

**ATTORNEY GRIEVANCE
COMMISSION OF MARYLAND, et al.,**

Petitioners,

vs.

TY CLEVINGER

Respondent

**IN THE COURT OF APPEALS
OF MARYLAND**

September Term, 2017

Case No. COA-PET-0338-2017

**RESPONSE IN OPPOSITION TO MOTION FOR IMMEDIATE STAY PENDING
FURTHER REVIEW**

NOW COMES Ty Clevenger, the Respondent, responding in opposition to the MOTION FOR IMMEDIATE STAY PENDING FURTHER REVIEW filed by the Attorney Grievance Commission of Maryland and the Maryland Bar Counsel (collectively “Petitioners”). In support thereof, Mr. Clevenger submits the following:

INTRODUCTION

Mr. Clevenger incorporates by reference his RESPONSE IN OPPOSITION TO PETITION FOR CERTIORARI AND RESPONDENT'S COUNTER-PETITION FOR EQUITABLE RELIEF as if fully set forth herein.

ARGUMENT

A request for a stay pending appeal should be first directed to the trial court. *See* Maryland Rule 8-422. The Petitioners never requested a stay in the trial court,¹ even after Mr. Clevenger pointed out last week that they should first request a stay in the trial court. *See* RESPONSE IN OPPOSITION TO MOTION FOR EXTENSION OF TIME (App. 1). This is beginning to look

¹ The undersigned declares under penalty of perjury under the laws of the State of Maryland that the Petitioners herein never sought a stay of proceedings in the trial court.

like a pattern. The Petitioners create problems for themselves by ignoring the rules, then pretend to be victims of the problems that they created. In this instance, they Petitioners don't even bother explaining why they bypassed the trial court. Instead, they admit what Mr. Clevenger suspected all along, *i.e.*, that they never had any intention of complying with the trial court's order to investigate David E. Kendall, Cheryl D. Mills, and Heather Faye Samuelson. Regardless, they have not demonstrated any reason to stay the proceedings below.

CONCLUSION

The MOTION FOR IMMEDIATE STAY PENDING FURTHER REVIEW should be denied and the PETITION FOR CERTIORARI should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that copies of this document and its appendices were electronically served on Asst. Attorney General Alexis Rhode (arohde@oag.state.md.us) and Asst. Attorney General Michele McDonald (mmcdonald@oag.state.md.us), counsel for the Respondents, on November 7, 2017.



Ty Clevenger

Appendix 1

Response in Opposition to Motion for Immediate Stay Pending Further Review
Attorney Grievance Commission v. Ty Clevenger
Case No. COA-PET-0338-2017

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

TY CLEVENGER,

Petitioner,

vs.

**ATTORNEY GRIEVANCE
COMMISSION OF MARYLAND and
OFFICE OF BAR COUNSEL,**

Respondents

Case No. C-02-CV-16-003620

RESPONSE IN OPPOSITION TO MOTION FOR EXTENSION OF TIME

NOW COMES Ty Clevenger, the Petitioner, responding in opposition to the RESPONDENT'S MOTION FOR EXTENSION OF TIME TO RESPOND TO PETITIONER'S MOTION TO COMPEL:

The Respondents have been caught defying an order of this Court, and now they are desperate to buy time. On September 22, 2017, when the Court ordered the Respondents to investigate attorneys David Kendall, Cheryl Mills, and Heather Samuelson, the Respondents could have asked the Court to stay its order. They did not. Instead, it appears that the Respondents ignored the Court's order, hoping that nobody would notice. When the Respondents refused to respond to the Petitioner's inquiries, he filed his Motion to Compel, and that forced the hand of the Respondents. They filed notices of appeal, but they still did not ask this Court for a stay, even though a request for stay pending appeal must be first directed to the trial court. *See* Maryland Rule 8-422.

Since the Respondents failed to request a stay pending appeal, this Court is under no obligation to countenance their delay tactics:

The Court of Appeals has made clear that a circuit court retains fundamental jurisdiction in cases where an appeal is pending so long as the exercise of that jurisdiction does not “preclude[] or hamper[] the appellate court from acting on the matter before it,” and “[a]ny post-judgment ruling by a circuit court that [precludes or hampers judicial review] may be subject to reversal on appeal, but it is not void ab initio for lack of jurisdiction to enter it.” *Jackson v. State*, 358 Md. 612, 620, 751 A.2d 473 (2000). Therefore “‘when an appeal is taken, the trial court may continue to act with reference to matters not relating to the subject matter of, or matters not affecting, the appellate proceeding[.]’” *Cottman v. State*, 395 Md. 729, 741, 912 A.2d 620 (2006) (quoting *State v. Peterson*, 315 Md. 73, 80, 553 A.2d 672 (1989)). In other words, “[i]f the trial court does ... decide to proceed during the pendency of the appeal, absent a stay required by law, or one obtained from an appellate court, it has the authority to exercise the ‘fundamental jurisdiction’ which it possesses.” *Peterson*, 315 Md. at 81, 553 A.2d 672 (quoting *Pulley v. State*, 287 Md. 406, 419, 412 A.2d 1244 (1980)).

State v. WBAL-TV, 187 Md. App. 135, 151–52, 975 A.2d 909, 918–19 (2009); *see also Kent Island, LLC v. DiNapoli*, 430 Md. 348, 360–61, 61 A.3d 21, 28 (2013).

The MOTION TO COMPEL included a request that the Petitioner be permitted to amend his petition. Given the pendency of the appeals, and to avoid any potential conflict with the jurisdiction of the appellate courts, the Petitioner requests permission to supplement that petition rather than amend it. Specifically, the Petitioner seeks permission to file the attached supplemental complaint. *See Exhibit 1.* Given the evidence of the Respondent's bad faith, the Petitioner urges the Court to deny the RESPONDENT'S MOTION FOR EXTENSION OF TIME summarily and grant all of the relief requested by the Petitioner in his MOTION TO COMPEL AND REQUEST FOR HEARING.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of this document was served on Asst. Attorney General Alexis Rhode, counsel for the Respondents, at arohde@oag.state.md.us on November 2, 2017.



Ty Clevenger