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July 10, 2012

The Honorable Heather R. Mizeur
429 House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Mizeur:

You have asked for advice concerning the decision of the Court of Appeals in *Tracey v. Solesky*. Specifically, you have asked whether there is any action that can be taken by the Executive or Legislative Branch of government to stay the decision, short of the passage of legislation by the General Assembly. You have also asked whether the decision is now in effect in light of the pending motion for reconsideration. It is my view that no action of the Executive or Legislative Branch short of the enactment of legislation can change the effect of this decision. While the matter is not free from doubt, it is our view that the decision is not currently in effect with respect to either the parties or other persons subject to the common law of Maryland.

In *Tracey v. Solesky*, No. 53, September Term 2012 (April 26, 2012), the Court of Appeals established, prospectively, "a strict liability standard in respect to the owning, harboring or control of pit bulls and cross-bred pit bulls in lieu of the traditional common law liability principles that were previously applicable to attacks by such dogs." This decision was based on the conclusion of the Court that "pit bulls and cross bred pit bulls are inherently dangerous." The opinion concludes:

This holding is prospective and applies to this case and causes of action accruing after the date of the filing of this opinion. Upon remand to the trial court, it shall apply in this case the modifications to the common law herein created.

The opinion was filed on April 26, 2012.

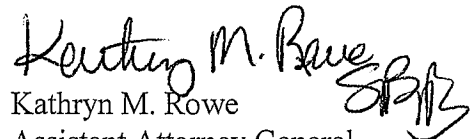
As discussed in the decision, the Court of Appeals has the power to change the common law in the light of modern circumstances or increased knowledge. Thus, their decision is the law of Maryland. It is clear that the law of Maryland cannot be altered by Executive Order. *Maryland Classified Employees Association v. Schaefer*, 325 Md. 19, 29-30 (1991). Moreover, while the General Assembly clearly has the power to change the law, it may do so only by

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enacting a bill that meets the requirements of the Maryland Constitution, including three readings in each house and passage by the yeas and nays on third reading. This can occur only in a session of the General Assembly, whether regular or special. Therefore, it is my view that the decision of the Court of Appeals cannot be altered by the Executive or Legislative Branch short of legislation passed during a session of the General Assembly.

It is my view that the interplay between Rule 8-606(a), which designates the mandate as the final judgment of the Court and Rule 8-605(d), which delays the mandate during consideration of a motion for reconsideration supports the conclusion that, as between the parties, the effect of a decision is stayed by the motion for reconsideration. What is less clear is the effect of the Court's pronouncements modifying the common law of Maryland as it applies to persons other than the parties to the instant case. In the absence of clear precedent to the contrary, we think the better rule maintains the flexibility of the Court of Appeals as it considers the motion for reconsideration. Thus, we believe that the motion for reconsideration delays the effect of the decision both as between the parties and as to all persons subject to the common law of Maryland. Nonetheless, we cannot be sure how the Court of Appeals will rule on this issue, which may (or may not) be the subject of the pending motion for reconsideration, and we urge private parties to consult their own legal counsel for advice.

Sincerely,


Kathryn M. Rowe
Assistant Attorney General