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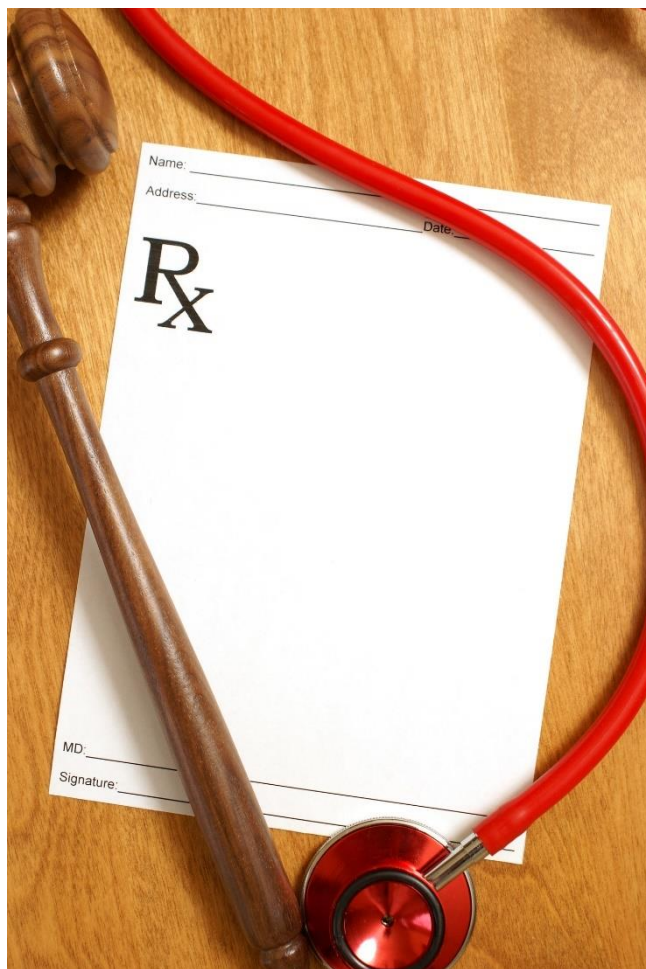
FEDERAL COURT RULES THAT SOME STATE RETIREES HAVE AN ENFORCEABLE CONTRACT RIGHT TO A STATE-FUNDED PRESCRIPTION DRUG BENEFIT, THAT SOME MIGHT AND THAT OTHERS DO NOT; MANY QUESTIONS REMAIN TO BE DECIDED, INCLUDING WHETHER PRELIMINARY INJUNCTIVE RELIEF SHOULD CEASE OR CONTINUE.

By Hon. Robert A. Zarnoch

In a long-awaited preliminary ruling, a U.S. District Judge has rejected the State's contention that no retiree has a vested contractual right to a prescription drug benefit.

On December 30, 2021, Judge Peter J. Messitte, in a complex decision, denied the State's motion to dismiss in part and granted it in part. The Court divided the challengers into four categories, keyed to the date of retirement and the date of certain State statutory changes; 1) Those who retired on or before June 30, 2011; 2) Those who retired between July 1, 2011 and December 31, 2018; 3) Those who retired on or after January 1, 2019; and 4) Currently active employees.

The pre-July 1, 2011 retirees had the strongest claim because they had a statutory "entitlement" to benefits and at the time of their retirement, the State "had not begun its efforts to walk back its promise of providing prescription drug benefits essentially coextensive with those of active employees." The pre-January 1, 2019 retirees appeared to have their rights changed by 2011 legislation. However, the Court said that this class "arguably" retained a vested contractual right to "at least some drug benefit subsidy until at least the beginning of fiscal year 2020," and at this stage, "has at least presented a colorable claim that the State may have acted unreasonably in modifying potential benefits." Because of 2019 legislative changes, the Court held that the General Assembly "withdrew its offer" of prescription drug benefits for persons retiring on or after July 1, 2019. Finally, Judge Messitte concluded that active employees could not rely on statutes extending benefits "only to retirees" and thus, these employees have "no vested entitlement to the prescription drug benefit promised" by the statutes invoked by other plaintiffs.



The Court's finding that certain retirees had a vested or enforceable contractual right to benefits does not end the analysis, because under Maryland law, "the State is still allowed to make reasonable modifications to the contractual rights of its retirees." This is a "fact-specific inquiry" that the Court "is in no position at this juncture

to resolve.” The Court’s opinion invited the parties to advise the Judge within 30 days “as to how the case should proceed from this point, *e.g.*, with discovery, evidentiary hearing, supplemental motions or the like.”

In the concluding bars of his opinion, the Judge may have surprised the plaintiffs with the following directive regarding the preliminary injunction issued earlier in the litigation:

Moreover, Counsel for the parties shall immediately consult with one another with regard to how to handle the Preliminary Injunction, *e.g.*, Should it remain in effect for a certain period of time before it is dissolved? Or should it be immediately dissolved pending the filing of a motion to stay?... A joint written submission to the Court with respect to the Preliminary Injunction shall also be made within 30 days, during which time the Preliminary Injunction will remain in effect and the Court’s Order herein will be stayed.

The Court also invited any party to file a motion to stay enforcement of the decision “for a reasonable period of time...to allow the parties time to transition their current prescription drug benefit program to an appropriate alternative program and/or to consider an interlocutory appeal.”

Resolution of the preliminary injunction issue is critical for the plaintiffs, because of a complicated contingency clause in 2019 legislation that delayed elimination of most prescription drug benefits until the “final resolution” of the preliminary injunction. That legislation also provides that if resolution of the injunction occurs less than 9 months before the first day of open enrollment -- typically October 15 -- then, the legislation is not effective until the next benefit year. Given the current pace of the litigation, the 9-month period will probably not kick in for 2022 and benefits would not appear to change for the rest of the year. With uncertainties over stays, appeals and the fate of the preliminary injunction, what happens in 2023 is anybody’s guess.

JUDICIAL ETHICS COURSE

To ensure Maryland Judges and Magistrates are in good standing with the ethics rules, the Judicial College launched *Judicial Ethics for Judges & Magistrates* in July 2021. Spanning two years, this eight-module online course will be offered quarterly and was made mandatory by the Judicial Council.

Module Three: Role of the Judge on and Off the Bench, opened on January 3, 2022. If you have not yet completed *Module Two* and require assistance in doing so, please reach out to the Judicial College Registrar via email educationregistrar@mdcourts.gov or phone (410) 260-3573.

Module and Focus	Scheduled Release*
Module 1: The Role of the Judge: Preamble and Rule 1.3	July 2021 – October 2021
Module 2: Court through the Eyes of a Judge	November 2021 – December 2021
Module 3: Role of Judge On and Off the Bench	January 2022 – March 2022
Module 4: Self Represented Litigants	April 2022 – June 2022
Module 5: Demeanor and Bias	July 2022 – September 2022
Module 6: Social Media	October 2022 – December 2022
Module 7: Political Activity	January 2023 – March 2023
Module 8: Ethics Committee	April 2023 – June 2023

LEO WEB PROTECT

The Maryland Judiciary's Security Administration announced the expansion of the LEO Web Protect service to senior judges. This service reduces the visibility of personal information found on the internet. The Security Administration noted that:

this service is unable to delete professional licensure information, nor does it remove information printed in newspapers or on web-based message boards. This process also does not remove any social media information you have shared on Facebook (Meta), Twitter, Instagram, or other social networking sites. To remove that information, you must change the privacy settings on each of your accounts or manually delete the information altogether.

This service is available to all judges, magistrates, and commissioners at no cost. If you are interested in this service, please sign up at <https://www.leowebprotect.com/product/maryland-judiciary-sign-up/>. If you have any questions, please contact Sean Wolcott at sean.wolcott@mdcourts.gov or Efren Diaz at Efren.diaz@mdcourts.gov.

A PURSUIT OF JUSTICE BLOG

A family's history is the most valuable information one can possess. Television shows such as PBS's *Finding Your Roots* and TLC's *Who Do You Think You Are?* connect celebrities and influential people with their ancestral history through researching public records. One of our own, the Honorable Steven I. Platt, has written an article on this topic about his own family's history as posted on his *A Pursuit of Justice* blog, titled, "[Remarks at 'Vintage of The Valley Event' Hosted by Strasburg, VA Heritage Association.](#)"



Save the Date!

April 26-28, 2023

*The Judicial Conference for 2023
has been entirely cancelled*

Judicial College of Maryland, Judicial Education

Judicial Conference

at the
**Hyatt Regency
Cambridge, MD**

MORE INFORMATION TO COME

Contact: Theresa Coffey
Judicial Education Event Coordinator
Phone #: 410-260-3601
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PUBLIC NOTICE

- For all COVID-19 updates, please visit mdcourts.gov and click on the red banner labeled COVID-19 UPDATE at the top of the page.
- For the latest news, updates, payroll info, Hot Topics and more, check out the Senior Judge webpage, <https://mdcourts.gov/hr/seniorjudges>. Don't forget to save the link so you can refer to it at any time.
- Have something about yourself that you want to share? Please contact Eliana Pangelinan at Eliana.pangelinan@mdcourts.gov to be featured in an issue of the Hot Topics Newsletter.

UPCOMING ADVANCED PAYROLLS FOR SENIOR JUDGES

02/02/22 – 02/15/22. Timesheets will be due for approval by noon on Monday, February 14th and managers must have the approvals completed by 6:00 p.m.

05/11/22 – 05/24/22. Timesheets will be due for approval by noon on Monday, May 23rd and managers must have the approvals completed by 6:00 p.m.

IN MEMORIAM

Hon. John W. Sause, Jr.
Circuit Court for Queen Anne's County

Hon. Joseph H. H. Kaplan
Circuit Court for Baltimore City

THE JUDICIAL COUNCIL'S SENIOR JUDGES COMMITTEE

Hon. James A. Kenney III, Chair
Hon. Deborah Sweet Eyler, Vice Chair, Senior Judge
Hon. Jean Baron, Senior Judge
Hon. Lynne A. Battaglia, Senior Judge
Hon. Paul M. Bowman, Senior Judge
Carole Burkhart, District Court Headquarters
Hon. Lawrence R. Daniels, Senior Judge
Hon. Steven I. Platt, Senior Judge
Hon. Irma S. Raker, Senior Judge
Hon. Gale E. Rasin, Senior Judge
Hon. Nancy B. Shuger, Senior Judge
Hon. Dennis M. Sweeney, Senior Judge
Eliana Pangelinan, Staff

RETIREMENT SERVICES CONTACT LIST

Maryland State Retirement and Pension System

1-800-492-5909

Gwendolyn Mulcahy
gmulcahy@sra.state.md.us
410-625-5516

Social Security Administration (SSA)

1-800-772-1213

www.socialsecurity.gov

Centers for Medicare and Medicaid

1-800-633-4227

www.medicare.gov

Maryland Supplement Retirement Plan (MSRP)

1-800-545-4730

Angela Anderson
angela.anderson@maryland.gov
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Department of Budget & Management, Employee Benefits Division

410-767-4775

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