/2016	 Order - Motion/Request Granted (Judicial Officer: Mulford, William C., II) Notices To:: Attorney DYER, ALLEN RAY; Attorney CORDISH, STUART J; Plaintiff McMahon, John F; Defendant Robey, Wayne	
08/29/2016	 Complaint - Amended <i>First Amended Complaint and Request for Leave to Join Additional Parties</i> Filed by: Plaintiff McMahon, John F	
08/30/2016	 Summons Issued (Service Event) Requested by: Plaintiff McMahon, John F Service for: Defendant Fitzgerald, James F; Defendant Lamone, Linda H; Defendant Wobensmith, John C; Defendant Hogan, Larry	
08/30/2016	Summons Issued Robey, Wayne	


ANNE ARUNDEL CIRCUIT COURT
CASE SUMMARY
CASE NO. C-02-CV-16-001949


McMahon E007


Unserved
Fitzgerald, James F
Served: 09/01/2016
Lamone, Linda H
Served: 09/01/2016
Hogan, Larry
Served: 09/01/2016
Wobensmith, John C
Served: 09/01/2016


10/03/2016  Motion
Motion to Dismiss Amended Complaint
Filed by: Defendant Robey, Wayne; Defendant Fitzgerald, James F; Defendant Lamone, Linda H; Defendant Wobensmith, John C; Defendant Hogan, Larry


10/03/2016  Return of Service - Served
JAMES FITZGERALD, HOLDOVER SHERIFF Served
Date Served: 09/01/2016


10/03/2016  Return of Service - Served
Date Served: 09/01/2016


10/03/2016  Return of Service - Served
Date Served: 09/01/2016


10/03/2016  Return of Service - Served
Date Served: 09/01/2016

10/03/2016  Supporting Exhibits
Exhibit 1


10/03/2016  Supporting Exhibits
Exhibit 2


10/19/2016  Motion
Plaintiff's Motion for Temporary Restraining Order and Bond Waiver
Filed by: Plaintiff McMahon, John F

10/19/2016  Motion - Shorten Time
Plaintiff's Motion to Shorten Time Requirements for Response to Motion for Temporary Restraining Order
Party: Plaintiff McMahon, John F

10/20/2016  Memorandum
Plaintiff's Memorandum of Law in Support of a Temporary Restraining Order
Filed by: Plaintiff McMahon, John F

10/20/2016 Hearing (8:30 AM) (Judicial Officer: Mulford, William C., II)
T.R.O














10/20/2016  Hearing Sheet / Open Court Proceedings (Judicial Officer: Mulford, William C., II)

10/20/2016  Opposition / Response
Defendants' Opposition to Plaintiff's Motion for Temporary Restraining Order
Filed by:: Defendant Robey, Wayne; Defendant Fitzgerald, James F; Defendant Lamone, Linda H; Defendant Wobensmith, John C; Defendant Hogan, Larry

10/20/2016

ANNE ARUNDEL CIRCUIT COURT
CASE SUMMARY
CASE NO. C-02-CV-16-001949

McMahon E008

	 Order (Judicial Officer: Mulford, William C., II) <i>**Hearing Sheet signed as Order of Court** Court Denied the Request for Temporary Restraining Order. (Copies to Attys Dyer, Levine and Cordish).</i>	
10/20/2016	 Attorney Appearance - No Fee. <i>Line Entering Appearance</i>	
10/21/2016	 Directive (Judicial Officer: Mulford, William C., II) <i>The Plaintiff's Motion to Shorten Time is MOOT, as the Court heard the matter on the record. (copies mailed to Atty Cordish and Atty Dyer)</i>	
10/24/2016	 Opposition / Response <i>Reply to Motion to Dismiss</i> Filed by:: Plaintiff McMahon, John F	
10/31/2016	 Hearing - Motion to Dismiss (1:30 PM) (Judicial Officer: Mulford, William C., II)	
10/31/2016	 Hearing Sheet / Open Court Proceedings (Judicial Officer: Mulford, William C., II)	
11/01/2016	 Order (Judicial Officer: Mulford, William C., II) <i>ORDERED, that the Defendant's Motion be and is hereby GRANTED; and it is further ORDERED, that Plaintiff's First Amended Complaint and Request for Leave to Join Necessary Parties be and is hereby DISMISSED WITH PREJUDICE. (Copies mailed to Attys Stuart Cordish, Allen Dyer and Jason Levine).</i>	
11/02/2016	 Notice of Appeal Filed <i>Notice of Appeal</i> Filed by: Plaintiff McMahon, John F	
11/03/2016	Additional Notes Exist <i>***PHC Civil Appeal Information Report to be filed at COSA mailed to Atty Dyer***</i>	
11/03/2016	Additional Notes Exist <i>**Notice of Appeal sent to Judge Mulford's and Court Reporters task queues; and COSA workflow queue***</i>	
11/07/2016	 Transcript <i>Invoice and 1 Volume Transcript Electronically filed - Hearing on Motion to Dismiss dated 10/31/16; Costs: \$95.70.</i>	
11/07/2016	 Acknowledgement of Petition for Writ of Certiorari	
11/09/2016	 Order (Judicial Officer: Mulford, William C., II) <i>Regarding Declaratory Judgment. That the Plaintiff has no right or claim to the Office of Sheriff of Howard County, and that the only the Governor may make an appointment to a vacancy in the office of Sheriff. (copies mailed to Atty Dyer and Atty Cordish)</i>	
11/09/2016	 Order - Writ of Certiorari Denied (Judicial Officer: Barbera, Mary Ellen)	
11/28/2016	 Order to Proceed <i>from COSA, signed by Chief Judge Krauser. The appeal shall proceed without a Prehearing Conference or Alternative Dispute Resolution.</i>	

DATE	FINANCIAL INFORMATION	
	Attorney DYER, ALLEN RAY	
	Total Charges	10.00
	Total Payments and Credits	0.00
	Balance Due as of 1/19/2017	10.00

ANNE ARUNDEL CIRCUIT COURT
CASE SUMMARY
CASE NO. C-02-CV-16-001949

McMahon E009

Plaintiff McMahon, John F
Total Charges
Total Payments and Credits
Balance Due as of 1/19/2017

296.00
131.00
165.00

CIRCUIT COURT FOR HOWARD COUNTY
Wayne A. Robey
Clerk of Circuit Court
8360 Court Avenue
Ellicott City, MD 21043-4579
(410)-313-2111, TTY for Deaf: (410)-313-3840
Civil(410)313-3844 Criminal(410)313-3822

06/03/16

Case Number: 13-C-16-107118 DJ
Date Filed: 03/31/2016
Status: Closed/Inactive
Judge Assigned: To Be Assigned,
Location :
CTS Start : 03/31/16 Target : 09/27/17

McMahon vs Robey

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
-----	-----
Case Folder ID	C16107118V01

INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Addr Str/Erd	Pty. Disp. Addr Update	Entered
PLT 001	McMahon, John F		BT RE 06/03/16	04/01/16
		Party ID: 0504692		
	Attorney: 0024455 Dyer, Allen R 13340 Hunt Ridge Ellicott City, MD 21042 (410)531-3965		Appear: 03/31/2016	04/01/16
DEF 001	Robey, Wayne		BT RE 06/03/16	04/01/16
		Party ID: 0504694		
	Capacity : Clerk Of The Circuit Court For Howard County			
Mail:		04/01/16		04/01/16 AGW
	Serve On: Clerk Wayne Robey			

CIVIL DEPARTMENT

2016 JUN 13 A 11:41

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	Activity User	Date
06/03/16	RE	Removal	BT	BEFORE TRIAL/HEARING	WR	06/03/16

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign	Date	Removal	RSN
TBA To Be Assigned.	J		04/01/16		

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
00001000	Complaint with Exhibits	03/31/16	04/01/16	PLT001	TBA	06/03/16	AGW WR
00002000	Writ of Summons - Civil Issued	03/31/16	04/01/16	DEF001	TBA	04/01/16	AGW
00003000	Scheduling Order	03/31/16	04/01/16	000	TBA	04/01/16	AGW
00004000	Affidavit of Service	06/02/16	06/03/16	PLT001	TBA	06/03/16	GH
00005000	Order--(Ordered, that Pursuant to Maryland Rule 2-505(a)(2), the above-captioned matter shall be and the same is hereby transferred to the Circuit Court for Anne Arundel County Maryland) - Circuit Administrative Judge Laura S. Kiessling 6/3/16 Copies Mailed	06/03/16	06/03/16	000	TBA	06/03/16	WR

SERVICE

Form Name	Issued	Response	Served	Returned	Agency
Writ of Summons/U422 DEF001 Robey, Wayne	04/01/16	05/26/16	05/26/16		Private Process

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
35AS	35 Day Tickle After	CLOSED	07/08/16	35	no	no	CTOS	T	0	000

13-C-16-107118 Date: 06/03/16 Time: 14:19

Page: 3

Code Tickle Name	Status Expires	#Days	AutoExpire	GoAhead	From Type	Num	Seq
CTOS Create Tickle Or Ser	CANCEL 04/01/16	0	no	ro		0	000
NCDT Notice Of Contemplat	CANCEL 07/30/16	120	no	ro	CTOS T	0	000

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : C2 Description: CV EXPEDITED TRACK 2 Custom: Yes
 Assign Date: 04/01/16 Order Date : 04/01/16
 Start Date : 04/01/16 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Plaintiff Expert ID	07/31/16	06/03/16	CLOSED	
Defendant Expert ID	08/30/16	06/03/16	CLOSED	
Rebuttal Expert ID	09/13/16	06/03/16	CLOSED	
Service of Written Discovery	06/30/16	06/03/16	CLOSED	
Discovery Deadline	09/29/16	06/03/16	CLOSED	
Motions Filing Cutoff	09/14/16	05/03/16	CLOSED	
Draft PreTrial Statement	09/24/16	06/03/16	CLOSED	
Final PreTrial Statement	10/04/16	06/03/16	CLOSED	
Witness Exhibit List	10/04/16	06/03/16	CLOSED	
Settlement Conference is	10/18/16	06/03/16	CLOSED	

ACCOUNTING SUMMARY

NON-INVOICED OBLIGATIONS AND PAYMENTS

Date	Rcpt/Initials	Acct Desc	Collig	Payment	Total MOP	Balance
04/01/16		1500 CF-App Fee	10.00	.00	10.00	10.00
04/01/16		1603 RIF-New Case	30.00	.00	30.00	40.00
04/01/16		1265 MLSC	55.00	.00	55.00	95.00
04/01/16		1101 CF-Civil Fil	80.00	.00	80.00	175.00
04/01/16	201600003166/EMM	1265 MLSC	.00	55.00	-55.00 CA	120.00
04/01/16	201600003166/EMM	1603 RIF-New Case	.00	30.00	-30.00 CA	90.00
04/01/16	201600003166/EMM	1500 CF-App Fee	.00	10.00	-10.00 CA	80.00
04/01/16	201600003166/EMM	1101 CF-Civil Fil	.00	80.00	-80.00 CA	.00

CASE FOLDER HISTORY

Date	Time	Type	User	Location	Clerk	Reason
06/03/16	12:37 PM	CheckOut	WR	Clerk of Court	WR	
04/01/16	11:26 AM	CheckIn		File room	AGW	
04/01/16	10:02 AM	Created		Civil Clerk	AGW	Case Folder Created

I hereby certify that the foregoing docket is a true copy of the Civil records of the Clerk of the Circuit Court for Howard County. IN TESTIMONY WHEREOF I hereunto subscribe my name and affix the Seal of the Circuit Court for Howard County, MD, this date 06/03/2016.

Wayne A Robey

Wayne A. Robey
Clerk of Circuit Court



John F. McMahon v. WAYNE ROBEY, *et al.*

Joint Record Extract

3.

**FIRST AMENDED COMPLAINT AND REQUEST FOR
LEAVE TO JOIN ADDITIONAL PARTIES AND
PLAINTIFF AFFIDAVIT**

(08/29/16) (R 112–141)

E014–E043

JOHN F. MCMAHON

*

PLAINTIFF,

*

IN THE

*

CIRCUIT COURT

V

*

OF

WAYNE ROBESY

in his official capacity as
CLERK OF THE CIRCUIT COURT
FOR HOWARD COUNTY,

*

ANNE ARUNDEL COUNTY

*

JAMES F. FITZGERALD

personally & official capacity as
HOLDOVER SHERIFF
FOR HOWARD COUNTY
8360 Court Avenue
Ellicott City, MD 21043,

*

CASE # C-02-CV-16-001949

*

LINDA H. LAMONE

in her official capacity as
State Administrator of the
Maryland Board of Elections
151 West Street
Suite 200
Annapolis, MD 21401,

*

**Declaratory Judgment,
&
Writ of Mandamus**

*

*

*

JOHN C. WOBENSMITH

in his official capacity as
Maryland Secretary of State
Fred L. Wineland Building
16 Francis Street
Annapolis, MD 21401,

*

*

*

LARRY HOGAN

in his official capacity as
GOVERNOR OF MARYLAND STATE
100 State Circle

*

*

*

Annapolis, MD 21401, *

DEFENDANTS. *

CASE # C-02-CV-16-001949

SERVE ON:

Holdover Sheriff James Fitzgerald *

Md State Board of Elections *

Administrator Linda H. Lamone *

Md Secretary of State *

John C. Wobensmith *

Md Governor Larry Hogan *

...ooo0ooo...

**FIRST AMENDED COMPLAINT
AND
REQUEST FOR LEAVE TO JOIN ADDITIONAL PARTIES**

Plaintiff John F. McMahon, a candidate for election to the Office of Sheriff of Howard County, by his counsel, Allen R. Dyer, sues Defendant Clerk of the Circuit Court of Howard County Wayne Robey and joins Defendant State Administrator of the Maryland Board of Elections Linda H. Lamone; Defendant Secretary of State John C. Wobensmith; Defendant holdover Sheriff James Fitzgerald; and Defendant Maryland Governor Larry Hogan and as grounds states:

EXPEDITED TREATMENT REQUESTED

Given that the resolution of the 2014 general election for Howard County Sheriff still remains in doubt, Plaintiff Candidate McMahon respectfully requests the Court to expedite the process as warranted by circumstances pursuant to ELECTION LAW ART §12-203.

PROCEDURAL BACKGROUND

The original *Complaint* in this matter was filed on March 31, 2016, but, on August 9, 2016, the Court dismissed the original *Complaint* with leave to amend within 20 days. The grounds for dismissal was failure to join a necessary party whose rights may be prejudiced, COURTS AND JUDICIAL PROCEEDINGS ART. § 3-405(a); to wit, James F. Fitzgerald a 2014 candidate for Sheriff and holdover Sheriff, who is joined as a Defendant herein. In addition to joinder of Mr. Fitzgerald, pursuant to MD RULE 2-211, to the *First Amended Complaint*, Plaintiff also joins the State Administrator of the Maryland Board of Elections Linda H. Lamone; Maryland Secretary of State John C. Wobensmith; and Maryland Governor Larry Hogan, all of whom have important roles in their official capacities in the protection of Maryland's constitutional representative democracy and are, arguably, necessary parties with a cognizable interest in this election matter. MD RULE 2-211.

PARTIES

1. Plaintiff John F. McMahon is a citizen, a 2014 candidate for Howard County Sheriff and a registered voter of Howard County, Maryland, who resides at: 5208 Kalmia Drive; Dayton, Maryland 21036. Defendant Wayne Robey is the elected Clerk of the Howard County Circuit Court. Defendant James F. Fitzgerald is a 2014 candidate for Howard County Sheriff and is a holdover Sheriff of Howard County. Defendant Linda H. Lamone is State Administrator of the Maryland Board of Elections. Defendant John C. Wobensmith is Maryland Secretary of State. Defendant Larry Hogan is the Governor of the State of Maryland.

FACTS

2. Plaintiff candidate McMahon stood for election to the Office of Sheriff of Howard County in the 2014 general election and received 42,692 votes from the citizens of Howard County. Defendant candidate Fitzgerald, the incumbent Sheriff prior to the 2014 general election, stood for re-election to the office of Sheriff of Howard County in 2014 and he received 55,659 votes.

3. On November 14, 2014 the Chairman of the Howard County Board of Canvassers of Elections, Ann M. Balcerzak, certified the results of the general election held on November 4, 2014 in Howard County and declared, on page 8 of 9, vote tallies for Sheriff: James F. Fitzgerald 55,659; John Francis McMahon 42,692; and, Write-Ins 263. Exhibit 1 of *Defendant's Motion to Dismiss or for Summary Judgment*, filed: June 27, 2016. Defendant Lamone, State Administrator of the Board of Elections, is Maryland's chief election official and is responsible for supervising all local boards of elections *inter alia*. MD. ELECTION LAW ART. § 2-103.

4. Prior to the general election of 2014, Plaintiff candidate McMahon did not know, and is unaware of any mechanisms by which he could have known, that Defendant candidate Fitzgerald would fail to take the oath of office after Defendant Lamone declared Defendant Fitzgerald the winner of the 2014 election for Howard County Sheriff.

5. On March 23, 2016 the Plaintiff received an anonymous packet which raised questions about whether the Office of Howard County Sheriff was vacant since, *inter alia*, Defendant Fitzgerald had apparently failed to take the oath of office. A copy of the anonymous packet is attached hereto as Exhibit 1 and incorporated herein. Prior to the receipt of the March 23, 2016 anonymous packet, Plaintiff McMahon was unaware that

Defendant Robey had never taken the oath of office for the 2014 term of office as Sheriff.

6. On Monday, March 28, 2016, via a hand carried letter to Defendant Clerk Robey, Plaintiff candidate McMahon requested a certification as to whether Defendant candidate Fitzgerald had taken his oath of office after the 2014 general election. A copy of Plaintiff's letter to Defendant Robey is attached hereto as Exhibit 2 and incorporated herein.

7. On Monday, March 28, 2016, Plaintiff McMahon told Defendant Clerk Robey that Plaintiff was ready to be sworn in as Sheriff. Defendant Clerk Robey failed to respond to Plaintiff.

8. On March 28, 2016, Defendant Clerk Robey confirmed, in a letter, "the last Oath of Office administered to the Howard County Sheriff was dated December 14, 2010." A copy of Defendant Clerk Robey's letter is attached hereto as Exhibit 3 and incorporated herein.

9. Upon information and belief, Defendant candidate Fitzgerald purposely failed to take the oath of office for the 2014 term of office as Sheriff of Howard County at which point Defendant Fitzgerald was disclosed to be a *non-bona-fide*, sham candidate for the 2014 general election whose willful conduct undermined and corroded the organic process of Maryland's representative democracy machinery and "[t]his deception on the face of the ballot clearly debased the rights of all voters in the election." *Smith v. Cherry*, 489 F.2d 1098, 1102 (7th Cir. Ill. 1973).

10. Upon information and belief and knowledge of the people of Howard County, Plaintiff believes the voters of Howard County would never attempt to elect anyone to the office of Howard County Sheriff if they knew beforehand that the candidate would refuse to take the oath of office and serve the term to which elected. In a practical sense, the

2014 ballot misidentified Defendant James Fitzgerald as a valid candidate instead of “a sham intended to deceive the voters.” *Smith v. Cherry*, 489 F.2d 1098, 1102 (7th Cir. Ill. 1973).

11. Plaintiff candidate McMahon is unaware of any time or place where Defendant candidate Fitzgerald took the oath of office for the 2014 term for Sheriff of Howard County. Furthermore, Plaintiff candidate McMahon is unaware of anyone with advance knowledge that Defendant candidate Fitzgerald would decide to fail to comply with taking the oath of office mandated by the MD. CONSTITUTION.

12. Upon information and belief, Defendant candidate Fitzgerald currently serves as a holdover Sheriff pursuant to MD. CONST. ART. IV, § 44.

13. Plaintiff candidate McMahon avers that the secret and intentional refusal of Defendant candidate Fitzgerald to take the oath of office broke the social covenant between candidate Fitzgerald and ALL voters and, in addition, those voters selecting Defendant candidate Fitzgerald in the 2014 general election were disenfranchised and their votes nullified, *as a matter of fact*, due to the purposeful, willful actions of Defendant candidate Fitzgerald. “[C]ourts have recognized that the designation of a ‘sham’ candidate who has no intention of serving may be stricken as a fraud upon the voters....” *Matter of Ruck v. Greene County Bd. of Elections*, 24 Misc. 3d 1232(A), 1232A (N.Y. Sup. Ct. 2009).

14. Plaintiff avers that, as a matter of law, the Court must nullify the votes cast in favor of Defendant candidate Fitzgerald in the 2014 because the law cannot assume the voters of Howard County would cast their votes for a sham candidate that would fail to take and abide by the oath of office required by the MARYLAND CONSTITUTION. The office of Howard County Sheriff should not devolve into an appointed official as the result of

official wrongdoing. “It is fundamentally unfair and constitutionally impermissible for public officials to disenfranchise voters in violation of state law so that they may fill the seats of government through the power of appointment.” *Duncan v. Poythress*, 657 F.2d 691, 704 (5th Cir. Ga. 1981).

15. Plaintiff candidate McMahon claims the right, as a matter of fact and law, to be adjudged to be the 2014 qualified candidate for election to the office of Sheriff of Howard County because Plaintiff meets the eligibility requirements, to wit: resides in Howard County, is over the age of twenty-five years, for at least five years preceding the 2014 general election Plaintiff was a Maryland citizen, and more legally valid votes were cast for Plaintiff than any other eligible candidate.

16. Plaintiff candidate John F. McMahon stands ready and willing, and would be honored, to take and abide by the oath of office for Sheriff of Howard County and Plaintiff will post any necessary bond. MD. CONST. ART. IV, § 44.

JURISDICTION

17. The office of county sheriff is an elected office created by the MARYLAND CONSTITUTION, Art. IV, § 44 which states: “There shall be elected in each county and in Baltimore City one person, resident in said county or City, above the age of twenty-five years, and for at least five years preceding his election a citizen of the State, to the office of Sheriff.” Emphasis added.

18. MARYLAND ELECTION LAW ARTICLE § 12-202 provides for judicial challenges to the results of elections:

(a) In general. -- If no other timely and adequate remedy is provided by this article, a registered voter may seek judicial relief from any act or omission relating to an

election, whether or not the election has been held, on the grounds that the act or omission:

- (1) is inconsistent with this article or other law applicable to the elections process; and
- (2) may change or has changed the outcome of the election.

As the Court of Appeals recently explained in *Cabrera v. Penate*, 439 Md. 99, 109 (2014), “Our cases ... show that § 12-202 is the mechanism for challenging the qualifications of a candidate seeking election.”

**COUNT I
DECLARATORY JUDGMENT**

19. Plaintiff incorporates paragraphs 1– 18 into Count I and Plaintiff, respectfully asks the Court the following questions.

20. Does the MARYLAND CONSTITUTION require Defendant James F. Fitzgerald, as the previous Howard County Sheriff, to holdover in the elected office of Howard County Sheriff “until his successor is duly elected and qualified”, MD. CONST. ART. IV, § 44, and, if so, as a matter of law, does that mean there is no vacancy in the office of Howard County Sheriff as the term “vacancy” is used in MD. CONST. ART. IV, § 44?

21. Has Defendant Fitzgerald forfeited his right to take the oath of office that is required to qualify for the 2014 to 2018 term as Howard County Sheriff? MD. GENERAL PROVISIONS ART. § 2-301.

22. Did Defendant Fitzgerald’s intentional failure to take the oath of office nullify the votes of those voters who voting for Defendant Fitzgerald in the 2014 general election as a matter of fact or law?

23. Did Plaintiff John McMahon receive the clear majority of all legally valid votes cast in the 2014 general election?

24. Did Plaintiff John McMahon promptly act to take the oath of office and, thus, is not disqualified by limitations or laches? *First Amended Complaint and Request for Leave to Join Parties* “Procedural Background” & ¶¶2-15; *Plaintiff John F. McMahon’s Affidavit* appended below.

25. Is Plaintiff McMahon duly elected and, upon the prompt taking of the oath of office, constitutionally qualified to assume the Office of Sheriff of Howard County and relieve Defendant holdover Sheriff Fitzgerald of the duties of office?

**COUNT II
FOR WRIT OF MANDAMUS**

26. Plaintiff incorporates paragraphs 1–25 into Count II.

27 Plaintiff McMahon will suffer irreparable injury to his professional and political reputation if he is not allowed to take the oath of office for the position to which he stood in the general election of 2014.

WHEREFORE, the elected office of sheriff supports the operation of the Maryland judiciary, MD. CONST. ART. IV, § 44, and in consideration of this matter and the behavior of Defendant Fitzgerald, Plaintiff John McMahon respectfully requests a *Writ of Mandamus* be issued by this Court ordering:

- a. Defendant State Administrator of the Maryland Board of Elections Linda H. Lamone to officially nullify the votes received by Defendant Sheriff candidate James F. Fitzgerald in the general election of 2014;
- b. Defendant Governor Larry Hogan to issue a commission declaring Plaintiff eligible for being sworn into elected office as Sheriff of Howard County;
- c. Defendant Clerk Wayne Robey of the Howard County Court to promptly swear

Plaintiff John McMahon into the Office of Sheriff of Howard County and to report said swearing in to Defendant Maryland Secretary of State John C. Wobensmith;

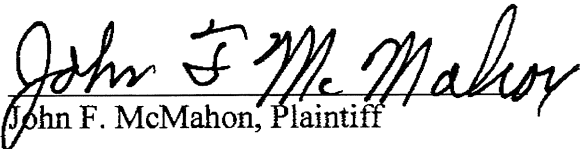
d. Defendant Maryland Secretary of State John C. Wobensmith, upon proper notice from Defendant Clerk Robey, to officially enter the name of Plaintiff John McMahon into the official state records; and,

e. Defendant James Fitzgerald to surrender the office and duties of the Howard County Sheriff's office to Plaintiff John McMahon immediately after Plaintiff is sworn into office and gives bond. MD. CONST. ART. IV, § 44.

PLAINTIFF JOHN F. MCMAHON'S AFFIDAVIT

I do solemnly declare and affirm under the penalties of perjury that I did not suspect Defendant James Fitzgerald had failed to take the 2014 oath of office until receiving the March 23, 2016 anonymous letter and the facts in the foregoing *First Amended Complaint and Request for Leave to Join Parties* are true to the best of my knowledge, information and belief. Furthermore, when offered the opportunity, I will take the oath of office and abide thereby.

Date: August 29, 2016


John F. McMahon, Plaintiff

Respectfully Submitted,

_____/s/_____
Allen R. Dyer

13340 Hunt Ridge
Ellicott City, Maryland 21042
aldyer@lawlab.com / 410-531-3965
Attorney for Plaintiff

JOHN F. MCMAHON
PLAINTIFF

WAYNE ROBEY, *et alia*
DEFENDANTS

*
*
*
*
IN THE
CIRCUIT COURT
OF
ANNE ARUNDEL COUNTY
Case # C-02-CV-16-001949

...0000000...

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of August, 2016, a copy of the foregoing *First Amended Complaint and Request for Leave to Join Additional Parties* and *proposed Order* were served by electronic means via the Maryland Electronic Courts System (MDEC) to Mr. Stuart J. Cordish, Assistant Attorney General, counsel for Defendant Wayne Robey, at Attorney General of Maryland; Courts Unit, 20th Floor; 200 St. Paul Place; Baltimore, Maryland 21202.

Plaintiff's counsel will serve the newly joined defendants: holdover Sheriff James Fitzgerald; Md State Board of Elections Administrator Linda H. Lamone; Md Secretary of State John C. Wobensmith; and, Md Governor Larry Hogan via hard copy service to Maryland Attorney General Brian E. Frosh; 200 St. Paul Place; Baltimore, MD 21202.

_____/s/_____
Allen R. Dyer

CERTIFICATE OF COMPLIANCE WITH RULE 1-322.1

I HEREBY CERTIFY THAT this filing was prepared in compliance with Maryland Rule 1-322.1.

_____/s/_____
Allen R. Dyer

JOHN F. McMAHON
PLAINTIFF

WAYNE ROBNEY, *et alia*
DEFENDANTS

*
* IN THE
* CIRCUIT COURT
* OF
* ANNE ARUNDEL COUNTY
*
* Case # C-02-CV-16-001949

...0000000...

LIST OF EXHIBITS

Exhibit 1	Mar 23, 2016	Anonymous Packet Regarding James F. Fitzgerald.
Exhibit 2	Mar 28, 2016	Letter to Clerk Wayne Robey requesting certification as to whether James Fitzgerald had taken his 2014 oath of office.
Exhibit 3	Mar 28, 2016	Response from Clerk Wayne Robey.

Exhibit 1

Mr. McMahon;

You should have won the election for Sheriff over the corrupt man that is currently residing in that office. You ran on transparency in that office, there is no transparency. Did you know that;

The current elected Sheriff of Howard County, **James F. Fitzgerald**, has refused or neglected to take the oath of office after being duly notified since being elected during the last gubernatorial elections of 2014. **This can be confirmed with the Howard County Clerk of the Court.**

James Fitzgerald has performed the functions of the Office of Sheriff including all duties associated with the Circuit Court of Maryland for Howard County including personally making arrests when he is not duly authorized to do so. Not only is this illegal and improper, it places great civil liability on the state of Maryland and Howard County. James Fitzgerald did not obtain a bond as required by Maryland law at the beginning of this term of office as well.

In accordance with the Constitution of Maryland and Maryland Courts and Judicial Proceedings, James F. Fitzgerald having neglected or refused to take the oath of office ***“shall be considered as having refused to accept the said office; and a new election, or appointment, shall be made...”***

Constitution of Maryland – Article 1 Elective Franchise

SEC. 11. Every person, hereafter elected, or appointed, to office, in this State, who shall refuse, or neglect, to take the oath, or affirmation of office, provided for in the ninth section of this Article, shall be considered as having refused to accept the said office; and a new election, or appointment, shall be made, as in case of refusal to accept, or resignation

of an office; and any person violating said oath, shall, on conviction thereof, in a Court of Law, in addition to the penalties now, or hereafter, to be imposed by Law, be thereafter incapable of holding any office of profit or trust in this State (*originally Article I, sec. 7. Thus renumbered and amended by Chapter 681, Acts of 1977, ratified Nov. 7, 1978*).

Additionally, under the Courts and Judicial Proceedings 2-104 - Oaths or affirmations;

a) Every auditor, clerk, sheriff, constable, commissioner, surveyor, or other officer before he assumes the duties of his office, shall take and sign the oath or affirmation prescribed by the Constitution.

Under Courts and Judicial Proceedings 2-105 – Bond;

(a) Each of the following officers, before he assumes the duties of his office, shall be covered by a bond for the faithful performance of the duties of his office:

- (1) Clerk of any court;
- (2) Commissioner; or
- (3) Sheriff.

(b) Each bond, except a sheriff's bond, shall be in a penalty prescribed by the Comptroller. The Comptroller may increase or decrease the amount of a bond at any time.

(c) The sheriff of a county shall give a bond in the penalty of \$10,000, except that in Allegany, Charles, Frederick, Prince

George's, and Washington counties and Baltimore City the penalty is \$25,000.

And finally, under Courts and Judicial Proceedings 2-106 - Failure to qualify for office;

(a) A person who is required to take an oath under § 2-104 of this subtitle or to file a bond under § 2-105 of this subtitle but who fails to qualify for office by taking and subscribing the required oath or affirmation or giving the required bond within 30 days from the date his commission is received by the clerk, or if no commission is sent to the clerk, within 30 days after receiving his commission or notice of appointment, is deemed to have refused the office, and the office shall be considered vacant, unless the time is extended by the court for good cause shown.

In accordance with Maryland law, the office of Sherriff for Howard County should be immediately deemed vacant and James F. Fitzgerald should immediately be removed from that office and a special election or appointment be made as determined by Maryland law.

There was also a recent auditors report done that concluded that a number of deputies were paid almost \$8000 with county tax payer dollars to work on Mr. Fitzgerald's campaign. That was reported by the Baltimore Sunpapers. That put you at a disadvantage

in the election! NO ONE should be above the law especially the politicians we elect to represent us!

Here is a full copy of the Maryland Constitution and the Courts and Judicial Proceedings that shows that Mr. Fitzgerald is not the current Sheriff and should not be holding that office. No one will do anything about this. It this just another example of politicians protecting their own?

CONSTITUTION OF MARYLAND

ARTICLE I

ELECTIVE FRANCHISE.

SECTION 1. All elections shall be by ballot. Except as provided in Section 3 of this article, every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which the citizen resides at all elections to be held in this State. A person once entitled to vote in any election district, shall be entitled to vote there until the person shall have acquired a residence in another election district or ward in this State (*amended by Chapter 99, Acts of 1956, ratified Nov. 6, 1956; Chapter 784, Acts of 1969, ratified Nov. 3, 1970; Chapter 681, Acts of 1977, ratified Nov. 7, 1978; Chapter 513, Acts of 2007, ratified Nov. 4, 2008*).

SEC. 1A. Vacant (*added by Chapter 20, Acts of 1918, ratified Nov. 5, 1918. Amended by Chapter 480, Acts of 1953, ratified Nov. 2, 1954; Chapter 100, Acts of 1956, ratified Nov. 6, 1956; Chapter 881, Acts of 1974, ratified Nov. 5, 1974. Renumbered as Art. I, sec. 3, by Chapter 681, Acts of 1977, ratified Nov. 7, 1978*).

SEC. 2. The General Assembly shall provide by law for a uniform Registration of the names of all voters in this State, who possess the qualifications prescribed in this Article, which Registration shall be conclusive evidence to the Judges of Election of the right of every person, thus registered, to vote at any election thereafter held in this State; but no person shall vote, at any election, Federal or State, hereafter to be held in this State, or at any municipal election in the City of Baltimore, unless his name appears in the list of registered voters; the names of all persons shall be added to the list of qualified voters by the officers of Registration, who have the qualifications prescribed in the first section of this Article, and who are not disqualified under the provisions of the second and third sections thereof (*originally Article I, sec. 5, thus renumbered by Chapter 681, Acts of 1977, ratified Nov. 7, 1978. As sec. 5, it was amended by Chapter 99, Acts of 1956, ratified Nov. 6, 1956*).

SEC. 3. (a) The General Assembly shall have the power to provide by suitable enactment for voting by qualified voters of the State of Maryland who are absent at the time of any election in which they are entitled to vote, for voting by other qualified voters who are unable to vote personally, or for voting by qualified voters who might otherwise choose to vote by absentee ballot, and for the manner in which and the time and place at which such absent voters may vote, and for the canvass and return of their votes (*originally Article I, sec. 1A, thus renumbered by Chapter 681, Acts of 1977, ratified Nov. 7, 1978*).

(b) The General Assembly shall have the power to provide by suitable enactment a process to allow qualified voters to vote at polling places in or outside their election districts or wards or, during the two weeks immediately preceding an election, on no more than 10 other days prior to the dates specified in this Constitution (Chapter 513, Acts of 2007, ratified Nov. 4, 2008).

SEC. 4. The General Assembly by law may regulate or prohibit the right to vote of a person convicted of infamous or other serious crime or under care or guardianship for mental disability (*originally Article I, sec. 2, thus renumbered by Chapter 681, Acts of 1977, ratified Nov. 7, 1978. As sec. 2, it was amended by Chapter 368, Acts of 1972, ratified Nov. 7, 1972*).

SEC. 5. It shall be the duty of the General Assembly to pass Laws to punish, with fine and imprisonment, any person, who shall remove into any

election district, or precinct of any ward of the City of Baltimore, not for the purpose of acquiring a bona fide residence therein, but for the purpose of voting at an approaching election, or, who shall vote in any election district, or ward, in which he does not reside, (except in the case provided for in this Article,) or shall, at the same election, vote in more than one election district, or precinct, or shall vote, or offer to vote, in any name not his own, or in place of any other person of the same name, or shall vote in any county in which he does not reside (*originally Article I, sec. 4, thus renumbered by Chapter 681, Acts of 1977, ratified Nov. 7, 1978*).

SEC. 6. If any person shall give, or offer to give, directly or indirectly, any bribe, present or reward, or any promise, or any security, for the payment or delivery of money, or any other thing, to induce any voter to refrain from casting his vote, or to prevent him in any way from voting, or to procure a vote for any candidate or person proposed, or voted for as the elector of President, and Vice President of the United States, or Representative in Congress or for any office of profit or trust, created by the Constitution or Laws of this State, or by the Ordinances, or Authority of the Mayor and City Council of Baltimore, the person giving, or offering to give and the person receiving the same, and any person who gives or causes to be given, an illegal vote, knowing it to be such, at any election to be hereafter held in this State, shall, on conviction in a Court of Law, in addition to the penalties now or hereafter to be imposed by law, be forever disqualified to hold any office of profit or trust, or to vote at any election thereafter. But the General Assembly may in its discretion remove the above penalty and all other penalties upon the vote seller so as to place the penalties for the purchase of votes on the vote buyer alone (*originally Article I, sec. 3, thus renumbered by Chapter 681, Acts of 1977, ratified Nov. 7, 1978. As sec. 3, it was amended by Chapter 602, Acts of 1912, ratified Nov. 4, 1913*).

SEC. 7. The General Assembly shall pass Laws necessary for the preservation of the purity of Elections (*transferred from Article III, sec. 42, by Chapter 681, Acts of 1977, ratified Nov. 7, 1978. Previous sec. 7 renumbered as Art. I, sec. 11, by same act and ratification*).

SEC. 8. The General Assembly, shall make provisions for all cases of contested elections of any of the officers, not herein provided for (*transferred from Article III, sec. 47, by Chapter 681, Acts of 1977, ratified Nov. 7, 1978*).

SEC. 9. Every person elected, or appointed, to any office of profit or trust, under this Constitution, or under the Laws, made pursuant thereto, shall, before he enters upon the duties of such office, take and subscribe the following oath, or affirmation: I, _____, do swear, (or affirm, as the case may be,) that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the Constitution and Laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of _____, according to the Constitution and Laws of this State, (and, if a Governor, Senator, Member of the House of Delegates, or Judge,) that I will not directly or indirectly, receive the profits or any part of the profits of any other office during the term of my acting as _____ (*originally Article I, sec. 6, renumbered by Chapter 681, Acts of 1977, ratified Nov. 7, 1978*).

SEC. 10. Any officer elected or appointed in pursuance of the provisions of this Constitution, may qualify, either according to the existing provisions of law, in relation to officers under the present Constitution, or before the Governor of the State, or before any Clerk of any Court of Record in any part of the State; but in case an officer shall qualify out of the County in which he resides, an official copy of his oath shall be filed and recorded in the Clerk's office of the Circuit Court of the County in which he may reside, or in the Clerk's office of the Superior Court of the City of Baltimore, if he shall reside therein. All words or phrases, used in creating public offices and positions under the Constitution and laws of this State, which denote the masculine gender shall be construed to include the feminine gender, unless the contrary intention is specifically expressed (*transferred from Article XV, sec. 10, by Chapter 681, Acts of 1977, ratified Nov. 7, 1978. As Art. XV, sec. 10, it was amended by Chapter 275, Acts of 1922, ratified Nov. 7, 1922*).

SEC. 11. Every person, hereafter elected, or appointed, to office, in this State, who shall refuse, or neglect, to take the oath, or affirmation of office, provided for in the ninth section of this Article, shall be considered as having refused to accept the said office; and a new election, or appointment, shall be made, as in case of refusal to accept, or resignation of an office; and any person violating said oath, shall, on conviction thereof, in a Court of Law, in addition to the penalties now, or hereafter, to be imposed by Law, be thereafter incapable of holding any office of profit or

trust in this State (*originally Article I, sec. 7. Thus renumbered and amended by Chapter 681, Acts of 1977, ratified Nov. 7, 1978*).

SEC. 12. Except as otherwise specifically provided herein, a person is ineligible to enter upon the duties of, or to continue to serve in, an elective office created by or pursuant to the provisions of this Constitution if the person was not a registered voter in this State on the date of the person's election or appointment to that term or if, at any time thereafter and prior to completion of the term, the person ceases to be a registered voter(*added by Chapter 788, Acts of 1984, ratified Nov. 6, 1984*).

2013 Maryland Code

COURTS AND JUDICIAL PROCEEDINGS

§ 2-104 - Oaths or affirmations

Universal Citation: MD Cts & Jud Pro Code § 2-104 (2013)

§2-104.

(a) Every auditor, clerk, **sheriff**, constable, commissioner, surveyor, or other officer **before** he assumes the duties of his office, shall take and sign the oath or affirmation prescribed by the Constitution.

(b) Except as provided in subsection (d) of this section, **every** deputy clerk or **sheriff** shall take and subscribe the following oath or affirmation: "I, A.B., do swear (or affirm) that I will not for lucre or malice delay any person applying to me for any business belonging to the office I officiate in, and that I will not directly or indirectly ask, take, exact, demand, or receive from or

charge to any such person to my own use any fee or reward whatsoever for any services I may do as deputy of the said office, and that in making out the office fees I will not wittingly or willingly charge other or higher fees than are allowed by law.”

(c) (1) In addition to the oath or affirmation required under subsection (b) of this section, in St. Mary’s County, every deputy sheriff shall take and subscribe the following oath or affirmation: “I, A.B., do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America and to the State of Maryland; that I will serve honestly and faithfully to uphold and defend the Constitution of the United States and the Constitution of Maryland; that I will enforce the laws of St. Mary’s County, and the State of Maryland; and that I will obey the orders of the Sheriff and of my superior officers according to the rules and regulations of the Sheriff’s Office, St. Mary’s County and the State of Maryland.”

(2) In addition to the oath or affirmation required under subsection (b) of this section, in Charles County, every deputy sheriff shall take and subscribe the following oath or affirmation: “I, A.B., do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America and to the State of Maryland; that I will serve honestly and faithfully to uphold and defend the Constitution of the United States and the Constitution of Maryland; that I will enforce the laws of Charles County, and the State of Maryland; and that I will obey the

orders of the Sheriff and of my superior officers according to the rules and regulations of the Sheriff's Office, Charles County and the State of Maryland.”

(d) In Montgomery County and Washington County, every deputy clerk or deputy sheriff shall take and sign the oath or affirmation prescribed by Article I, § 9 of the Maryland Constitution.

(e) (1) Except as authorized by Article I, § 10 of the Maryland Constitution, every officer, except the clerk of the circuit court of a county or an appellate court, shall take the oath before the clerk of the circuit court.

(2) Except as provided in Article I, § 10 of the Maryland Constitution, the clerk of a circuit court shall take the oath before a judge of the court.

(3) The clerk of an appellate court shall take the oath before the Governor.

2013 Maryland Code COURTS AND JUDICIAL PROCEEDINGS § 2-105 - Bond

Universal Citation: MD Cts & Jud Pro Code § 2-105 (2013)

§2-105.

(a) Each of the following officers, before he assumes the duties of his office, shall be covered by a bond for the faithful performance of the duties of his office:

(1) Clerk of any court;

(2) Commissioner; or

(3) Sheriff.

(b) Each bond, except a sheriff's bond, shall be in a penalty prescribed by the Comptroller. The Comptroller may increase or decrease the amount of a bond at any time.

(c) The sheriff of a county shall give a bond in the penalty of \$10,000, except that in Allegany, Charles, Frederick, Prince George's, and Washington counties and Baltimore City the penalty is \$25,000.

(d) Every officer's bond except a blanket bond shall have a surety who is approved by a judge of the court. A blanket bond shall have a corporate surety approved by the Comptroller.

(e) The premiums for the bonds of District Court officers shall be paid by the State. The premiums on the bonds of any other officer shall be allowed as expenses of the office.

(f) An officer's bond shall remain in effect during his tenure in office.

2013 Maryland Code COURTS AND JUDICIAL PROCEEDINGS § 2-106 - Failure to qualify for office

Universal Citation: MD Cts & Jud Pro Code § 2-106 (2013)

§2-106.

(a) A person who is required to take an oath under § 2-104 of this subtitle or to file a bond under § 2-105 of this subtitle but who fails to qualify for office by taking and subscribing the required oath or affirmation or giving the required bond within 30 days from the date his commission is received by the clerk, or if no commission is sent to the clerk, within 30 days after receiving his commission or notice of appointment, is deemed to have refused the office, and the office shall be considered vacant, unless the time is extended by the court for good cause shown.

(b) A clerk of a circuit court for a county who fails to execute the required bond may not receive fees or compensation. A clerk who violates this subsection is subject to a penalty of \$1,000.

Mr. Fitzgerald is also illegally claiming the Homestead Tax credit on his home in Ocean Pines in Worcester County. The law states you can only claim this tax credit on your principle residence. If this is his principle residence and not a resident of

Howard County, this would also make him ineligible to hold the office of Sheriff of Howard County. If he lied on his application, the application stated that untruthful responses on the application are considered perjury and punishable by fine and/or imprisonment. I have included the documents showing that he claimed this tax credit.

You should be the rightful Sheriff as Mr. Fitzgerald has not taken the oath of office and should vacate the office in accordance with Maryland law.

Search Result for WORCESTER COUNTY

View Map		View GroundRent Redemption			View GroundRent Registration					
Account Identifier:		District - 10 Account Number - 385776								
Owner Information										
Owner Name:		FITZGERALD JAMES FRANCIS & FITZGERALD LORRAINE MARIE			Use:		RESIDENTIAL			
Mailing Address:		12715 WHISPER TRACE DR OCEAN CITY MD 21842-8826			Principal Residence:		YES			
					Deed Reference:		/03882/ 00339			
Location & Structure Information										
Premises Address:		12715 WHISPER TRACE DR WEST OCEAN CITY 21842-0000			Legal Description:		LOT 156 12123 SQ FT WHISPER TRACE DR OYSTER HARBOR SEC 4			
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	168033
0022	0019	0408		1117	4		156	2014		Plat Ref:
Special Tax Areas:					Town:		NONE			
					Ad Valorem:					
					Tax Class:					
Primary Structure Built		Above Grade Enclosed Area		Finished Basement Area		Property Land Area		County Use		
2003		2,691 SF				12,123 SF		000000		
Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation				
1 1/2	NO	STANDARD UNIT	SIDING	4 full/ 1 half	1 Attached					
Value Information										
		Base Value		Value As of 01/01/2014		Phase-in Assessments As of 07/01/2015		As of 07/01/2016		
Land:		88,000		88,000						
Improvements		255,200		235,700						
Total:		343,200		323,700		323,700		323,700		
Preferential Land:		0						0		
Transfer Information										
Seller: WEST OCEAN CITY				Date: 09/26/2003		Price: \$352,555				
Type: ARMS LENGTH IMPROVED				Deed1: SVH /03882/ 00339		Deed2:				
Seller:				Date:		Price:				
Type:				Deed1:		Deed2:				
Seller:				Date:		Price:				
Type:				Deed1:		Deed2:				
Exemption Information										
Partial Exempt Assessments:		Class		07/01/2015		07/01/2016				
County:		000		0.00		0.00				
State:		000		0.00		0.00				
Municipal:		000		0.00 0.00		0.00 0.00				
Tax Exempt:				Special Tax Recapture:						
Exempt Class:				NONE						
Homestead Application Information										
Homestead Application Status: Approved 07/23/2008										

APPLICATION FOR HOMESTEAD TAX CREDIT ELIGIBILITY

- The Homestead Tax Credit law limits the amount of assessment increase on which eligible resident homeowners actually pay county, municipal, and State property taxes each year. **This credit can have a significant impact on your real estate taxes regardless of your property's value or your income level. If the property is used as your principal residence, you are strongly encouraged to complete this application.**
- The reason why this application is required is to verify that the property owners only receive the benefit of this credit on their **one principal residence**. It also insures that other homeowners entitled to the credit but not receiving it can also start to receive this benefit.
- A married couple may only have one principal residence under the provisions of this law. A homeowner who submits an application that is inconsistent with income tax and motor vehicle records of the State shall be required to later submit additional verification in order to be considered for the credit.
- If you have a specific question concerning the application, you may telephone 410-767-2165 in the Baltimore metropolitan area or on 1-866-650-8783 toll free elsewhere in Maryland.
- This application can be filled out on your pc; if hand written please print legibly.

Section I

1. **SDAT Real Property Tax Identification Number of the property for which Homestead Eligibility is requested.**

INSTRUCTIONS: You must fill-in the property identification number in order to submit this application. The identification number is composed of the two digit county code where the property is located, followed by an account number of up to 14 characters in length. This information can be obtained from an assessment notice or by searching the Department's online Real Property database. If using the online system, the account number displayed must be preceded by the appropriate two digit county code listed below. **If you do not have the identification number click here to search the Real Property database.**

Allegany - 01	Calvert - 05	Charles - 09	Harford - 13	Prince George's - 17	Talbot - 21
Anne Arundel - 02	Caroline - 06	Dorchester - 10	Howard - 14	Queen Anne's - 18	Washington - 22
Baltimore City - 03	Carroll - 07	Frederick - 11	Kent - 15	St. Mary's - 19	Wicomico - 23
Baltimore Co. - 04	Cecil - 08	Garrett - 12	Montgomery - 16	Somerset - 20	Worcester - 24

County Code (From above)

Identification Number (up to 14 digits)

Co. Code 03	Ward	Section	Block	Lot
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For Baltimore City Only

2. **Address of the Property for which Application is being made:**

Street Address

City

MD

Zip code

YOU MUST ANSWER ALL QUESTIONS AND INCLUDE THE SOCIAL SECURITY NUMBER OF ALL HOMEOWNER(S).
A homeowner is defined as any living person listed on the deed.

1. Is the real property shown on this letter currently used, and expected to be used in the next calendar year as the single principal residence of the homeowner(s)? Yes No
2. Is this real property address the location where the homeowner(s) expect to file their next federal and Maryland income tax return if one is filed? Yes No Not applicable (Not Filing)
3. Is this real property address the location from which the homeowner(s) have received a driver's license or requested automobile licenses or vehicle registrations, if applicable?
 Yes No Not applicable (No License or Vehicle Registration)
4. Is this real property address the location from which the homeowner(s) are registered to vote, if registered?
 Yes No Not applicable (Not Registered)
5. Is any portion of the principal residence rented? Yes No

All owners must also complete the section below. If there are, more than four (4) owners complete this application and attach a separate sheet listing the names and Social Security numbers of the additional owners before mailing.

Printed Name of Homeowner (First Name, Middle Initial, Last, Suffix)

Social Security Number

Printed Name of Homeowner (First Name, Middle Initial, Last, Suffix)

Social Security Number

Printed Name of Homeowner (First Name, Middle Initial, Last, Suffix)

Social Security Number

Printed Name of Homeowner (First Name, Middle Initial, Last, Suffix)

Social Security Number

In submitting this application I hereby declare under the penalties of perjury, pursuant to Tax-Property Article, 1-201, Annotated Code of Maryland, that the application has been examined by me and the information contained herein, to the best of my knowledge and belief is true, correct and complete and that this property is my principal residence for the prescribed period. I understand that the Department may independently verify the above information by contacting, including but not limited to, the Internal Revenue Service, the Maryland Comptroller's Office and the Motor Vehicle Administration.

Homeowner's Signature

Spouse or Co-Owner's Signature

Date

Telephone Number (Daytime)

**Mail completed application to: Department of Assessments and Taxation
Homestead Tax Credit Division
301 West Preston Street, 8th Floor
Baltimore MD 21201**

PENALTIES FOR PERJURY

A person who willfully or with intent to evade payment of a tax under this Article provides false information or a false answer to a property tax interrogatory/ application is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$5,000 or imprisonment not exceeding 18 months or both. Tax-Property Article, § 14-1004. For example, it is willful intent for a homeowner to indicate a property is his or her principal residence when the property is used for another purpose, such as a rental or a vacation home.

PRIVACY AND STATE DATA SECURITY NOTICE

The principal purpose for which this information is sought is to determine your eligibility for a tax credit. Failure to provide this information will result in a denial of your application. Some of the information requested would be considered a "Personal Record" as defined in State Government Article, § 10-624. Consequently, you have the statutory right to inspect your file and to file a written request to correct or amend any information you believe to be inaccurate or incomplete. Additionally, it is unlawful for any officer or employee of the state or any political subdivision to divulge any income particulars set forth in the application or any tax return filed except in accordance with a judicial or legislative order. However, this information is available to officers of the state, county or municipality in their official capacity and to taxing officials of any other state, or the federal government, as provided by statute.

Exhibit 2

March 28, 2016

From: John McMahon

To: Wayne Robey, Clerk of the Howard County Circuit Court

Dear Mr. Robey,

Pursuant to CTS. & JUD. PROC. ART. § 2-212(c)(1), please provide me with a certificate, under the seal of the clerk's office, of the qualification of the current Howard County Sheriff, if any, based on who has taken the oath of office before the clerk, or, whose oath of office is recorded in the clerk's office.

Enclosed with this request is \$ 1 for issuing a certificate under seal of the qualifications of the Howard County Sheriff as required by CTS. & JUD. PROC. ART. § 2-212(c)(2).

For your convenience, I have appended a copy of CTS. & JUD. PROC. ART. § 2-212.

Sincerely,



John McMahon

MARYLAND COURTS AND JUDICIAL PROCEEDINGS ARTICLE § 2-212. Public officers --
Oaths

(a) Report. -- At least once a month, the clerk of a circuit court shall report to the Secretary of State the name and office of each officer who has taken, before the clerk, the oath required by the Constitution or another law.



CIRCUIT COURT FOR HOWARD COUNTY

8360 COURT AVENUE

ELLICOTT CITY, MD 21043-4579

410-313-2111

<http://www.mdcourts.gov/clerks/howard/index.html>



WAYNE A. ROBEY, CLERK

License Department
410-313-5850

Civil Department
410-313-3844

Criminal Department
410-313-3822

Juvenile Department
410-313-3827

Exhibit 3

March 28, 2016

Mr. John McMahon,

Dear Sir,

You have inquired about the Oath of Office for the Howard County Sheriff. Please be advised that the last Oath of Office administered to the Howard County Sheriff was dated December 14, 2010.

Very truly yours,

Wayne A. Robey

John F. McMahon v. WAYNE ROBESY, *et al.*

Joint Record Extract

4.

PLAINTIFF AFFIDAVIT

(07/12/16) (R 90–92)

E044–E046