In The

# Appellate Court of Maryland

**No. 1812, September Term, 2024**
**ACM-REG-1812-2024**

## THE METHODIST CHURCH OF CAPE ST. CLAIRE, ET AL.

*Appellants*

v.

## THE BALTIMORE WASHINGTON CONFERENCE OF THE UNITED METHODIST CHURCH, INC., ET AL.

*Appellees*

*Appeal from the Circuit Court for Anne Arundel County, Maryland*
*Case No. C-02-CV-23-000500*
*(Hon. Michael E. Malone, Judge)*

# APPELLEES' BRIEF


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## STATEMENT OF THE CASE

Plaintiffs/Appellants are thirty-seven local United Methodist churches that conduct ministry under the ecclesiastical jurisdiction of the Baltimore-Washington Conference ("Conference") of The United Methodist Church ("UMC"), who maintain that UMC strayed from traditional religious doctrine on human sexuality issues. The present appeal arises out of the summary judgment dismissal, on both ecclesiastical abstention and substantive grounds, of Plaintiffs/Appellants' suit against UMC and its Bishop, LaTrelle Easterling (collectively "Appellees"), seeking a court order that authorizes them to "disaffiliate" from the UMC in a manner that enables them to retain the church's property, free and clear, despite the fact that such property is held in trust for the benefit of UMC.

These express trust provisions are central to the UMC faith. They have been included in the UMC foundational text, *The Book of Discipline of The United Methodist Church* ("*Discipline*"), since the late 1700s, codified in Md. Code Ann., *Corp. & Ass'ns* § 5-326, and set forth in various Appellant deeds, articles of incorporation, and/or bylaws. This action is a broadside against this fundamental organizational structure of the UMC.

Appellants' First Amended Complaint asserts that the Conference's Board of Trustees wrongfully blocked Appellants' ability to "disaffiliate" pursuant to the time-limited (now-expired) provisions of *Discipline* ¶ 2553 by requiring all disaffiliating churches desiring to retain their church property to make a payment equal to 50% of the assessed value of such property (the "50% Payment Requirement"). Despite the Conference's willingness to accept only half the assessed value, Appellants allege that "longstanding church law—embodied in provisions such as ¶ 2548.2 and ¶ 2549 of the

[*Discipline*]" permit them to retain their property, and that the Conference "depart[ed] from the text" of ¶ 2553 and was otherwise "unauthorized" by the *Discipline*.

The First Amended Complaint alleges ten counts. These include claims for declaratory judgment and judicial modification of the trusts, breach of contract, quantum meruit, unjust enrichment, promissory estoppel, and quiet title. They also include claims for constructive fraud, breach of fiduciary duty and quantum meruit, based on alternative allegations regarding the Conference's clergy pension fund liabilities, essentially alleging that if the 50% Payment Requirement was necessary, it must mean that clergy pension liabilities were underfunded.

Appellees filed a motion to dismiss based on for lack of subject-matter jurisdiction under the ecclesiastical abstention doctrine. Ruling on the pleadings, the circuit court (Vitale, J.) dismissed some counts on this basis, but not others, by Memorandum Opinion and Order dated December 29, 2023. After discovery, Appellees filed motion for summary judgement, later amended. Prior to ruling, the circuit court (Malone, J.) denied Appellants' Motion for Disqualification on June 6, 2024. The summary judgment motion was argued on July 1, 2024, and by Memorandum Opinion and Order dated October 11, 2024, the circuit court dismissed the balance of the First Amended Complaint in a blend of subject matter jurisdiction (ecclesiastical abstention) and substantive grounds.

Contrary to Appellants' Statement of the Case, Judge Malone's decision on the motion for summary judgment did not express any "disagree[ment]" with the prior ruling of Judge Vitale in ruling on Appellees' motion to dismiss. Rather, the motions were at different stages of the proceeding, one with a discovery record and one without.

Appellants' Statement of the Case appears to suggest the motion for summary judgment rests entirely on the ecclesiastical abstention doctrine. In fact, certain counts were instead (or alternatively) dismissed on their merits.

Appellants' appeal does not challenge Judge Vitale's December 29, 2023 order, dismissing aspects of the First Amended Complaint. Appellants' appeal also does not appear to challenge Judge Malone's October 11, 2024 summary judgment order, to the extent that it is based on the merits. Rather, Appellants' appeal challenges the ecclesiastical abstention rulings in Judge Malone's October 11, 2024 order, as well as Judge Malone's June 6, 2024 order denying Appellants' motion to disqualify. Appellants also appear to assert on appeal that their constitutional rights were violated, though no such claim was made in the circuit court below.

Appellees maintain that all assignments of error lack merit. The order granting summary judgment should be affirmed in full.

## QUESTIONS PRESENTED

1. Did the trial court err in dismissing claims challenging the consistency of Conference disaffiliation procedures with the UMC's central governing document for lack of subject-matter jurisdiction?

2. Did the trial court err in dismissing claims based on the Conference's alleged mismanagement of clergy pension funds for lack of subject-matter jurisdiction?

3. Did the trial court err in granting summary judgment to Appellees on Appellants' claims for constructive fraud and breach of fiduciary duty based a lack of evidence to create a genuine dispute of fact on refuted allegations that Appellees made false

statements regarding clergy pension fund liabilities, or had mismanaged clergy pension funds or otherwise mismanaged the Conference's finances?

4. Did the trial court err in finding a lack of genuine factual dispute and entering summary judgment for Appellees on claims that sought to terminate or modify the irrevocable trust over local church property?

5. Did the law of the case doctrine require the trial court to adhere to its previous rulings on subject-matter jurisdiction?

6. Did the trial judge err in declining to recuse himself based on his and his family's membership in non-party local churches affiliated with the UMC?

7. Should the Appellate Court exercise its discretion to hear several arguments raised by Appellants for the first time on appeal whose resolution would not facilitate adjudication of Appellants' claims on remand?

## STATEMENT OF FACTS

### A. Background

1. The Plaintiffs are 37 local United Methodist churches affiliated with the Conference. The Baltimore-Washington Conference is an "annual conference" that governs all United Methodist congregations in a geographical region that includes most of Maryland, the District of Columbia, and the eastern panhandle of West Virginia. Bishop LaTrelle Easterling is the Conference's presiding bishop.

2. The General Conference is the supreme legislative body of the UMC, and the legislation it enacts, as published in the *Discipline* binds all UMC annual conferences and local churches. **(Apx.0078)**[1]

3. The Judicial Council is the highest church court in the United Methodist denomination, and its rulings on church law bind all United Methodists. **(Apx.0078)**

4. *Discipline* ¶ 2501.1 provides that "[a]ll properties" of UMC local churches "are held, in trust, for the benefit of the entire denomination, and ownership and usage of church property is subject to the *Discipline*." **(Apx.1429)** The trust requirement is a "fundamental expression of United Methodism" that "reflects the connectional structure of the Church" by ensuring that local church property is used "solely for purposes consonant with the mission of the entire denomination as set forth in the *Discipline*." **(*Id.*)** It is an "essential element of the historic polity" of the UMC and its predecessor denominations that has been part of the *Discipline* "since 1797." **(*Id.*)**[2]

5. *Discipline* ¶ 2501.2 provides that the denominational trust "is and always has been irrevocable" and that "[p]roperty can be released from the trust . . . only to the extent authority is given by the Discipline." **(Apx.1429)**

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[1] Appellees have filed with this Brief a five-volume Appendix containing parts of the record that Appellants did not include in the Record Extract. The reasons for the additional parts are set forth in Appellees' Rule 8-501(e) Statement, which can be found at the front of Volume 1 of the Appendix.

[2] As previously noted, Md. Code, Corp. & Ass'ns § 5-326 accommodates Methodist polity by formally recognizing that, notwithstanding the rules that may apply to religious corporations generally, "[a]ll assets owned by any Methodist Church . . . [s]hall be held by the trustees of the church in trust for the United Methodist Church" and are "subject to the discipline" as "declared by the general conference[.]"

6. *Discipline* ¶ 2503 requires the inclusion of specific trust language in all deeds to real property a local church owns. **(Apx.1430)**

7. *Discipline* ¶ 2503.6 makes clear that a local church's trust obligation attaches even if an express trust clause is not included in the church's deeds, so long as the local church manifested an intention to affiliate with the UMC, such as by using its "name, customs, and polity" or accepting the pastorate of ministers employed by an annual conference.[3] **(Apx.1431-32)**

8. As UMC local churches, Appellants' real property is held in trust for the benefit of the denomination pursuant to the foregoing provisions.

9. Prior to 2019, there was no mechanism in the Discipline that allowed a UMC local church to choose to disaffiliate from the denomination and retain the church property free and clear of the denominational trust. **(Apx.0079)** If a local church purported to sever its connection with the UMC, it would be subject to "closure" by the governing annual conference, and title to its assets would pass to that conference. **(Apx.0080)**

**B. *Discipline* Paragraph 2553**

10. In February 2019, the General Conference enacted *Discipline* ¶ 2553, providing local churches for the first time with a time-limited opportunity to disaffiliate and retain their property free and clear of the trust in the denomination's favor. **(Apx.0079)**[4]

[3] The Maryland Code likewise echoes this aspect of United Methodist Church governance. *See* Md. Code, Corp. & Ass'ns § 5-327.

[4] Paragraph 2553 was set by its own terms to expire, and did indeed expire, on December 31, 2023. **(Apx.1599)**

11. *Discipline* ¶ 2553.4 provided that a disaffiliation under that paragraph was available only if satisfied both (a) all prerequisites imposed directly by the General Conference, and (b) any additional "terms and conditions for that disaffiliation [as] shall be established by the board of trustees of the applicable annual conference," as well as any "additional standard terms" the annual conference might apply to all disaffiliating congregations. **(Apx.1599)**

12. The General Conference's own prerequisites on local church disaffiliation under ¶ 2553 included requiring disaffiliating churches to pay an amount equal to "any unpaid apportionments for the 12 months prior to disaffiliation, as well as an additional 12 months of apportionments." **(Apx.1600)** Additionally, a disaffiliating church had to pay a pension "withdrawal liability" contribution "in an amount equal to [the local church's] pro rata share of any aggregate unfunded pension obligations" ascribed to its governing annual conference by the denomination's General Board of Pension and Health Benefits (a/k/a Wespath). **(*Id.*)** The General Conference instructed Wespath to calculate the aggregate funding obligations of an annual conference "using market factors similar to a commercial annuity provider, from which the annual conference will determine the local church's share." **(*Id.*)**

13. The only limitation the General Conference imposed on the annual conference trustee board's authority to establish "additional standard terms" for disaffiliation was that the terms had to be "not inconsistent" with those mandated directly by the General Conference. **(Apx.1599)**

14. Exercising its authority to impose "additional standard terms" on local church disaffiliations, the Conference's Trustees adopted and applied its the previously mentioned 50% Payment Requirement to all local churches that opted to pursue disaffiliation under ¶ 255. **(Apx.0081)**

15. The Judicial Council has decided several cases that challenged an annual conference trustee board's decision to require disaffiliating local churches to make payments over and above the General Conference-mandated apportionment and pension withdrawal liability payments. In every case, the Judicial Council upheld the conference trustees' authority to require additional payments, explaining that *Discipline* ¶ 2553.4 "express[es] the intent of General Conference to delegate to the Conference Board of Trustees the exclusive authority in establishing the terms and conditions of a local church's departure from The United Methodist Church." **(Apx.0081-85)**

16. During any of the annual sessions of the Baltimore-Washington Conference that followed promulgation of the 50% Payment Requirement, any clergy or lay member representing any of the Appellant churches were free to seek a ruling of church law from Bishop Easterling on whether that requirement was or was not "inconsistent" with the ¶ 2553 or otherwise violated the *Discipline*. And any ruling the bishop made in response would have been automatically reviewed by the Judicial Council. **(Apx.0085-86)**

17. No Appellant, nor anyone else attending any of the Conference's annual sessions, sought such ruling from Bishop Easterling on the validity of the 50% Payment Requirement. Instead, Appellants sought a ruling of civil law in Maryland state court.

## C. Circuit Court Proceedings

18. Appellants filed their original Complaint on March 13, 2023. **(E.001)**, and their Amended Complaint on May 19, 2023.

19. Appellants' core allegations challenged the 50% Payment Requirement as "inconsistent" with ¶ 2553 **(E.078-79)**, and charged Appellees (Defendants below) with violating contractual and fiduciary obligations purportedly owed to Appellants by enacting it.[5]

20. Appellants also alleged that Appellees falsely represented that its the Conference's clergy pension liabilities were underfunded, alleging giving the Conference no basis for receiving a pension withdrawal liability payment. **(E.085)** Appellants alleged in the alternative that, to the extent there was a funding deficit, it was the result of "grossly negligent financial mismanagement" of the pension funds or other assets, which Appellants theorize (without evidence) was the "true" justification for imposing the 50% Payment Requirement. **(*Id.*)**

21. Appellants asserted ten counts based on these allegations: declaratory judgment, judicial modification of trust, constructive fraud, breach of fiduciary duty,

[5] Although not an Appellee here, the Board of Trustees of the BWC was named as a defendant in the Amended Complaint. **(E.076)** The Board was dismissed from the case pursuant to Judge Vitale's order dated December 29, 2023. **(E.126)**

demand for an accounting, quantum meruit, unjust enrichment, promissory estoppel, breach of contract, and quiet title. **(E.088-102)**[6]

22. On June 21, 2023, Appellees filed a motion to dismiss all counts, arguing primarily that the trial court lacked subject-matter jurisdiction over any part of the parties' inherently ecclesiastical dispute.

23. On December 29, 2023, the circuit court (Judge Kathleen Vitale) entered an order dismissing Appellants' Claim II (judicial modification of trust), Claim VI (quantum meruit), (Claim VII) unjust enrichment, and (Claim VIII) promissory estoppel, all for lack of subject-matter jurisdiction pursuant to the ecclesiastical abstention doctrine. **(E.114-19)** Judge Vitale allowed the related financial mismanagement claims—fraud (III), breach of fiduciary duty (IV), and accounting (V)—to proceed. While acknowledging that "these allegations may [ultimately] collapse under the weight of greater evidence," the court was unable to conclude based on pleadings alone that moving forward on those claims fell "clearly outside of the Court's ability to decide by applying secular and neutral principles of law. Judge Vitale allowed Cape St. Claire's quiet title claim to proceed. **(E.116-19)**[7] She

[6] Counts I-IX were asserted by all Appellants. Count X for quiet title was asserted only by The Methodist Church of Cape St. Claire ("Cape St. Claire"). **(E.102)**

[7] Appellees voluntarily dismissed their demand for accounting claim on August 21, 2024 pursuant to a stipulation of dismissal. **(E.059)** That claim is not at issue in this appeal.

dismissed the declaratory judgment claim as to all Appellants except the five whose church property is located in Anne Arundel County. **(E.121-22)**[8]

24. The case was specially assigned to Judge Michael Malone for all purposes on February 16, 2024. **(E.045)** On April 23, the parties attended a Status Conference at which Judge Malone disclosed that he and members of his family are parishioners of local churches affiliated with the BWC, none of which are party to this action. **(E.151-54)** Judge Malone expressed his belief that he could remain impartial and fairly adjudicate the case. **(E.152)**

25. On May 1, Appellants filed a Motion for Disqualification of Judge Malone, claiming they were "doubtful that Judge Malone could separate his personal interests in his local church from his professional obligations" as a judge. **(E.168)** Appellants asked Judge Malone to recuse himself and for the Circuit Court to assign a new judge who was not a member of a UMC local church.

26. Judge Malone denied the motion for his recusal by order dated June 6, 2024. **(E.170)** Appellees moved for summary judgment, renewing their argument for dismissal of all counts pursuant to the ecclesiastical abstention doctrine. **(Apx.0032)** Appellees also argued that they were entitled to judgment as a matter of law on all remaining counts because Appellants had adduced no evidence to substantiate their claims that Appellees had

[8] Appellants' brief does not challenge any aspect of Judge Vitale's ruling on Appellees' preliminary motion to dismiss.

made any false representations regarding unfunded pension liabilities or had mismanaged the conference pension fund. **(Apx.0052)**

27. On October 11, 2024, Judge Malone entered an Order **(Apx.3278)** and accompanying Memorandum Opinion **(E.171)** granting Appellees' motion for summary judgment and dismissing all remaining claims. Judge Malone found that all remaining claims either required the Court to adjudicate matters of church doctrine or governance, and were therefore beyond its subject-matter jurisdiction, and/or lacked a genuine factual dispute and could not survive summary judgment. Specifically:

a. No genuine dispute of material fact existed regarding Appellants' claim for a declaratory judgment that the denominational trust had terminated or become revocable due to changed circumstances, as the *Discipline* plainly provided that the trust "is and always has been irrevocable[.]" **(E.179-81)** The same was true for Cape St. Claire's claim for quiet title, which also was premised on demonstrably incorrect assertions that the irrevocable trust had terminated or become revocable. **(E.185)**

b. The ecclesiastical abstention doctrine barred Appellants' claims that Appellees falsely represented that the clergy pension fund had unfunded liabilities or, in the alternative, that Appellees mismanaged that fund. These claims "require[] judicial examination of the [Conference]'s management, from which civil courts should abstain." **(E.181-82)** Furthermore, there was no evidence to support these

claims, and Appellees adduced unrefuted evidence that disproved them. **(E.182-83)**

c. The ecclesiastical abstention doctrine barred Appellants' claims for breach of contract and fiduciary duty challenging the 50% Payment Requirement, because those claims required the trial court to usurp the role of the UMC Judicial Council and interpret the *Discipline* to evaluate the validity of annual conference disaffiliation procedures. **(E.183-85)**

28. On November 8, 2024, Appellants appealed to this Court the order granting summary judgment, as well as Judge Malone's order denying Appellants' motion for his recusal. **(Apx.3279)**

## STANDARD OF REVIEW

In deciding a motion for summary judgment, the circuit court must determine "1) whether there is a genuine dispute of material fact and 2) if not, whether the moving party is entitled to summary judgment as a matter of law." *Dett v. State*, 161 Md. App. 429, 440 (2005). "Because the decision to grant summary judgment is purely legal," the Appellate Court must "review it *de novo*" and determine for itself "whether the record on summary judgment presented a genuine dispute of material fact, and if not, whether the moving party was entitled to summary judgment as a matter of law." *Id.* at 441.

A trial judge's decision whether or not to recuse himself is reviewed under the abuse of discretion standard. *Sibley v. Doe*, 227 Md. App. 645, 658 (2016). An abuse of discretion occurs only "where no reasonable person would take the view adopted by the [trial] court[]

. . . or when the court acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the court[.]" *Id.* (alterations in original) (quoting *Bacon v. Arey*, 203 Md. App. 606, 667 (2012)).[9]

## ARGUMENT

### I. THE TRIAL COURT PROPERLY DISMISSED CLAIMS CHALLENGING THE BALTIMORE-WASHINGTON CONFERENCE'S DISAFFILIATION TERMS FOR LACK OF SUBJECT-MATTER JURISDICTION.

#### A. The Trial Court Correctly Determined that Appellants' Challenge to the Baltimore-Washington Conference's Authority to Enact the 50% Payment Requirement Would Have Impermissibly Entangled the Court in an Ecclesiastical Controversy.

Under the Establishment and Free Exercise clauses of the First Amendment, civil courts must remain completely free from "entanglement in questions of religious doctrine, polity, and practice." *Jones v. Wolf*, 443 U.S. 595, 603 (1979). As such, civil courts have no authority to second-guess ecclesiastical decisions made by hierarchical church bodies. *Downs v. Roman Cath. Archbishop of Balt.*, 111 Md. App. 616, 621 (1996).

> In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

[9] Appellants recite a "mixed standard for constitutional issues" (App. Br. 6), but the case they cite for that proposition addresses the standard of review for challenges to decisions on motions to suppress evidence under the Fourth Amendment. *State v. Andrews*, 227 Md. App. 350 (2016). This standard has no application to the case at hand.

*Id.* If resolution of a dispute involves matters of church doctrine or governance, or consideration of ecclesiastical decisions made by a church body, the matter falls outside of the civil court's jurisdiction. *Id.* at 622. A civil court may hear claims involving religious issues only if the case can be resolved through "neutral principles of law" that do not require consideration of doctrinal matters. *Jones*, 443 U.S. at 603.

The U.S. Supreme Court has held that the Establishment Clause of the First Amendment "severely circumscribes the role that civil courts may play in resolving church property disputes." *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church,* 393 U.S. 440, 449 (1969) ("*Blue Hull*"). Therefore, courts must refrain from deciding such cases when their resolution turns on "religious doctrine and practice." *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710 (1976) (quoting *Blue Hull,* 393 U.S. at 449).

As Judge Malone concluded, neutral principles of secular law are incapable of determining whether the Conference breached a fiduciary duty in enacting this term of disaffiliation. **(E.183)** And determining whether the 50% Payment Requirement is "consistent" with *Discipline* ¶ 2553 or exceeded the standard terms of disaffiliation established by the General Conference would require the trial court to interpret the *Discipline* (a fundamentally ecclesiastical document) and resolve questions of church law. The Religion Clauses, as interpreted by this Court and the U.S. Supreme Court, plainly prohibit the civil judiciary from performing that exercise. Only the UMC Judicial Council,

whose review Appellants did not seek, can address these doctrinal questions.[10] As Judge Malone cogently explained:

> Here, resolution of what is "inconsistent with the terms of the Discipline" is a question of church governance. . . . [T]he UMC has the Judicial Council to interpret the Discipline, and other laws, and ecclesiastical rulings of the UMC. This Court should not delve into resolving issues of what is inconsistent or consistent with the governing law of the UMC. . . . The Court finds that there is no neutral principle by which it can determine what is consistent or inconsistent with the Discipline without referencing and analyzing the Discipline, church polity, and doctrine as a whole. A ruling from this Court would unconstitutionally strip the [UMC] of their First Amendment protections to run their organization by their system of governance and rules.

**(E.184-85)**

This sound reasoning aligns with multiple state supreme court holdings that questions of local church rights under ¶ 2553 are ecclesiastical concerns that the civil judiciary cannot address. In *Oklahoma Annual Conference of the UMC v. Timmons*, 538 P.3d 170 (Okla. 2023), the supreme court of that state held that "church autonomy prevented [the trial court] from hearing any claim which required it to interpret the Book of Discipline and step into the shoes of church authority" to determine whether acts of an annual conference complied with ¶ 2553, as such "issues are ecclesiastical[.]" *Id.* at 175. Similarly, in *Aldersgate UMC of Montgomery v. Alabama–West Florida Conference*, 2024

[10] As discussed in Statement of Facts ¶ 15, the UMC Judicial Council repeatedly affirmed an annual conference's ability to require local churches, as a term of disaffiliation pursuant to ¶ 2553, to make payments beyond the pension withdrawal and apportionment payments mandated by the General Conference. Appellants would have the civil judiciary effectively overrule those holdings of church law reached by an ecclesiastical tribunal.

WL 2790269 (Ala. May 31, 2024) (publication forthcoming),[11] the Supreme Court of Alabama held that claims which turned "entirely on the interpretation of ¶ 2553 and whether [plaintiffs'] efforts to leave the UMC were consistent with that church law" presented "an ecclesiastical question that courts do not have jurisdiction to decide." *Id.* at *2. The same is true here, where Appellants' claims necessitate interpretation of ¶ 2553 and examination of whether the annual conference complied with that church law.[12]

### B. The Authorities Relied Upon by Appellants Are Distinguishable, as the Interpretation of the *Discipline* Did Not Entail Resolution of Church Law Questions as it Does Here.

Appellants cite *Fifth Avenue UMC of Wilmington v. North Carolina Conference*, 911 S.E.2d 106 (N.C. App. 2024), in support of their argument that Judge Malone erred in finding the trial court without jurisdiction over claims challenging the 50% Payment Requirement. App. Br. 6-7. In *Fifth Avenue*, the annual conference and its board of trustees closed the local church (Fifth Avenue) pursuant to *Discipline* ¶ 2549[(13)] and seized its property ahead of the church conference at which Fifth Avenue's members were supposed

[11] Delay in publication "shall not affect the precedential value of an opinion" of the Alabama Supreme Court. Ala. R. App. P. 53(e).

[12] Appellants assert, citing no authority, that by enacting provisions in the Corporations and Associations article of the Maryland Code that reference the *Discipline*, the General Assembly intended "to incorporate the [*Discipline*] into Maryland's corporate law, thereby requiring secular enforceability." App. Br. 15. But an act of legislation cannot overturn the First Amendment's prohibition against exercising civil judicial authority to resolve ecclesiastical issues.

[13] This provision of the *Discipline* allows an annual conference to initiate "closure" proceedings against a local church within its jurisdiction "where the local church property is no longer used, kept, or maintained by its membership as a place of divine worship of [the UMC]." *Fifth Avenue*, 911 S.E.2d at 113 (quoting *Discipline* ¶ 2549.3(b)).

to vote on disaffiliation. 911 S.E.2d at 112. Fifth Avenue sued the annual conference and board of trustees, asserting a claim for breach of contract based on defendants' failure "to follow the disaffiliation procedures set out in paragraph 2553 by not allowing a church conference vote [on disaffiliation]." *Id.* at 118. Fifth Avenue also asserted a claim for constructive fraud alleging that defendants wrongfully deprived the local church of its opportunity to disaffiliate by closing Fifth Avenue before the membership could meet to vote. *Id.* at 120.

The North Carolina Court of Appeals found Fifth Avenue's contract claim adjudicable under neutral principles because it "simply asks whether Defendants' actions complied with the steps outlined in [¶ 2553]," and there was no dispute that provision required defendants to allow Fifth Avenue to vote on disaffiliation. *Id.* at 119. Thus, the claim could be adjudicated "without resolving underlying controversies" of church governance or the "substantive merits" of the closure decision. *Id.* Fifth Avenue's fraud claim could also proceed under neutral legal principles so long as the trial court did not inquire into whether the closure was "proclaimed in good faith and in accordance with church doctrine," for that would "tread on the sanctity of church doctrine." *Id.* at 120.

Unlike *Fifth Avenue*, the claims in the case at hand necessitate interpretation of the *Discipline* to resolve a question of church law: whether the 50% Payment Requirement was a valid exercise of the Baltimore-Washington Conference's authority under ¶ 2553.4(a) to develop "additional standard terms" of disaffiliation "that are not inconsistent" with the General Conference's standard terms. Appellants expressly request to develop a record "explaining why the Conference imposed the 50% [requirement]." App. Br. 9 n.2. That is

a fundamentally ecclesiastical issue that a civil court cannot review. *See Fifth Avenue*, 911 S.E.2d at 119, 120 (civil court cannot review "substantive merits" of ecclesiastical decision or whether such a decision was made "in good faith and in accordance with church doctrine"). Judge Malone properly found the trial court without jurisdiction to adjudicate this controversy.

Appellants cite several cases, including *Trustees of Peninsula-Delaware Annual Conference v. East Lake Methodist Episcopal Church*, 1998 WL 83033 (Del. Ch. 1998), for the proposition that, in a dispute between hierarchical entities within a religious organization, a court can examine articles of church law (including the *Discipline*) "solely as legal documents" and "without delving into doctrinal interpretation[.]" App. Br. 11-12 (Appellants' language). Appellees do not dispute that notion in this appeal, for it has no application. The controversy at hand would require the court to resolve a **fundamentally ecclesiastical** question: whether an act of an annual conference was consistent with a directive of the General Conference.

In *East Lake Methodist*, the Delaware Court of Chancery found that "secular consideration of the Discipline" was permissible to determine whether an implied trust in favor of the UMC attached to local church property, because that issue did "not require interpretation or resolution of ecclesiastical issues." 1998 WL 83033, at *6. However, the court lacked jurisdiction to review the validity of the conference's decision to close the church, as that would have required "interpreting the Discipline" to resolve an "ecclesiastical issue" concerning the validity of the annual conference's conduct under church law. *Id.* (citing *Am. Union of Baptists v. Trs. of Particular Primitive Baptist Church*

*at Black Rock*, 335 Md. 564, 578 (1994)). A court is "precluded" by the First Amendment from examining such questions, which must be decided "by the inner tribunals of the United Methodist Church." *Id.* at *5, *6. The same is true for the validity of the Baltimore-Washington Conference's enactment of the 50% Payment Requirement.

## II. THE TRIAL COURT PROPERLY DISMISSED CLAIMS FOR ALLEGED FRAUD AND FINANCIAL MISMANAGEMENT CONCERNING THE CLERGY PENSION FUND BASED ON LACK OF SUBJECT-MATTER JURISDICTION AND LACK OF A GENUINE FACTUAL DISPUTE.

Appellate courts have recognized that the First Amendment bars civil courts from scrutinizing a religious organization's financial operations because they are a core component of ecclesiastical administration. In *Harris v. Matthews*, 361 N.C. 265, 273 (2007), for example, the Supreme Court of North Carolina held that hearing claims regarding a church's pastor alleged improper expenditures would require "an examination of the church's view of the role of pastor, staff, and church leaders, their authority and compensation, and church management," none of which a civil court may examine. Similarly, in *Ngo v. Ngo*, 2023 WL 8286458, at *2 (Ky. App. Dec. 1, 2023),[14] the Kentucky Court of Appeals held that an "accounting of church funds is directly related to church governance," and ordering such relief "would be an imposition on the will of the Archdiocese as to the proper running of the parish and administration of the parish funds," the prevention of which "is precisely why the ecclesiastical abstention doctrine exists." Judge Malone correctly applied this authority and held that the ecclesiastical abstention

[14] Unpublished opinions of the Kentucky Court of Appeals "rendered after January 1, 2003" can be cited as persuasive authority in courts of that state. Ky. R. App. P. 41(a).

doctrine bars Appellants' claims regarding the calculation of pension liabilities and management of the UMC's clergy pension fund.

Appellants do not contest the ecclesiastical abstention doctrine's general application to church finances, but instead argue that the trial court erred by not applying the supposed exception for fraud claims. App. Br. 8-9. The U.S. Supreme Court has recognized the possibility of a narrow exception for "fraud" or "collusion" that may apply when "religious figures act in bad faith for secular purposes[.]" *Milivojevich*, 426 U.S. at 713. "[W]hether a fraud or collusion exception exists is an open question requiring further clarification from the Supreme Court." *Fam. Fed'n for World Peace & Unif'n Int'l v. Moon*, 2023 WL 5286266, at *9 (D.C. Super. June 15, 2023). No court appears to have ever applied the supposed exception,[15] and Appellants have not identified a single case.[16]

To the extent the exception has legs, it applies only when religious figures or institutions "act in bad faith for secular purposes." *Moon Fam. Fed'n for World Peace & Unif'n Int'l*, 281 A.3d 46, 70 (D.C. 2022) (quoting *Heard v. Johnson*, 810 A.2d 871, 881 (D.C. 2002)). It cannot be used to "produce an investigation and review of matters of

[15] *See Moon v. Moon*, 431 F. Supp. 3d 394, 414 n.28 (S.D.N.Y. 2019) ("[T]his court has been unable to identify a single case applying the 'fraud or collusion' exception as the basis for civil court intervention in an otherwise nonjusticiable church controversy.").

[16] Neither of the cases Appellants cite applied the fraud exception. In *Fifth Avenue*, the court allowed a fraud claim to proceed in a disaffiliation dispute, but the ecclesiastical abstention doctrine did not apply in the first place because the claim did not require the court to determine whether the defendant annual conference acted "in good faith and in accordance with church doctrine." 911 S.E.2d at 120. The other case, *Episcopal Diocese of Fort Worth v. Episcopal Church*, 602 S.W.3d 417 (Tex. 2020), did not even involve a fraud claim.

ecclesiastical administration and government, which could produce, by its coercive effect, only the very opposite of that contemplated by the First Amendment." *Abrams v. Watchtower Bible & Tract Soc. of N.Y., Inc.*, 306 Ill. App. 3d 1006, 1013 (1999); *see also Bd. of Trs. of Oakley Park Missionary Church v. Mich. Dist. Missionary Church*, 2003 WL 21854519, at *5 (Mich. App. Aug. 7, 2003) (fraud exception cannot be invoked to permit civil review of any "matter of internal church government, an issue at the core of ecclesiastical affairs").[17] That includes church finances. As Judge Malone explained, "a judicial determination of the actions and expenditures [of the Conference] requires judicial examination of the church's management, from which the civil courts should abstain." **(E.182)** (citing *Harris*, 361 N.C. at 273).[18]

Even if a court could exercise jurisdiction here, Judge Malone correctly found that Appellants adduced zero evidence of any false statements regarding the Conference's pension fund or "gross mismanagement" thereof. **(E.182-83)** Appellees provided testimony from the director of the UMC's General Board of Pension and Health Benefits (a/k/a Wespath) to reconcile statements regarding unfunded pension liabilities with financial records showing the Conference's pension fund was fully funded when

[17] Unpublished opinions of the Michigan Court of Appeals may be cited as persuasive authority "for propositions of law for which there is [no] published authority." Mich. Rule 7.215(C)(1).

[18] Appellants also assert, without any supporting authority, that the trial court can hear their challenge to the 50% Payment Requirement as an "arbitrary financial obligation[]" and "violation of procedural fairness." App. Br. 10. But the U.S. Supreme Court has rejected the notion of an "arbitrariness" exception to ecclesiastical abstention, stating it would "undermine the general rule that religious controversies are not the proper subject of civil court inquiry." *Milivojevich*, 426 U.S. at 712-13.

Appellants wanted to disaffiliate. As explained in that testimony, when an employer is withdrawing from a pension plan and will cease contributions, as in the disaffiliation context, the withdrawing employer (local church) is required to make a pension withdrawal liability payment, and a more conservative discount rate is used to calculate liability than if the employer were to remain in the plan. **(Apx.0059-60)** The General Conference instructed Wespath to follow this industry practice to calculate the pension withdrawal liabilities of disaffiliating local churches and ensure those payments would cover the funding risk that the remaining plan sponsors would assume. **(Apx.0058-59)** The different rate factors used for calculating withdrawal liability versus long-term funding liability can produce substantially different results, and it is not uncommon for a pension plan to be fully funded on a long-term basis but underfunded on a "market-factor" basis in the withdrawal context. **(Apx.0060)**

Appellants failed to produce any evidence to rebut this sound explanation and create a genuine factual issue regarding the accuracy of statements concerning their pension withdrawal liabilities or the care with which Wespath managed the Conference pension fund, as Judge Malone found. **(E.182-83)** Appellants argue that their "factual allegations" of fraud and financial mismanagement "warrant judicial review" (App. Br. 9), but allegations without evidentiary support entitle no litigant to reach the jury. Summary judgment was appropriate.

## III. THE LAW OF THE CASE DOCTRINE DID NOT BIND THE TRIAL COURT ON SUMMARY JUDGMENT.

Appellants argue that Judge Malone erred by disregarding the "law of the case" that had been set by Judge Vitale in her order denying Appellees' motion to dismiss certain claims pursuant to the ecclesiastical abstention doctrine (the "December 2023 Order"). According to Appellants, the law of the case doctrine requires trial judges to adhere to earlier decisions of the trial court in the same case, and thus the December 2023 Order was "binding" on Judge Malone. App. Br. 20.

As an initial matter, Appellants are incorrect that the December 23 Order conflicts with the preceding Order of Judge Vitale dated December 29, 2023. The latter was decided on motion to dismiss; the former was decided on summary judgment. It stands to reason that the December 23 Order, decided on a full summary judgment record, had a more fulsome basis upon which to ascertain the applicability of the ecclesiastical abstention doctrine. The December 23 Order expresses no disagreement with the prior order.

That said, even if the orders were in tension, it does not matter. Appellants misunderstand the doctrine. The law of the case doctrine "is one of appellate procedure" whereby "once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case." *Scott v. State*, 379 Md. 170, 183 (2004). The doctrine "prevents trial courts from dismissing appellate judgment and re-litigating matters already resolved by the appellate court." *Baltimore County v. Fraternal Order of Police*, 449 Md. 713, 730 (2016).

The doctrine has no application to decisions of a trial court. The Court of Appeals has repeatedly recognized that, "as a general principle, one judge of a trial court ruling on a matter is not bound by the prior ruling in the same case by another judge of the court."

*Elec. Gen. Corp. v. Labonte*, 454 Md. 113, 140 (2017) (quoting *Scott v. State*, 379 Md. 170, 184 (2004) and *Gertz v. Anne Arundel County*, 339 Md. 261, 273 (1995)). Furthermore, Md. Rule 2-602(a)(3) expressly recognizes that an order or other form of decision that adjudicates fewer than all of the claims in an action "is subject to revision at any time" prior to entry of final judgment. Holding trial court judges bound by prior rulings in the same case would eviscerate that provision and upend well-established high court precedent.

None of the cases Appellants cite support their misapprehension of the law of the case doctrine. *Turner v. Housing Authority of Baltimore City*, 364 Md. 24 (2001), held that the doctrine prevented the trial court from granting a motion to reinstate a judgment that the Court of Special Appeals (as it was then called) had reversed. *Scott v. State*, 379 Md. 170 (2004), which Appellants claim held that "trial judges must follow prior rulings in the same case" (App. Br. 18), actually said the opposite: "[O]ne judge of a trial court ruling on a matter is not bound by the prior ruling in the same case by another judge of the court." *Scott*, 379 Md. at 184. Same with *Monarch Academy Baltimore Campus, Inc. v. Baltimore City Board of School Commissioners*, 457 Md. 1, 57 (2017): "A circuit court judge is not necessarily bound to respect an earlier legal ruling in a given case made by a fellow circuit court judge in the same way that a circuit court judge must respect a legal ruling in a given case by an appellate court under the doctrine of the law of the case."

In *Monarch Academy*, the Court of Appeals stated that the law of the case doctrine did **not** bind a trial judge to earlier rulings of his colleague, but held that the trial judge abused his discretion by overruling his colleague's earlier decision that issues regarding charter school funding needed to be brought in the first instance before the State Board of

Education. 457 Md. at 56-57. The reversal was "particularly concerning" because there was "no clear indication in the record" that the second judge had reviewed the prior ruling before issuing the stay, and the plaintiffs required additional discovery regarding the defendant's finances and funding formula before they could successfully bring the case before the State Board. *Id.* By contrast, in the case at hand, Judge Malone had reviewed the December 2023 Order and expressly acknowledged that Judge Vitale only "partially granted" Appellees' motion to dismiss all claims on ecclesiastical abstention grounds, and that Appellees were "reiterat[ing]" their argument for dismissal of all claims pursuant to that doctrine. **(E.175-76)** Judge Malone was fully aware of the prior ruling and exercised his sound discretion to modify that non-final judgment.

## IV. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS' CLAIMS FOR DECLARATORY JUDGMENT AND QUIET TITLE SEEKING TERMINATION OR MODIFICATION OF THE UMC TRUST BASED ON ALLEGED DEPARTURES FROM CHURCH DOCTRINE.

Appellants argue that the trial court should have heard claims seeking modification or revocation of the denominational trust "because the UMC's religious beliefs have fundamentally changed and now conflict with the beliefs held by Appellants." App. Br. 13. But the U.S. Supreme Court squarely has held that the First Amendment prohibits a civil court from determining "whether actions of the general church constitute such a 'substantial departure' from the tenets of faith and practice existing at the time of the local churches' affiliation that the trust in favor of the general church must be declared to have terminated." *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 450 (1969). This inquiry would require the civil court to determine

matters "at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion." *Id.* "Plainly, the First Amendment forbids civil courts from playing such a role." *Id.* The trial court could not, as Appellants assert, adjudicate "using neutral principles of law" the magnitude or import of alleged changes to church doctrine.[19]

Appellants further claim that termination or revocation of the trust is warranted in light of the UMC's alleged discontinuation of *Discipline* ¶¶ 2548.2 and 2549 as means by which local churches could leave the denomination and retain their property free and clear of the trust. App. Br. 16. But as Judge Vitale observed in her Memorandum Opinion dated December 29, 2023, the UMC Judicial Council has held as a matter of church law that neither of those provisions have ever served that function and that, before it expired, ¶ 2553 was the sole means by which a local church could disaffiliate free and clear of the trust. **(E.115)** "That conclusion having been made by the proper authority in a hierarchical church organization, and being closely tied to internal church government, is one which civil courts must defer to." **(*Id.*)** Appellants' claims for declaratory judgment and quiet title were properly dismissed.

[19] To be sure, Appellants deny that any "substantial departure" from the UMC's core doctrine has occurred. Since its inception, the mission of the denomination, as set forth in the *Discipline*, has always been "[t]o make disciples of Jesus Christ for the transformation of the world." **(Apx.0687)** No act of the Baltimore-Washington Conference "related to the practice of homosexuality or the ordination or marriage of self-avowed practicing homosexuals" **(Apx.1599)** has defied that core mission. Regardless, that is not something a civil court can address.

Finally, even if there were any merit to Appellants' substantive contentions, this Court may affirm dismissal of the declaratory judgment and quiet title claims on jurisdictional grounds. *See, e.g.*, *Yaffe v. Scarlett Place Residential Condo., Inc.*, 205 Md. App. 429, 440 (2012).

## V. JUDGE MALONE DID NOT ABUSE HIS DISCRETION BY DECLINING TO RECUSE HIMSELF BASED ON HIS MEMBERSHIP IN A UMC LOCAL CHURCH.

Appellants argue that Judge Malone abused his discretion by declining to recuse himself despite his membership in a UMC local church, his family's membership in other UMC local churches, and his "potential bias rooted in personal and institutional loyalty" to the denomination. App. Br. 29-30. Appellants accuse His Honor of pulling a "bait and switch" by initially "downplay[ing] his affiliations" with the UMC and then revealing "extensive personal, familial, and current ties to the UMC" after the case had "advanced significantly[.]" *Id.* at 29.

A judge should recuse himself only where his impartiality "might reasonably be questioned." Md. Rule 18-202.11(a). There is a "strong presumption in Maryland, and elsewhere, that judges are impartial participants in the legal process, whose duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified." *Jefferson-El v. State*, 330 Md. 99, 107 (1993). The party seeking recusal of a judge bears a "heavy burden to overcome the presumption of impartiality." *Att'y Grievance Comm'n v. Blum*, 373 Md. 275, 297 (2003).

As Appellants acknowledged, Judge Malone "repeatedly reassured the litigants in this case that he could maintain objectivity and impartiality[.]" **(E.168)** The local church

to which Judge Malone belongs is not a party to this action. **(E.167)** Beyond attending worship "once a month" **(E.145)**, Judge Malone disclosed no additional participation in the mission or ministry of that local church or any distinct affiliation with the Baltimore-Washington Conference or UMC. No person could reasonably question Judge Malone's impartiality based solely on his membership in a non-party local church.

Indeed, "courts have consistently held that membership in a church does not create sufficient appearance of bias to require recusal." *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 659-60 (10th Cir. 2002) (affirming decision of district judge who was a practicing Episcopalian not to recuse himself from action against Episcopal church, and rejecting argument that judge's "membership in [the defendant] church alone creates an appearance of bias" requiring recusal);[20] *see also, e.g.*, *Feminist Women's Health Ctr. v. Codispoti*, 69 F.3d 399, 400-01 (9th Cir. 1995) (judge's membership in Catholic church did not disqualify him from hearing case involving abortion clinic, and such disqualification would conflict with the constitutional prohibition against the use of any "religious Test" as a qualification for public office);[21] *Hoatson v. N.Y. Archdiocese*, 2006 WL 3500633, at *5

[20] Because the text of Md. Rule 18-202.11 substantially tracks the text of the principal federal recusal statute, 28 U.S.C. § 455, interpretation of the latter persuasively guides interpretation of the former. *See Boyd v. State*, 321 Md. 69, 76-80 (1990).

[21] Article VI, Clause 3 of the U.S. Constitution—which by its terms binds not only federal courts but also "Judges in every State"—provides that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." Article 37 of the Maryland Constitution contains a substantially identical prohibition. *See* Md. Const., Decl. of Rights, art. 37 ("[N]o religious test ought ever to be required as a qualification for any office of profit or trust in this State[.]").

(S.D.N.Y. Dec. 1, 2006) ("Religious devotion or affiliation cannot constitute a general bias or prejudice under [the recusal statute]."); *Idaho v. Freeman*, 507 F. Supp. 709, 729 (D. Idaho 1981) ("religious beliefs or membership affiliation are presumed not to be relevant" on motion to disqualify judge).

"Other than the Court's faith, neither Plaintiff nor his Counsel have come forward with a single fact demonstrating that the Court was biased or prejudiced in favor of the [Conference] or [Bishop Easterling]." *Hoatson*, 2006 WL 3500633, at *5. Appellants therefore did not satisfy their "heavy burden" to overcome the "strong presumption" of His Honor's competence to resolve this case impartially. *Blum*, 373 Md. at 297; *Jefferson-El*, 330 Md. at 107. Furthermore, Appellants' request to disqualify Judge Malone based on his religious affiliation and receive a new judge who is not a practicing Methodist would require the trial court to administer a "religious test" of competence for judicial service. That is plainly prohibited by the Constitutions of the United States and Maryland. *See supra* note 21; *see also Hoatson*, 2006 WL 3500633, at *4 ("The Court clearly cannot recuse itself because of its faith or beliefs, even if strongly held. Doing so would violate Article VI of the Constitution, the First Amendment, and the holding of every case that has considered the issue."); *Codispoti*, 69 F.3d at 400 ("Either religious belief disqualifies or it does not. Under Article VI it does not.").

Judge Malone's refusal to recuse himself based solely on his affiliation with a non-party congregation was consistent with unanimous authority on this issue and

necessary to avoid imposing a "religious test" for judicial service in this case. It most certainly was not an abuse of discretion.[22]

## VI. THE COURT SHOULD DECLINE TO HEAR NEW ARGUMENTS THAT APPELLANTS HAVE RAISED FOR THE FIRST TIME ON APPEAL.

Section IV of Appellants' brief raises several new "constitutional concerns" associated with "denying judicial review" of their claims, none of which Appellants presented to the trial court. App. Br. 22. "Ordinarily," an appellate court will not decide an issue "unless it plainly appears by the record to have been raised in or decided by the trial

[22] There is no support for Appellants' accusation that His Honor intentionally hid the extent of his affiliation with the UMC and revealed it "[o]nly after the case had advanced significantly[.]" App. Br. 29. Judge Malone initially disclosed his membership in a non-party UMC local church during his first interaction with the parties at a discovery hearing on February 14, 2024. Judge Malone shared at the hearing that he was "not an active Methodist" but tried to attend service "once a month," and that his deceased uncle was a pastor at another non-party UMC local church. **(E.145)** Counsel for Appellants (then Plaintiffs) said they had no concern about Judge Malone's ability to preside impartially. **(E.146)** The case was subsequently assigned to Judge Malone for all proceedings through trial. **(E.045)**

At the very next hearing on April 23, 2024 (only two months later, in which interim no major proceedings had occurred), Judge Malone said he still believed he could resolve the matter impartially, but "wanted to make sure [the parties] knew everything about [his] ties to the [UMC]" in light of the upcoming trial and anticipated dispositive motion practice. **(E.152)** He proceeded to disclose that he was previously a member of two non-party member churches in the Baltimore-Washington Conference; that his father and mother had been members of UMC churches in other conferences; and that he attended service with other relatives at non-party churches in Western Maryland. **(E.152-54)** Judge Malone **invited** the parties to move for his recusal if they thought he could not preside impartially. **(E.155)**

His Honor did not "bait and switch" Appellants or "downplay[] his affiliations" with the UMC, as Appellants claim. His Honor was entirely candid about his ties to the UMC and resolved the motion for his recusal based on extensive authority that a judge should preside if the only alleged conflict is his membership in a religious organization.

court[.]" Md. Rule 8-131(a). While "the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal" (*id.*), this discretion is one that "appellate courts should rarely exercise, as considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court's ruling, action, or conduct be presented in the first instance to the trial court[.]" *Joyner v. State*, 208 Md. App. 500, 519 n.7 (2012). In deciding whether to exercise its discretion to review an unpreserved issue, an appellate court will consider "(1) 'whether the exercise of its discretion will work unfair prejudice to either of the parties,' and (2) 'whether the exercise of its discretion will promote the orderly administration of justice.'" *Cave v. Elliott*, 190 Md. App. 65, 84 (2010) (quoting *Jones v. State*, 379 Md. 704, 713-15 (2004)).

Appellants have made no attempt to show that resolution of the "constitutional concerns" they now raise will promote judicial economy or prevent successive appeals. Indeed, resolution of any alleged "concerns" with judicial abstention in this case will not change the outcome of the subject-matter jurisdiction analysis or cure the lack of genuine factual disputes. That aside, Appellants' newly voiced "concerns" are unfounded and have no merit. Appellants raise due process and First Amendment concerns they claim arise from a "statutory framework" that insulates Appellees from judicial scrutiny. App. Br. 22-23. Appellants seem to misunderstand the origin of church autonomy, which arises from the Religion Clauses of the First Amendment as interpreted by the U.S. Supreme Court, and not from any act of Maryland legislation. Even if the denominational trust over local church property was not codified in the Maryland Code, the civil judiciary would still lack

jurisdiction to review acts of church governance and doctrine as expressed in the *Discipline* and by acts of an annual conference implementing directives of the General Conference.[23] Appellants therefore cannot show that addressing these "constitutional concerns" for the first time on appeal might "guide the trial court" on remand or "avoid the expense and delay of another appeal." Md. Rule 8-131(a). Furthermore, allowing Appellants to raise new challenges to legislation concerning the UMC would work substantial prejudice to Appellants and this Court, as these claims were not raised or developed **at all** in the trial court. The Court should decline to address these unpreserved and meritless arguments.

## CONCLUSION

For the foregoing reasons, the Court should fully affirm the trial court's decision granting summary judgment to Appellees on ecclesiastical abstention grounds and for lack of any genuine dispute of material fact.

## REQUEST FOR ORAL ARGUMENT

Appellees respectfully request that this appeal be scheduled for oral argument before this Court.

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[23] The "judicial taking" argument that Appellants raise is equally meritless. App. Br. 23-26. The trial court did not eliminate any property right "without unjust compensation" as proscribed by the Fifth Amendment. It simply adjudicated property rights as set forth in a trust provision.

The equal protection challenge Appellants raise against the codified denominational trust is also meritless and, in any event, immaterial. App. Br. 27. Even if the trust was not codified in the Maryland Code, it would still exist in the *Discipline*, which all UMC local churches, including Appellants, agree to follow. Appellants' new equal protection challenge to the trust statute, even if it was sustained, would have no impact on the adjudication of property rights in this case.

Dated: May 30, 2025

By: */s/ Brian A. Coleman*

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## CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 9,070 words, excluding the parts of the brief exempted from the word count by Maryland Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Maryland Rule 8-112. This brief is double-spaced, with one (1) inch margins, and was printed using Times New Roman 13 pt. font.

## CERTIFICATION OF VERBATIM TEXT OF RULES AND STATUTES

Appellees hereby certify that the pages attached hereto contain the verbatim text of the following rules and statutes:

First Amendment to the United States Constitution

Md. Rule 8-501

Md. Code, Corp. & Ass'ns, § 5-327

Md. Rule 2-602

28 U.S.C. § 455

Article VI, Clause 3 of the United States Constitution

Maryland Constitution, Declaration of Rights, Article 37

Md. Rule 8-131

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on or before May 30, 2025, I electronically filed and served Appellees' Brief via MDEC and also:

A. Sent two (2) copies of the Brief, via first class mail, postage prepaid to counsel for Appellants, Derek A. Hills and David C. Gibbs, III; and

B. Simultaneously filed eight (8) copies of Appellees' Brief with the Appellate Court of Maryland.

*/s/ Brian A. Coleman*
Brian A. Coleman

PERTINENT PROVISIONS

## Constitution of the United States

# First Amendment

First Amendment Explained

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

West's Annotated Code of Maryland
Maryland Rules
Title 8. Appellate Review in the Supreme Court and the Appellate Court
Chapter 500. Record Extract, Briefs, and Argument

MD Rules, Rule 8-501

# RULE 8-501. RECORD EXTRACT

Currentness

**(a) Duty of Appellant.** Unless otherwise ordered by the appellate court or provided by this Rule, the appellant shall prepare and file a record extract in every case in the Supreme Court, subject to section (k) of this Rule, and in every civil case in the Appellate Court. The record extract shall be included as an attachment to appellant's brief, or filed as a separate volume with the brief in the number of copies required by Rule 8-502 (c).

**(b) Exceptions.** Unless otherwise ordered by the court, a record extract shall not be filed (1) when an agreed statement of the case is filed pursuant to Rule 8-207 or 8-413(b) or (2) in an appeal in the Appellate Court from a criminal case or from child in need of assistance proceedings, extradition proceedings, inmate grievance proceedings, juvenile delinquency proceedings, permanency planning proceedings, or termination of parental rights proceedings.

**Cross reference:** See Rule 8-504(b) for the contents of a required appendix to appellant's brief in criminal cases in the Appellate Court.

**(c) Contents.** The record extract shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal and any cross-appeal. It shall include the circuit court docket entries, the judgment appealed from, and such other parts of the record as are designated by the parties pursuant to section (d) of this Rule. In agreeing on or designating parts of the record for inclusion in the record extract, the parties shall refrain from unnecessary designation. The record extract shall not include those parts of the record that support facts set forth in an agreed statement of facts or stipulation made pursuant to section (g) of this Rule nor any part of a memorandum of law in the trial court, unless it has independent relevance. The fact that a part of the record is not included in the record extract or an appendix to a brief shall not preclude an appellate court from considering it.

**(d) Designation by Parties.** Whenever possible, the parties shall agree on the parts of the record to be included in the record extract. If the parties are unable to agree:

(1) Within 15 days after the filing of the record in the appellate court, the appellant shall serve on the appellee a statement of those parts of the record that the appellant proposes to include in the record extract.

(2) Within ten days thereafter, the appellee shall serve on the appellant a statement of any additional parts of the record that the appellee desires to be included in the record extract.

  

(3) Within five days thereafter, the appellant shall serve on the appellee a statement of any additional parts of the record that the appellant proposes to include in view of the parts of the record designated by the appellee.

(4) If the appellant determines that a part of the record designated by the appellee is not material to the questions presented, the appellant may demand from appellee advance payment of the estimated cost of reproducing that part. Unless the appellee pays for or secures that cost within five days after receiving the appellant's demand, the appellant may omit that part from the record extract but shall state in the record extract the reason for the omission.

**(e) Appendix in Appellee's Brief.** If the record extract does not contain a part of the record that the appellee believes is material, the appellee may reproduce that part of the record as an appendix to the appellee's brief together with a statement of the reasons for the additional part. The cost of producing the appendix may be withheld or divided under section (b) of Rule 8-607.

**(f) Appendix in Appellant's Reply Brief.** The appellant may include as an appendix to a reply brief any additional part of the record that the appellant believes is material in view of the appellee's brief or appendix. The appendix to the appellant's reply brief shall be prefaced by a statement of the reasons for the additional part. The cost of producing the appendix may be withheld or divided under section (b) of Rule 8-607.

**(g) Agreed Statement of Facts or Stipulation.** The parties may agree on a statement of undisputed facts that may be included in a record extract or, if the parties agree, as all or part of the statement of facts in the appellant's brief. As to disputed facts, the parties may include in the record extract, in place of any testimony or exhibit, a stipulation that summarizes the testimony or exhibit. The stipulation may state all or part of the testimony in narrative form. Any statement of facts or stipulation shall contain references to the page of the record and transcript. The parties are strongly encouraged to agree to such a statement of facts or stipulation.

**(h) Table of Contents.** If the record extract is produced as an appendix to a brief, the table of contents required under section (a) of Rule 8-504 shall include the contents of the appendix. If the record extract is produced as a separate volume, it shall be prefaced by its own table of contents. The table of contents shall (1) reference the first page of the initial examination, cross-examination, and redirect examination of each witness and of each pleading, exhibit, or other paper reproduced and (2) identify each document by a descriptive phrase including any exhibit number.

**(i) Style and Format.** The numbering of pages, binding, method of referencing, and covers of the record extract, whether an appendix to a brief or a separate volume, shall conform to sections (a) through (c) of Rule 8-503. Except as otherwise provided in this section and in section (g) of this Rule, the record extract shall reproduce verbatim the parts of the record that are included. Asterisks or other appropriate means shall be used to indicate omissions in the testimony or in exhibits. Reference shall be made to the pages of the record and transcript. The date of filing of each paper reproduced in the extract shall be stated at the head of the copy. If the transcript of testimony is reproduced, the pages shall be consecutively renumbered. Documents and excerpts of a transcript of testimony presented to the trial court more than once shall be reproduced in full only once in the record extract and may be referred to in whole or in part elsewhere in the record extract. Any photograph, document, or other paper filed as an exhibit and included in the record extract shall be included in all copies of the record extract and may be either folded to the appropriate size or photographically or mechanically reduced, so long as its legibility is not impaired.

  

**(j) Correction of Inadvertent Errors.** Material inadvertently omitted from the record extract may be included in an appendix to a brief, including a reply brief. Other inadvertent omissions or misstatements in the record extract or in any appendix may be corrected by direction of the appellate court on motion or on the Court's own initiative.

**(k) Record Extract in Supreme Court on Review of Case from the Appellate Court.** When a writ of certiorari is issued to review a case pending in or decided by the Appellate Court, unless the Supreme Court orders otherwise, the appellant shall file in that Court eight copies of any record extract that was filed in the Appellate Court within the time the appellant's brief is due. If a record extract was not filed in the Appellate Court or if the Supreme Court orders that a new record extract be filed, the appellant shall prepare and file a record extract pursuant to this Rule.

**(l) Deferred Record Extract; Special Provisions Regarding Filing of Briefs.**

(1) If the parties so agree in a written stipulation filed with the Clerk or if the appellate court so orders on motion or on its own initiative, the preparation and filing of the record extract may be deferred in accordance with this section. The provisions of section (d) of this Rule apply to a deferred record extract, except that the designations referred to therein shall be made by each party at the time that party serves the page-proof copies of its brief.

(2) If a deferred record extract authorized by this section is employed, the appellant, within 30 days after the filing of the notice required by Rule 8-412 (a), shall file one page-proof copy of the brief and shall serve one copy on each party. Within 30 days after the filing of the page-proof copy of the appellant's brief, the appellee shall file one page-proof copy of the brief and shall serve one copy on the appellant. The page-proof copies shall contain appropriate references to the pages of the parts of the record involved. The parties are not required to file paper copies of page-proof briefs if they are represented by counsel or are registered users of MDEC.

**Committee note:** Attorneys and other registered users are required to file briefs and other papers with the court electronically.

(3) Within 25 days after the filing of the page-proof copy of the appellee's brief, the appellant shall file the deferred record extract, and the appellant's final briefs. Within five days after the filing of the deferred record extract, the appellee shall file its final briefs.

(4) The appellant may file a reply brief in final form within 20 days after the filing of the appellee's final brief, but not later than ten days before the date of scheduled argument.

(5) In a cross-appeal:

(A) within 30 days after the filing of the page-proof copies of the appellee/cross-appellant's brief, the appellant/cross-appellee shall file one page-proof copy of a brief in response to the issues and argument raised on the cross-appeal and shall include any reply to the appellee's response that the appellant wishes to file;

(B) within 25 days after the filing of the cross-appellee/appellant's reply brief, the appellant shall file the deferred record extract, the appellant's final briefs, and the final cross-appellee's/appellant's reply briefs;

  

(C) within five days after the filing of the deferred record extract, the appellee shall file its final appellee/cross-appellant's briefs; and

(D) the appellee/cross-appellant may file in final form a reply to the cross-appellee's response within 20 days after the filing of the cross-appellee's final brief, but not later than ten days before the date of scheduled argument.

(6) The deferred record extract and final briefs shall be filed in the number of copies required by Rules 8-502(c), 8-501(a), and 20-404(b). The briefs shall contain appropriate references to the pages of the record extract. The deferred record extract shall contain only the items required by Rule 8-501(c), those parts of the record actually referred to in the briefs, and any material needed to put those references in context. No changes may be made in the briefs as initially served and filed except (A) to insert the references to the pages of the record extract, (B) to correct typographical errors, and (C) to take account of a change in the law occurring since the filing of the page-proof briefs.

(7) The time for filing page-proof copies of a brief or a final brief may be extended as provided in subsections (l)(7)(A), (B), and (C) of this Rule.

(A) In the Supreme Court, the time for filing page-proof copies of a brief or final briefs may be extended by stipulation of counsel filed with the clerk so long as the final briefs set out in subsections (l)(3) and (5) of this Rule are filed at least 30 days, and any reply brief set out in subsections (l)(4) and (5) of this Rule is filed at least ten days, before the scheduled argument.

(B) In the Appellate Court, by joint stipulation filed with the Clerk, the parties may extend the time for filing a page-proof brief or final brief by no more than 30 days from the original due date of the page-proof brief or final brief. The time to file a reply brief may be extended by stipulation so long as the reply brief will be filed at least ten days before argument or the date of submission of the case on the briefs.

(C) The Appellate Court, on its own initiative or on motion filed pursuant to Rule 1-204, may extend the time for filing a brief. Absent urgent and previously unforeseeable circumstances, a motion shall be filed at least five days before the applicable due date. The motion shall: (1) state that the moving party has sought consent of the other parties and whether each party consents to the extension; and (2) if the requested due date is more than 30 days after the original due date, identify good cause for the extension required.

**(m) Sanctions for Noncompliance.** Ordinarily, an appeal will not be dismissed for failure to file a record extract in compliance with this Rule. If a record extract is not filed within the time prescribed by Rule 8-502, or on its face fails to comply with this Rule, the appellate court may direct the filing of a proper record extract within a specified time and, subject to Rule 8-607, may require a non-complying attorney or unrepresented party to advance all or part of the cost of printing the extract. The appellate court may dismiss the appeal for non-compliance with an order entered under this section.

**Source:** This Rule is derived from former Rules 1028 and 828 with the exception of section (l) which is derived from former Rule 833.

  

**Credits**

[Adopted Nov. 19, 1987, eff. July 1, 1988. Amended Nov. 23, 1988, eff. Jan. 1, 1989; March 30, 1993, eff. July 1, 1993; Dec. 10, 1996, eff. July 1, 1997; March 5, 2001, eff. July 1, 2001; Nov. 12, 2003, eff. Jan. 1, 2004; April 5, 2005, eff. July 1, 2005; Sept. 10, 2009, eff. Oct. 1, 2009; March 2, 2015, eff. July 1, 2015; Feb. 9, 2022, eff. April 1, 2022; April 1, 2023, eff. July 1, 2023.]

Notes of Decisions (45)

MD Rules, Rule 8-501, MD R A CT AND SPEC A Rule 8-501
Current with amendments received through February 1, 2025. Some sections may be more current, see credits for details.

**End of Document**

KeyCite Yellow Flag
Proposed Legislation

West's Annotated Code of Maryland
Corporations and Associations
Title 5. Special Types of Corporations (Refs & Annos)
Subtitle 3. Religious Corporations
Part III. United Methodist Church

MD Code, Corporations and Associations, § 5-327

# § 5-327. Absence of deed trust clause, trustees' responsibilities

Currentness

The absence of a trust clause in any deed or other conveyance executed before June 1, 1953, does not relieve or exclude a local church in any way from its Methodist connectional responsibilities or from the provisions of this part and does not absolve a local congregation or board of trustees of its responsibility to the United Methodist Church, if such an intent of the founders or the later congregations and boards of trustees is indicated by:

(1) The conveyance of the assets to the trustees of the local church or any of its predecessors;

(2) The use of the name, customs, and polity of the United Methodist Church in such a way as to be known to the community as part of this denomination; or

(3) The acceptance of the pastorate of ministers appointed by a bishop of the United Methodist Church or employed by the superintendent of the district in which the local church is located.

**Credits**
Added by Acts 1976, c. 487, § 5.

MD Code, Corporations and Associations, § 5-327, MD CORP & ASSNS § 5-327
Current through legislation effective through May 6, 2025, from the 2025 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

**End of Document**

West's Annotated Code of Maryland
Maryland Rules
Title 2. Civil Procedure--Circuit Court
Chapter 600. Judgment

MD Rules, Rule 2-602

# RULE 2-602. JUDGMENTS NOT DISPOSING OF ENTIRE ACTION

Currentness

**(a) Generally.** Except as provided in section (b) of this Rule, an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action:

(1) is not a final judgment;

(2) does not terminate the action as to any of the claims or any of the parties; and

(3) is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties.

**(b) When Allowed.** If the court expressly determines in a written order that there is no just reason for delay, it may direct in the order the entry of a final judgment:

(1) as to one or more but fewer than all of the claims or parties; or

(2) pursuant to Rule 2-501 (f)(3), for some but less than all of the amount requested in a claim seeking money relief only.

**Source:** This Rule is derived from former Rule 605 a and the 1961 version of Fed. R. Civ. P. 54 (b).

**Credits**
[Adopted April 6, 1984, eff. July 1, 1984. Amended eff. April 8, 1985; Nov. 12, 2003, eff. Jan. 1, 2004; Dec. 8, 2003, eff. July 1, 2004; April 5, 2005, eff. July 1, 2005.]

Notes of Decisions (220)

MD Rules, Rule 2-602, MD R RCP CIR CT Rule 2-602
Current with amendments received through February 1, 2025. Some sections may be more current, see credits for details.

  

**End of Document**

KeyCite Yellow Flag
Proposed Legislation

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part I. Organization of Courts (Refs & Annos)
Chapter 21. General Provisions Applicable to Courts and Judges

28 U.S.C.A. § 455

# § 455. Disqualification of justice, judge, or magistrate judge

Currentness

**(a)** Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

**(b)** He shall also disqualify himself in the following circumstances:

**(1)** Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

**(2)** Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

**(3)** Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

**(4)** He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

**(5)** He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

**(i)** Is a party to the proceeding, or an officer, director, or trustee of a party;

**(ii)** Is acting as a lawyer in the proceeding;

**(iii)** Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

  

**(iv)** Is to the judge's knowledge likely to be a material witness in the proceeding.

**(c)** A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

**(d)** For the purposes of this section the following words or phrases shall have the meaning indicated:

**(1)** "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

**(2)** the degree of relationship is calculated according to the civil law system;

**(3)** "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

**(4)** "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

**(i)** Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

**(ii)** An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

**(iii)** The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

**(iv)** Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

**(e)** No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

**(f)** Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

  

**CREDIT(S)**

(June 25, 1948, c. 646, 62 Stat. 908; Pub.L. 93-512, § 1, Dec. 5, 1974, 88 Stat. 1609; Pub.L. 95-598, Title II, § 214(a), (b), Nov. 6, 1978, 92 Stat. 2661; Pub.L. 100-702, Title X, § 1007, Nov. 19, 1988, 102 Stat. 4667; Pub.L. 101-650, Title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

Notes of Decisions (1752)

**O'CONNOR'S CROSS REFERENCES**
**O'Connor's Federal Rules Civil Trials:**

See ***O'Connor's Federal Rules***, "Motion to Recuse," ch. 5-E, §1 et seq.

28 U.S.C.A. § 455, 28 USCA § 455
Current through P.L. 119-12. Some statute sections may be more current, see credits for details.

**End of Document**

# Browse the Constitution Annotated

## Article VI  Supreme Law

### Clause 3 Oaths of Office

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

West's Annotated Code of Maryland
Constitution of Maryland Adopted by Convention of 1867
Declaration of Rights

MD Constitution, Declaration of Rights, Art. 37

# Article 37. Religious tests to qualify for office; oath of office

Currentness

That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God; nor shall the Legislature prescribe any other oath of office than the oath prescribed by this Constitution.

MD Constitution, Declaration of Rights, Art. 37, MD CONST DECL OF RIGHTS, Art. 37
Current through legislation effective through May 6, 2025, from the 2025 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

West's Annotated Code of Maryland
Maryland Rules
Title 8. Appellate Review in the Supreme Court and the Appellate Court
Chapter 100. General Provisions

MD Rules, Rule 8-131

RULE 8-131. SCOPE OF REVIEW

Currentness

**(a) Generally.** The issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by an appellate court whether or not raised in and decided by the trial court. Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

**(b) In Supreme Court--Additional Limitations.**

(1) *Prior Appellate Decision.* Unless otherwise provided by the order granting the writ of certiorari, in reviewing a decision rendered by the Appellate Court or by a circuit court acting in an appellate capacity, the Supreme Court ordinarily will consider only an issue that has been raised in the petition for certiorari or any cross-petition and that has been preserved for review by the Supreme Court. Whenever an issue raised in a petition for certiorari or a cross-petition involves, either expressly or implicitly, the assertion that the trial court committed error, the Supreme Court may consider whether the error was harmless or non-prejudicial even though the matter of harm or prejudice was not raised in the petition or in a cross-petition.

**Committee note:** The last sentence of subsection (b)(1) of this Rule amends the holding of *Coleman v. State*, 281 Md. 538 (1977), and its progeny.

(2) *No Prior Appellate Decision.* Except as otherwise provided in Rule 8-304 (c), when the Supreme Court issues a writ of certiorari to review a case pending in the Appellate Court before a decision has been rendered by that Court, the Supreme Court will consider those issues that would have been cognizable by the Appellate Court.

**(c) Action Tried Without a Jury.** When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

**(d) Interlocutory Order.** On an appeal from a final judgment, an interlocutory order previously entered in the action is open to review by the Court unless an appeal has previously been taken from that order and decided on the merits by the Court.

**(e) Order Denying Motion to Dismiss.** An order denying a motion to dismiss for failure to state a claim upon which relief can be granted is reviewable only on appeal from the judgment.

  

**Source:** This Rule is derived as follows:

Section (a) is derived from former Rules 1085 and 885.

Section (b) is derived from former Rule 813.

Section (c) is derived from former Rules 1086 and 886.

Section (d) is derived from former Rules 1087 and 887.

Section (e) is derived from former Rule 1009.

**Credits**

[Adopted Nov. 19, 1987, eff. July 1, 1988. Amended April 5, 2005, eff. July 1, 2005; April 21, 2023, eff. *nunc pro tunc* April 1, 2023.]

Notes of Decisions (476)

MD Rules, Rule 8-131, MD R A CT AND SPEC A Rule 8-131
Current with amendments received through February 1, 2025. Some sections may be more current, see credits for details.

**End of Document**