

THE ESTATE OF KATHERINE  
SARAH MORRIS, *et al.*

Plaintiffs

v.

STATE OF MARYLAND

Defendant

\* IN THE  
\* CIRCUIT COURT  
\* FOR ANNE  
\* ARUNDEL COUNTY  
\* Case No. C-02-CV-18-002696  
\*

\* \* \* \* \*

**DEFENDANT'S MOTION TO DISMISS**

Defendant, the State of Maryland, through counsel, submits this Motion to Dismiss pursuant to Md. Rule 2-322 and requests that this Honorable Court dismiss Plaintiffs' Complaint for Writ of Mandamus with prejudice and provide any further relief it may deem appropriate.

1. Plaintiffs filed a Complaint for Writ of Mandamus seeking to have the Autopsy Report for Katherine Sarah Morris amended so as to change the manner of death from "suicide" to "undetermined." Plaintiffs also seek compensatory damages for alleged negligence and attorneys' fees. *See* Compl. at p. 12, ¶¶ 28-29 and p. 153, ¶¶ 331.

2. Plaintiffs' claim must be dismissed because it violates the doctrine of *res judicata*.

3. Plaintiffs' claim must be dismissed because there is no final administrative decision for review in the Circuit Court.

4. Plaintiffs' claim must be dismissed because they have failed to exhaust administrative remedies prior to filing in the Circuit Court.

5. Plaintiffs' claim must be dismissed because there is a separate statutory avenue for which Plaintiffs can seek the requested relief.

6. Plaintiffs' claim must be dismissed because it is barred by the applicable statute of limitations and/or laches.

7. Defendant incorporates the attached Memorandum of Law in Support of its Motion to Dismiss as if stated fully herein.

8. Defendant, the State of Maryland, respectfully requests that this Honorable Court enter an Order dismissing Plaintiff's Complaint for Writ of Mandamus filed against the State of Maryland with prejudice, and that this Honorable Court provide any further relief as it may deem appropriate.

Respectfully submitted,

BRIAN E. FROSH  
Attorney General of Maryland

/s/ James N. Lewis

JAMES N. LEWIS, Assistant Attorney General  
CPF#: 1212120174

Maryland Office of the Attorney General  
300 West Preston Street, Suite 302  
Baltimore, Maryland 21201

jnlewis@oag.state.md.gov  
(410) 767-5162  
(410) 333-7894 (facsimile)

*Attorneys for Defendant*

October 18, 2018

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of October 2018, a copy of the foregoing Motion to Dismiss, accompanying Memorandum of Law, and Proposed Order were served by mailing a copy, first class to:

Ms. Marguerite Morris  
701 Harvest Run Drive, Apt. # 104  
Odenton, Maryland 21113  
*Plaintiff, individually and as  
Administrator of the  
Estate of Katherine Sarah Morris*

\_\_\_\_\_  
/s/ James N. Lewis  
*Attorneys for Defendant*  
CPF#: 1212120174

THE ESTATE OF KATHERINE  
SARAH MORRIS, *et al.*

Plaintiffs

v.

STATE OF MARYLAND

Defendant

\* IN THE  
\* CIRCUIT COURT  
\* FOR ANNE  
\* ARUNDEL COUNTY  
\* Case No. C-02-CV-18-002696  
\*

\* \* \* \* \*

**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANT'S MOTION TO DISMISS**

Defendant, the State of Maryland, through counsel, submits this Memorandum of Law in Support its Motion to Dismiss pursuant to Md. Rule 2-322, and states:

**INTRODUCTION**

Marguerite R. Morris filed this Complaint for Writ of Mandamus on behalf of herself and the Estate of Katherine Sarah Morris, her daughter, pursuant to Maryland Rule 15-701. *See* Compl. at p. 1, unnumbered introductory paragraph. Specifically, Ms. Morris seeks to have the Autopsy Report for Katherine Sarah Morris amended so as to change the manner of death from "suicide" to "undetermined." *Id.* at p. 1, p. 12, ¶¶ 18-19, and p. 153, ¶ 331.

This is Ms. Morris's second Complaint for Writ of Mandamus in this court in an effort to obtain an order compelling the Office of the Chief Medical Examiner to amend the manner of death for Katherine Sarah Morris. *Compare with The Estate of Katherine Sarah Morris, et al. v. Dr. David R. Fowler*, Circuit Court for Anne Arundel County, Case No. C-02-CV-18-000655 (hereinafter the "First Lawsuit").



## STATEMENT OF RELEVANT FACTS

Plaintiffs previously filed a lawsuit in this court on or about March 14, 2018 seeking identical relief. *See* the “First Lawsuit.” In the First Lawsuit, Ms. Morris originally sued Dr. David Fowler, who is the Chief Medical Examiner for the Office of the Chief Medical Examiner, which is an agency of the State of Maryland. Md. Code Ann., Health-Gen. § 5-301, *et seq.* and COMAR 10.35.01, *et seq.* It was a Complaint for Writ of Mandamus seeking, among other things, to change Katherine Sarah Morris’s manner of death from “suicide” to “undetermined.” *See* First Lawsuit, Compl. at p. 140. Dr. David R. Fowler filed a Motion to Dismiss in the First Lawsuit on or about April 20, 2018, which was accepted, but also marked deficient because several PDF documents had been merged into one PDF document. The Motion to Dismiss was refiled as separate PDF documents on or about May 4, 2018.

The Motion to Dismiss in the First Lawsuit had several bases for dismissal, including, in relevant part, (1) that plaintiffs do not have a claim because there is no final administrative decision for review in the Circuit Court, (2) that plaintiffs do not have a claim because they have failed to exhaust administrative remedies prior to filing the Circuit Court, (3) that plaintiffs do not have a claim for a writ of mandamus because there is a separate statutory avenue for which plaintiffs can seek the requested relief, and (4) that plaintiffs do not have a claim because it is barred by the applicable statute of limitations and/or laches.

On May 9, 2018, Ms. Morris filed a Motion to Deny Defendants Motion to Dismiss. A plain reading of the motion revealed that it challenged the merits of the Motion to

Dismiss and, as a result, it appeared to be an opposition to the pending Motion to Dismiss and not an independent motion seeking separate relief. Dr. Fowler treated it as such and filed a Reply Memorandum on May 22, 2018.

On May 9, 2018, Ms. Morris also filed a Motion for Leave to Amend with a copy of her Amended Complaint and a redlined Amended Complaint. The Amended Complaint added the "State of Maryland, Office of the Chief Medical Examiner" as a defendant.

On or about June 6, 2018, this Honorable Court granted the motion to dismiss and ordered that the plaintiffs' complaint be dismissed with prejudice. On June 15, 2018, plaintiffs filed a Motion to Alter or Amend the Judgment and/or for Reconsideration. On July 27, 2018, after the motion was fully briefed, the motion was denied.

In this case (hereinafter, the "Second Lawsuit"), the plaintiffs are suing the State of Maryland seeking to have the Autopsy Report for Katherine Sarah Morris amended so as to change the manner of death from "suicide" to "undetermined." *See* Compl. at p. 1, p. 12, ¶¶ 18-19, and p. 153, ¶ 331. A recitation of the lengthy and detailed facts is not necessary because this case violates the doctrine of *res judicata*.

#### STANDARD OF REVIEW

"Maryland now applies the 'transaction' test when determining whether two cases are the same for the purposes of *res judicata*. . . . Cases are grouped by 'transaction' pragmatically, 'giving weight to such considerations as whether the facts are related in time, space, origin or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or

usage.” *Douglas v. First Sec. Fed. Sav. Bank, Inc.*, 101 Md. App. 170, 188, 643 A.2d 920, 929 (1994) (internal citations omitted).

## ARGUMENT

### I. PLAINTIFFS’ CLAIMS ARE BARRED BY THE DOCTRINE OF RES JUDICATA.

“Res judicata, also known as claim preclusion or direct estoppel, means ‘a thing adjudicated.’” *Anne Arundel County Bd. of Educ. v. Norville*, 390 Md. 93, 106 (2005). “The doctrine of res judicata bars the relitigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter and causes of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation.” *Id.* at 106-07. “Res judicata restrains a party from litigating the same claim repeatedly and ensures that courts do not waste time adjudicating matters which have been decided or *could have been* decided fully and fairly.” *Id.* at 107 (emphasis in original). “Under Maryland law, the elements of res judicata, or claim preclusion, are: (1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute; (2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and, (3) that there has been a final judgment on the merits.” *Id.* (internal citations omitted).

#### A. The parties in the present litigation are the same or in privity with the parties to the earlier dispute.

The First Lawsuit and the Second Lawsuit each have the same plaintiffs. In the First Lawsuit, plaintiffs sued Dr. Fowler in his official capacity. Before dismissal, plaintiffs sought to amend and add the “State of Maryland, Office of the Chief Medical Examiner” as a defendant. This would have been a distinction without a difference because



Dr. Fowler in his official capacity, the Office of the Chief Medical Examiner, and the State of Maryland are not three distinctly "sue-able" entities. Holding a unit of the State responsible is the same as holding the sovereign power answerable, and as such, two units of the State are not two separate entities for purposes of suit. *Baltimore Police Department v. Cherkas*, 140 Md. App. 282, 306-07 (2001); *Board v. Town of Riverdale*, 320 Md. 384, 388-89 (1990).

The decision to only sue the State of Maryland in the Second Lawsuit is the same as suing Dr. Fowler in his official capacity in the First Lawsuit. This is not to mention that the court in the First Lawsuit had seen plaintiffs' motion for leave to amend the complaint and add the State of Maryland as a party prior to dismissing the First Lawsuit. The First Lawsuit and the Second Lawsuit involve the same parties.

**B. The claim presented in the current action is identical to the one determined in the prior adjudication.**

In the First Lawsuit, plaintiffs sought to have the Autopsy Report for Katherine Sarah Morris amended so as to change the manner of death from "suicide" to "undetermined." See First Lawsuit Compl. at p. 142, ¶¶ 348-49. In the Second Lawsuit, plaintiffs also seek to have the Autopsy Report for Katherine Sarah Morris amended so as to change the manner of death from "suicide" to "undetermined." See Second Lawsuit Compl. at p. 12, ¶¶ 28-29 and p. 153, ¶¶ 331. The two cases seek identical relief from the same parties.

**C. There has been a final judgment on the merits.**

This Court already considered a motion to dismiss in the First Lawsuit. After considering that motion, this Court dismissed the First Lawsuit with prejudice. After ruling

on it, plaintiffs filed a Motion to Alter or Amend Judgment and/or for Reconsideration. This Court considered the motion and denied it. There has been a final judgment on the merits.

**II. PLAINTIFFS' CASE SHOULD BE DISMISSED FOR THE SAME REASONS ARGUED IN THE FIRST LAWSUIT.**

**A. Plaintiffs do not have a claim because there is no final administrative decision for review in the Circuit Court.**

“When a legislature provides an administrative remedy as the exclusive or primary means by which an aggrieved party may challenge a government action, the doctrine of administrative exhaustion requires the aggrieved party to exhaust the prescribed process of administrative remedies before seeking ‘any other’ remedy or ‘invok[ing] the ordinary jurisdiction of the court.’” *Priester v. Baltimore County, Maryland*, 232 Md. App. 178, 193 (2017) (emphasis in original) (internal citation omitted). Furthermore, “[t]he rule of finality overlaps the rule of exhaustion. . . . ‘[A] party must exhaust the administrative remedy and obtain a final administrative decision . . . before resorting to the courts.’” *Id.* (emphasis in original) (internal citations omitted).

Here, the legislature provides an administrative remedy in Md. Code Ann., Health-Gen. § 5-310(d)(2). The process requires a request by a person in interest—*within 60 days* after the medical examiner files the final findings and conclusions as to the cause and manner of death—to request a correction. *Id.* § 5-310(d)(2)(i). If denied, a person in interest can appeal the decision to the Secretary of Health who would then refer the case to the Office of Administrative Hearings for a contested case hearing regarding the (1) denial and (2) the cause and manner of death. *Id.* § 5-310(d)(2)(ii). The administrative law judge

hearing the case would then issue findings of fact to the Secretary of Health. *Id.* § 5-310(d)(2)(iii). The Secretary of Health reviews the findings of the administrative law judge, and issues a final order. *Id.* § 5-310(d)(2)(iv). A person in interest could then appeal an adverse decision to the appropriate circuit court. *Id.* § 5-310(d)(2)(v).

Katherine Sarah Morris died on May 6, 2012. *See* Second Lawsuit Compl. at p. 4, ¶ 6. Ms. Morris, a person in interest, waited more than three years to make a request (*see* Second Lawsuit Compl. at p. 25, ¶ 64), which makes the entire process untimely as a matter of law. To the extent that Ms. Morris attempted to engage in the statutorily prescribed method for changing the manner of death, there is no final decision until the Secretary of Health rejects the findings of an administrative law judge, which has not happened. In addition to the extraordinary delay, which is a violation of the statute of limitations, there is no final decision for this Court to review and, therefore, this matter should be dismissed with prejudice.

**B. Plaintiffs do not have a claim because they have failed to exhaust administrative remedies prior to filing in the Circuit Court.**

Ms. Morris has no claim because she has failed to exhaust her administrative remedies, which is a precondition to pursuing this action in circuit court. “The exhaustion doctrine fulfills the legislature’s intent of delegating a matter to an agency for initial review and decision, promotes the policy of allowing agencies to exercise their expertise, and furthers judicial economy by limiting the number of appeals before the court, allowing the administrative process to narrow the scope of those issues that do eventually warrant judicial review.” *Priester*, 232 Md. App. at 200 (internal citation omitted).



Ms. Morris has not exhausted her administrative remedies prior to filing a lawsuit, nor can she because of the extraordinarily long delay in requesting an amendment to the manner of death. As a result, this case should be dismissed with prejudice.

**C. Plaintiffs do not have a claim for a writ of mandamus because there is a separate statutory avenue for which Plaintiffs can seek the requested relief.**

Ms. Morris brings this lawsuit pursuant to Maryland Rule 15-701 for a writ of mandamus, which is not to be confused with actions for an “administrative mandamus pursuant to Title 7, Chapter 400 of [the Maryland rules] or mandamus in aid of appellate jurisdiction.” Maryland Rule 15-701. With respect to a writ of mandamus, it is “generally used to compel corporations, inferior tribunals, or public officers to perform their functions, or some particular duty imposed upon them, which in its nature is imperative, and to the performance of which the party applying for writ has a clear legal right.” *City of Seat Pleasant v. Jones*, 364 Md. 663, 672-73 (2001) (internal citation omitted). Furthermore, “[t]he process is extraordinary, and if the right be doubtful, or the duty discretionary, or of a nature to require the exercise of judgment, or if there be any ordinary adequate legal remedy to which the party applying could have recourse, this writ will not be granted.” *Id.* at 673 (internal citations omitted).

The Court has held that a writ of mandamus is a vehicle “to correct abuses of discretion and arbitrary, illegal, capricious, or unreasonable acts; but in exercising that power, care must be taken not to interfere with the legislative prerogative, or with the exercise of sound administrative discretion, where discretion is clearly conferred.” *Id.* (internal citations omitted). Furthermore, “[m]andamus is *an original action*, as

distinguished from an appeal.’” *Id.* (emphasis added) (internal citations omitted). A writ of mandamus is further limited because “‘judicial review is properly sought through a writ of mandamus ‘where there [is] no statutory provision for hearing or review and where public officials [are] alleged to have abused the discretionary powers reposed in them.’ . . . Thus, prior to granting a writ of mandamus to review discretionary acts, *there must be both a lack of an available procedure for obtaining review* and an allegation that the action complained of is illegal, arbitrary, capricious or unreasonable.’” *Id.* at pp. 674-75 (emphasis added) (internal citations omitted).

In this case, Ms. Morris seeks an amendment to the manner of death. There is statutory procedure to obtain that relief. That process is the appropriate vehicle for relief, not a writ of mandamus. If Ms. Morris is able to receive a final decision and exhaust her administrative remedies, then she would be able to have that decision reviewed by the appropriate circuit court, which would likely be in the form of a Petition for Judicial Review.

A writ of mandamus is not the proper vehicle for which relief can be granted and, therefore, this case should be dismissed with prejudice.

**D. Plaintiffs do not have a claim because it is barred by the applicable statute of limitations and/or laches.**

As noted above, the statute applicable to the relief that Ms. Morris seeks requires that a request to amend the manner of death must be made within 60 days. Md. Code Ann., Health-Gen. § 5-310(d)(2)(i). The time period enumerated in this statute establishes the

applicable statute of limitations,<sup>1</sup> and it has clearly been violated because Ms. Morris first sought amendment to the manner of death more than 3 years after her daughter's passing. See Second Lawsuit Compl. at p. 25, ¶ 64.

In the alternative, Maryland courts have also held that laches is a proper grounds for dismissal. *Ipes v. Bd. of Fire Comm'rs of Baltimore*, 224 Md. 180, 183-84 (1961); see also *O'Brien v. Bd. of License Commr's for Washington Cty.*, 199 Md. App. 563, 580 (2011). Laches is closely analogous to a violation of the statute of limitations because it is an "[u]nreasonable delay in pursuing a right or claim – almost always and equitable one – in a way that prejudices the party against whom relief is sought. Also termed *sleeping on rights*." See Laches, Black's Law Dictionary (10th ed. 2014) (emphasis in original). If this Honorable Court determines that the 60 days prescribed by statute is not a statute of limitations, then the lengthy delay in seeking amendment to the manner of death should be considered barred by laches for equitable reasons.

Ms. Morris expressed, in great detail, the extent to which she has been consumed by the investigation surrounding her daughter's death. Waiting more than three years after her daughter's death to seek amendment to the manner of death is detrimental, not only to the process by which a medical examiner is expected conduct the business of performing autopsies, but also to the procedure established for making changes to the cause and manner of death.

---

<sup>1</sup> If the statutory period is not considered the applicable statute of limitations, then a standard civil action requires that it be "filed within three years from the date it accrues unless another provide of the Code provides a different period of time within which an action shall be commenced." Md. Code Ann., Cts. and Jud. Proc. § 5-101. Using the standard civil statute of limitations, this action would still be a violation of the applicable statute of limitations.

The extraordinary delay makes amendment to the manner of death difficult because, while Ms. Morris has been living with this case every day, the medical examiner has not. Memories fade, which is important because reexamining the evidence years later is difficult, if not impossible. To conduct an examination years later would require heavy reliance upon notes and records because the body itself is unavailable, absent the extreme measure of exhuming it for further analysis.

The delay is a violation of the statute of limitations and this case should be dismissed with prejudice.

### CONCLUSION

WHEREFORE, for the reasons set forth above, the State of Maryland respectfully requests that this Honorable Court enter an Order dismissing Plaintiff's Complaint for Writ of Mandamus filed against the State of Maryland with prejudice, and that this Honorable Court provide any further relief as it may deem appropriate.

Respectfully submitted,

BRIAN E. FROSH  
Attorney General of Maryland

/s/ James N. Lewis

JAMES N. LEWIS, Assistant Attorney General  
CPF#: 1212120174  
Maryland Office of the Attorney General  
300 West Preston Street, Suite 302  
Baltimore, Maryland 21201  
jnlewis@oag.state.md.gov  
(410) 767-5162  
(410) 333-7894 (facsimile)  
*Attorneys for Defendant*

October 18, 2018