



## *Weekly Wright Report* (11/27/17)

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### LITIGATION

#### **The Importance of Understanding Hearsay**

The Court of Special Appeals of Maryland recently issued a lengthy opinion discussing hearsay and, more specifically, what is not hearsay in the matter of *Wallace-Bey v. State of Maryland* where Wallace-Bey was charged with murdering her spouse. *Wallace-Bey v. State*, No. 476 (Md. App. Nov. 2, 2017). In that matter, the Court reversed the murder conviction and held that an alleged batterer's taunts are not inadmissible hearsay in a murder trial if they are offered for their psychological impact, an element of the Battered Spouse Syndrome defense, rather than for their truth. Of particularly more value to litigants who do not practice criminal law is the Court's opinion in that matter, which provides a thorough review of what hearsay is and is not.

If a declaration is not a statement or is not offered for its truth, it is not hearsay, thus, it will not be excluded pursuant to the hearsay rule. An out-of-court statement is not hearsay unless it is offered to prove the truth of the matter asserted. In general, orders and commands are not factual assertions. For example, the command "stop!" made outside of court can neither be true or untrue, thus, it is not an assertion and, as such, is not hearsay. As a result of the trial court's improper hearsay rulings, the Court reversed the murder conviction of Wallace-Bey. Although hearsay may be complex, it is important for litigants to understand. Ask Michelle [MGomola@wcsllaw.com](mailto:MGomola@wcsllaw.com)

### ESTATE PLANNING

#### **The Best Gift For Yourself and Your Family This Year - - A Will**

If you pass on without a legally sound will, your heirs will likely pay more taxes than necessary. Your children might not be cared for as you wish. And state law, not you, will determine where your assets go. Here's how to avoid three common mistakes people make when drawing up a will.

1. Not Signing It Correctly. State statutes vary, but often, if a will is not signed exactly the way the law dictates, it's invalid. Some states require two witnesses, for example. Some mandate notarized signatures, and some require an "acknowledgement," a formal written declaration that

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the signer truly intends this to be his or her will. That seems silly, but wills often have such “magic words” necessary to ensure legal validity. Professional assistance can help you make certain that your will is compliant. If you wait until you really need it, you’ll be in no position to rectify mistakes. (Our condolences to your survivors.)

2. Titling Assets Incorrectly. In other words, your stuff won’t go to the people you intend. Let’s say a woman wants her assets divided evenly between her two kids. To make paying bills easier, she adds one of them to her bank account as a joint owner. When she dies, all the money in the account belongs to the joint owner. Civil wars have started over less. A simple remedy here would be to make one child an “authorized signatory”: able to access the bank account but not own it. Then, upon the mother’s death, the funds will pass equally to each child, as directed by the will. Similarly, if your will creates a trust to be funded by your life insurance, be sure the trust is named as the policy beneficiary. If you don’t, the trust won’t be seeded, and its purpose (to reduce a tax payment, say) will be rendered moot.

3. Failing To Update. Laws change. Families change. Assets change. (Do they ever.) A will is not a “one and done” item to be permanently checked off your to-do list. Update it periodically, especially after a major life event: marriage, divorce, birth of a child or grandchild. Above all, seek help from a professional who is knowledgeable about your state’s laws. Making your way through the byzantine legal jungle to the sunny uplands of a well-crafted will can give you extraordinary peace of mind — whether your next birthday takes you to 40, 60, 80 or points beyond. Ask Steve [SKaufman@wcsolaw.com](mailto:SKaufman@wcsolaw.com) or Mary Alice [MASmolarek@wcsolaw.com](mailto:MASmolarek@wcsolaw.com)

## GOVERNMENT CONTRACTING

### What Happens When a Government Contract Award is Appealed?

In a sound warning to contractors who hope to double-down on claim decisions by contracting officers leveraging them into higher awards, Judge Somers recently reminded contractors that an appeal of a contracting officer decision rescinds all offers and concessions. In BES Design/Build, LLC (CBCA 5640), the Board confirmed what most government contractors forget—even though the Contracting Officer makes a final decision on a claim, once the contractor appeals that decision, it eliminates the ability to accept the offer made. The contractor must start at the beginning. As the Board reaffirmed, “once an action is brought following a contracting officer’s final decision, the parties start in court or before the board with a clean slate.” Ask Don [DWalsh@wcsolaw.com](mailto:DWalsh@wcsolaw.com)