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Justice delayed

By ANDREW H. BAIDA

For well over a year, I have delayed writing today's article about the glacier-like speed at which some judges decide cases, and I almost didn't write this at all after becoming intimately familiar, as the result of my involvement in an attorney disciplinary matter, with Rule 8.2(a) of the Maryland Rules of Professional Conduct.

This Rule, which I suspect most of you know nothing about unless you work for the Attorney Grievance Commission, are a Maryland Rules wonk, or simply like to live dangerously, sanctions any statement that a lawyer makes about the qualifications or integrity of a judge that is either false or made with reckless disregard of its truth or falsity.

The lawyer who was the subject of the disciplinary matter I just mentioned was charged with violating Rule 8.2(a) by making statements that were allegedly false, and definitely inflammatory, in an unsuccessful motion that the lawyer had filed in a separate case in which he sought the recusal of the entire Circuit Court for Carroll County.

The thought hadn't occurred to me until after the grievance case became moot last month that the same amicus curiae brief I wrote on behalf of the MSBA — a brief the Court of Appeals specifically stated it would keep in its files in the event questions concerning the constitutionality of Rule 8.2(a) are raised in the future — could be used in a grievance proceeding in which I was the subject due to statements made in this column about how some judges decide cases with anything but "all deliberate speed." *Brown v. Board of Education*, 349 U.S. 294, 301 (1955).

This confluence of events may seem unlikely to occur, especially when I have every intention to be truthful and have been informally assured by a former client who happens to be the AGC's lead prosecutor that I have nothing to worry about in writing today's column, but I am nevertheless somewhat hesitant in proceeding any further with what may lay the groundwork for my own legal version of *The Perfect Storm*.

But I have procrastinated and been a pathetic coward long enough. Even though today's article may put me in harm's way and is not likely to endear me to particular segments of the legal community, someone's got to say it and I'm saying it here: Some judges need to decide their cases more quickly.

### **Not bad, on average**

Before sprinting down the hallway to retain one of my partners to represent me, I'd like to mitigate the potential damage to my legal career by clarifying two points.

First, I'm only talking about delays that judges have direct control over, namely, the period of time that elapses between the date a case is argued and the date the decision is rendered. Today's beef is not with the time gap between when a case is docketed and when it is argued or deemed "submitted on brief." This period of delay also constitutes a significant portion of the time it takes to decide a case, but such a delay is systemic in

nature rather than attributable to just one individual who could be doing his or her job in a more timely fashion.

Second, I am not complaining that all judges need to decide all cases more expeditiously. Most judges decide most cases in a reasonable period of time. According to the Maryland Judiciary Annual Report covering the time period of July 1, 2003 to June 30, 2004, the Court of Special Appeals, which is the true workhorse of our appellate system in Maryland, decided 1,360 cases in an average of 107 days after they were argued, or slightly more than 3½ months. The Court of Appeals, Maryland's highest court, took approximately 50 percent longer to decide a little less than one-tenth of that case load, or an average of 159 days following argument to issue 130 opinions.

You can form your own opinion about these numbers, but I think that, on average, they're pretty good. I know how long it takes to write a brief — sometimes it takes me what seems like an eternity to write even a paragraph — so far be it for me to stand here on the sidelines and complain about the average amount of time it takes a judge with at least as much on his or her plate as I have on mine to produce, on a monthly basis, 8.7 Court of Special Appeals' opinions and 1.5 Court of Appeals' decisions.

The key word in what I just said, however, is "average." And that's where my concern lies.

For each decision that is issued on one side of the average, there is another one on the other side. Hypothetically speaking, 10 opinions that one judge writes and files within a month of argument means that there could be 10 other opinions that aren't written and filed until 184 days after argument, if we're talking about the Court of Special Appeals, and 288 days after argument, if the court in question is the Court of Appeals.

Unfortunately, these are not hypothetical numbers. The reality is that, while far from the norm, it is not unheard of for either court to take an even longer period of time before deciding a case.

If you are reading this, then you know of at least one attorney who had a case that lay dormant following oral argument for a period of time so extensive that two complete strangers could have met, dated, married, and had a couple of offspring in the 25 months that elapsed before the court issued its decision. This delay was unusual, but I have known of other cases, as I'm sure some of you have as well, that have languished for so long in the land of purgatory that is euphemistically known as "under advisement" that it is necessary to dust off and re-read the briefs to even remember what the case was about by the time it is decided.

The potential for delay looms even larger at the trial court level where many more cases exist. Most trial judges are diligent in deciding dispositive motions, but a judge who is not can hold up a case for months, if not years, while a pending motion to dismiss or for summary judgment waits to be decided.

### **Fair's fair**

Putting everything else aside, it seems to me that the playing field should be made more level. The Maryland Constitution contains a provision stating that appellate cases "shall" be decided within three months of the argument, but this is not a mandatory requirement, at least according to Maryland's appellate courts (there's a surprise).

Three months seems too restrictive a time frame anyway for requiring an overburdened appellate court such as the Court of Special Appeals to decide an appeal, but, in light of the litany of ways in which an appeal can be dismissed due to a lawyer's failure to file a brief or do any number of other acts in a timely fashion, shouldn't there be some counterpart for Maryland appellate judges that eliminates the two- or three-year delay between argument and decision that, while occasional, nevertheless does occur?

There should be, but I've said enough and will leave it to others to propose what such a counterpart should look like. I have more immediate issues to worry about. Like getting a good attorney grievance lawyer.

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