

January 25, 2007

Dear Client:

As we begin 2007, we want to bring you up to date on recent developments in the law and at the firm. As mentioned in our last letter, the firm has grown from four to five lawyers as of September 25, 2006, with the addition of Daniel H. Ginsburg. We are also pleased to announce that both Fred Bennett and Gary Bair have been selected as 2007 Maryland Super Lawyers in the area of criminal defense. This honor is limited to the top five percent of lawyers in the State, who are selected based upon a statewide survey of lawyers, an independent candidate search, and evaluation of peer recognition and professional achievement. Only 20 lawyers in the entire State of Maryland were selected as the top criminal defense attorneys and two of them are the partners in this firm.

On the legal developments front, a recent case decided by the Court of Special Appeals of Maryland may be of help to you or someone you know. In *State v. Adams*, \_\_\_ Md. App. \_\_\_, 2006 WL 3489048 (No. 617, Sept. Term, 2005, filed Dec. 5, 2006), the Court issued an important post conviction ruling. The case involved “advisory only” jury instructions that were commonly given in Maryland trials through the 1970’s. The Court ruled that such advisory instructions violated the Due Process Clause and, further, that defense counsel’s failure to object to the instructions at trial did waive the issue for post conviction purposes. In another part of the ruling, the Court once again held that the failure of trial counsel to file a timely motion for modification of sentence constitutes ineffective assistance of counsel. This ruling is even more definitive than prior cases, where the defendant had requested that such a motion be filed. In *Adams*, the Court holds that defense counsel must file the motion for modification unless there is “an express directive from [the defendant] not to file a motion.”

There are recent developments in the area of drug treatment under the Health-General Article. In *Fuller v. State*, 169 Md. App. 303 (2006), the Court of Special Appeals ruled that the denial by the circuit court of a petition for drug treatment under the Health-General Article cannot be appealed. The Court did not rule on the merits of the case, but noted that the appeal arose “out of a petition that appellant was entitled to file in the circuit court as a result of amendments enacted by the General Assembly in 2004.” The Court of Appeals has granted review of the appealability issue and heard oral arguments in the case on January 5, 2007. Regardless of the outcome of that appeal, the law has once again changed, effective October 1, 2006. The Legislature hopefully has made clear that any and all inmates are now entitled to petition for evaluation and treatment, regardless of whether they have previously filed a motion for modification of sentence. This and other issues will be revisited by the courts in the future, as they interpret the new law.

A few other matters also may be of significance to you: (1) if a defendant was sentenced before October 1, 1995, there is no statute of limitations on the filing of a post conviction petition; (2) if a defendant was sentenced after October 1, 1995, time has either run or will run after 10 years, and the petition can only be filed if “extraordinary cause” is shown; (3) there is a one-petition limit applicable to every defendant, but there is no limit to the number of motions to reopen post conviction that may be filed; (4) for sentences imposed on or after July 1, 2004, the court’s revisory power to reduce the sentence expires five years after the date of sentencing; (5) for sentences imposed before July 1, 2004, there is no time limit on the court’s revisory power, so long as a timely motion for reduction of sentence was filed.

Thus, for defendants sentenced in 1996 and 1997, time has run out or will expire soon for the filing of a post conviction petition. And for defendants sentenced after July 1, 2004, who have pending motions for modification being held sub curia, the sentencing judge must make a ruling within the five year period or lose jurisdiction over the case. Any motions to supplement or requests for hearing should be made with that time limit in mind.

The firm continues to represent hundreds of clients in the state and federal courts. We are currently handling trials, direct appeals, motions for reconsideration of sentence, post conviction petitions, motions to reopen post conviction, and petitions for coram nobis relief throughout the State of Maryland. We have recently obtained favorable trial and appellate results; been granted relief in post conviction cases based on ineffective counsel, defective guilty pleas, erroneous jury instructions, and other grounds; and had sentences reduced on belated motions for reconsideration and motions to correct illegal sentences. In addition, numerous appeals are pending in the Court of Special Appeals, the Court of Appeals, the United States Court of Appeals for the Fourth and Eleventh Circuits, and the United States Supreme Court.

Finally, we are enclosing a copy of our new firm brochure, for your information. If you or someone you know has any questions about any of these matters, please feel free to contact us, in writing or by calling collect, at 301-220-1570. We wish you a healthy 2007.

Sincerely,

**THE LAW FIRM OF BENNETT & BAIR, LLP**