

IN THE MATTER OF  
FMR, Inc.  
APPELLANT/RESPONDENT  
436 Back River Neck Road  
Baltimore, MD 21221

RE: Revocation of Trespass Towing and  
Police-Initiated Towing Licenses

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO.: CBA-13-023

\* \* \* \* \*

### OPINION

This case comes before the Board as a record appeal of a Final Order of the Administration Law Judge (“ALJ”) on a citation for violations under Baltimore County Code (“B.C.C.”) Article 21, Title 16, and Code of Baltimore County Regulations (“C.O.B.A.R.”), Title 2, Subtitle 02, Chapters 2 and 3, wherein the ALJ revoked both a trespass towing license and police-initiated towing license.

A hearing was held before this Board on May 9, 2013. FMR, Inc. (“FMR”) was represented by Edward C. Covahey, Jr. Johnny Akchin, Assistant County Attorney, represented Baltimore County.

### Findings of Fact by ALJ

On or about December 28, 2011, FMR filed applications for a trespass towing license and a police-initiated towing license (Baltimore County Exs. 1A and 1B). On March 6, 2012, FMR received both licenses.

On October 12, 2012, the Department of Permits, Approvals & Inspections (“P.A.I.”) issued a Citation to FMR to revoke both the trespass and police-initiated towing licenses under BCC 21-16-125(b) based on allegations that on September 19, 2012 and September 27, 2012, an

individual named William Cash Forbes had taken part in police-initiated towings. (Baltimore County Ex. 2A). There were police reports issued for both incidents. The September 19, 2012 incident was reported by Officer Randy Maddox and the report was dated September 27, 2012. (Baltimore County Ex. 2B). The September 27, 2012 incident was reported by Officer Ronnie Georgieff and was dated October 5, 2012. (Baltimore County Ex. 2C).

The Citation charged that Mr. Forbes was not a “qualified operator” because he had been convicted of possession with intent to distribute a controlled dangerous substance on March 5, 2003. (Baltimore County Ex. 4A). The Citation explained that a driver is not qualified to operate a licensed tow vehicle within ten (10) years of that conviction. In addition, the Citation further charged that FMR failed to list Mr. Forbes as an employee on the license applications submitted to Baltimore County for which criminal background checks would have been performed prior to issuance of both towing licenses.

In the case presented by the County at the ALJ hearing, Donald E. Brand, P.E., Chief Code Administrator with PAI who oversees the administration of the licensing of towing companies, was accepted as an expert witness in those matters. Mr. Brand opined that a towing company need only violate a regulation once before the County can revoke its license. (T. 45, L. 18-21). On cross examination, Mr. Brand acknowledged that Officer Maddox, by report dated October 25, 2012, recanted his original report regarding the September 19, 2012 incident. (Respondent Ex. 1). (T. 68, L. 6-16).

In that report, Officer Maddox admitted that William Cash Forbes was not the tow truck driver on September 19, 2012 but rather, the driver was Robert Blair Boothe. The October 25, 2012 report further states that a tow truck driver by the name Mr. Wells from a competing tow truck company (Baltimore Towing) was on the scene of the September 19, 2012 and incorrectly

gave Officer Maddox the name of William Cash Forbes' as the tow truck driver. (T. p. 72, L. 9-13).

Tina Marie Forbes testified that she was the sole owner of FMR and that she handled all the administrative and management decisions for the business. She admitted knowing that her estranged husband had been convicted of a felony. She knew that a convicted felon could not be employed by a company. Yet, it was her understanding that FMR was complying with the towing regulations because William Cash Forbes was not an owner, operator or employee of FMR.

### Towing Regulations

#### **BCC §3-6-205**

(a) *Authority to issue.* The Code Official or the Director may issue a citation to a violator at any time.

(b) *Not required.*

(1) The Code Official and the Director are not required to issue a correction notice before issuing a citation.

(2) The Code Official and the Director shall establish written criteria for any circumstances in which the issuance of a correction notice is not required.

(c) *Contents of citation.*

(1) The citation issued under this section shall:

(i) Be in writing and describe with particularity the nature of the violation, including a reference to the Code or County Code provision the violator has allegedly violated;

(ii) Include any civil penalty proposed to be assessed; and

(iii) Advise the violator that the violator may contest the citation or proposed civil penalty by filing with the Code Official or the Director, within 15 days after receipt of the citation, a written request for a code enforcement hearing.

**BCC §21-16-125**

(a) *Misdemeanor.* A person who violates any provision of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100 for each offense, recoverable with costs.

(b) *Revocation, suspension, denial, and refusal to renew.* In addition to the penalty authorized under subsection (a) of this section, the Department may revoke or suspend a license or deny or refuse to renew a license of a towing business that:

- (1) Violates any provision of this title;
- (2) Violates any regulations adopted under this title;
- (3) Fails to comply with any of the provisions and terms of any towing agreement executed in accordance with this title; or
- (4) Is convicted by a court of competent jurisdiction of the crimes of perjury, bribery, impersonating a police officer, or any felony.

(c) Code Enforcement.

(1) In addition to any other remedy provided by law, the provisions of this title shall be enforced by the Code Official in accordance with the notice and hearing requirements in Article 3, Title 6 of the Code.

(2) Appeals from any action of the Code Official shall be taken only in accordance with the provisions contained in Article 3, Title 6 of the code.

**COBAR 02.02.02.06F**

F. Criminal Background – Owners.

An owner, officer or partner of a licensed towing company may not have a conviction for any of the following offenses:

- (1) Any felony or sex offense;
- (2) Insurance fraud;
- (3) Theft of a vehicle or theft from a vehicle;
- (4) Impersonating a Police Officer; or
- (5) Assaulting a Police Officer

**COBAR 02.02.02.06G**

G. Criminal Background – Operators.

(1) This section applies to:

(a) All Operators; and

(b) Any other employee who might accompany an operator while responding to a request for tow in the event the operator will allow a person involved in the incident to ride in the tow truck after the incident.

(2) The employees described in subsection (1) of this section may not:

(a) Within the last ten years have been convicted of any of the offenses listed under §F of this Regulation;

\* \* \* \*

### **COBAR 02.02.02.09**

#### **09. Infractions/Penalties.**

A. Infractions shall be divided into three categories:

- (1) Minor;
- (2) Serious; and
- (3) Revocation.

B. Minor infractions.

- (1) Non-or late response at rate greater than 5% dispatches.
- (2) Defects involving critical vehicle inspection items, including:
  - (a) Brake system;
  - (b) Coupling devices;
  - (c) Exhaust systems;
  - (d) Frames;
  - (e) Fuel Systems;
  - (f) Lighting devices (Headlamps, Tail lamps, Stop lamps, Turn signal and lamps/flags on projecting loads);
  - (g) Securing cargo;
  - (h) Steering mechanisms;
  - (i) Suspensions;
  - (j) Tires;
  - (k) Van and Open-top trailer bodies
  - (l) Wheels, rims and hubs;
  - (m) Windshield wipers; or
  - (n) Emergency exits and/or electrical cables and systems in engine and battery components (buses).

- (3) Failing to maintain towing receipts as required.
- (4) Failure to notify the Towing Administrator within 5 days of new truck or operator or removal of truck or operator.
- (5) Failure to notify the contractor at the time of dispatch of the inability to respond due to insufficient equipment.
- (6) Failure to satisfactorily clean a scene as determined by the officer at scene.
- (7) Failure to maintain required medical certifications for operators.
- (8) Illegal parking of towing vehicles by citation or observation.
- (9) Improper or failing to mark tow vehicle as required.
- (10) Any zoning or county code violation.
- (11) Any violation of Regulations not listed in this Regulation will be considered a minor violation

C. Serious Infractions.

- (1) Any vehicle defect placing a vehicle out of service.
- (2) Overcharging on any bill counts as one occurrence.
- (3) Causing injury or property damage through negligence.
- (4) Failure to submit to inspection of trucks or facilities.
- (5) Soliciting or loitering at the scene of a disabled vehicle without being summoned by Police or the contractor.
- (6) Failure to store or immediately take a disabled vehicle directly to a secured storage lot at the facility listed on license or to a location specified by the owner of a vehicle.
- (7) Failure to maintain required amount of certified operators and equipment.
- (8) Failure to maintain required insurance without interruptions.
- (9) Failure to obey direction of Police at scene of accident or impound.
- (10) Employing an unqualified operator.
- (11) Utilizing another towing company to perform requested work without permission of the Towing Administrator.
- (12) Subject to §E of this regulation, theft from vehicle.
- (13) Failing to reasonably secure a tow yard.

D. Infractions that may lead to revocation of a license.

- (1) Filing false information on a towing application/renewal.
- (2) Any disqualifying criminal conviction by owners or company officers.
- (3) Subject to §E of this regulation, theft.
- (4) Altering or removing serial numbers.
- (5) Insurance fraud.
- (6) Unauthorized use of vehicles or property in vehicle.
- (7) Engaging in police-initiated towing while suspended.
- (8) Failure to grant immediate access to towing records.

\* \* \* \*

**.10 Disciplinary Penalties.**

A. After notice and hearing, a towing license may be suspended or revoked by the Director of the Department of the Director's designee for a violation of any part of the provisions of the Baltimore County Code or any of the regulations in this Chapter.

B. Penalties.

(1) First Infraction.

(a) Minor infraction – the towing company shall receive a letter of warning or reprimand.

(b) Serious infraction – the towing company may be suspended for three days.

(2) Second Infraction.

(a) Minor infraction – for same violation, the towing company may be suspended for three days.

(b) Minor infraction – for a separate violation – the towing company may receive a letter of warning/reprimand.

(c) Serious Infraction – for the same violation – the towing company may be suspended for seven days.

(d) Serious infraction – for a separate violation - the towing company may be suspended for seven days.

(3) Third Infraction.

(a) Minor infraction – for same violation, the towing company may be suspended for fourteen days.

(b) Minor infraction – for a separate violation – the towing company may be suspended for fourteen days.

(c) Serious Infraction – for the same violation – the towing company may be suspended for twenty-one days.

(d) Serious infraction – for a separate violation - the towing company may be suspended for twenty-one days.

(4) Four or more minor infractions – the license of the towing company may be revoked or suspended for a period of 180 days.

- (5) Four or more serious offenses – suspension of license for 12 months.
- (6) Six violations of any kind within 24-month period – revocation of license.

**Standard of Review**

Appeals from Code Enforcement hearings are limited to the record created before the ALJ. That record includes all exhibits and other papers filed with the ALJ, and the written findings and final order of the ALJ (*Baltimore County Code* § 3-6-303).

In deciding a code enforcement appeal, per § 3-6-304, the Board of Appeals may:

- (i) Remand the case to the Hearing Officer,
- (ii) Affirm the final order of the Hearing Officer, or
- (iii) Reverse or modify the final order if a finding, conclusion, or decision of the Code Official or Hearing Officer:
  - 1. Exceeds the statutory authority or jurisdiction of the Code Official or Hearing Officer;
  - 2. Results from an unlawful procedure;
  - 3. Is affected by any other error of law;
  - 4. Subject to paragraph (2) of this section, is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
  - 5. Is arbitrary or capricious.

**Decision**

The Board has reviewed the record, the transcript of the hearing, and the decision of the ALJ. As such, we decide as follows:

**The September 19, 2012 Incident.**

The ALJ did not base any part of his decision on the September 19, 2012 incident. (Opinion p. 14). Given that the original 12L police report by Officer Maddox dated October 5,



2012 (Baltimore County Ex. 2C) was specifically recanted by his October 25, 2012 report in which Officer Maddox admits that he confused the identity of William Cash Forbes with Blair Boothe (Respondent Ex. 1), the ALJ correctly excluded the September 19 incident from his consideration. The ALJ believed Officer Maddox was honest in admitting his mistake. In review of the record, the Board finds that the ALJ's decision on this issue is supported by competent, material, and substantial evidence.

The September 27, 2012 Incident.

Having excluded the September 19, 2012 incident, the only incident for which a violation can be considered is the September 27, 2012 incident. The ALJ found that FMR utilized the services of William Cash Forbes for two (2) separate tasks on September 27, 2012: (1) driving the red wrecker conventional tow truck from the repair facility in Curtis Bay; and (2) driving the red wrecker conventional tow truck to the tow site to swap it for the rollback truck. (Opinion, pp. 11-12).

The County argued that the basis for the citation was that William Cash Forbes was an "unqualified operator" under COBAR .02.02.02.06G(1) and (2). Under COBAR 02.02.02.02B(8), an "Operator" is defined as a "driver of a tow truck." There is no dispute that William Cash Forbes drove FMR tow truck(s) on September 27, 2012. Thus, the ALJ found that he was an 'unqualified operator.'

In making this finding, the ALJ weighed the testimony of Officer Georgieff and Blair Booth as to the actions of William Cash Forbes on September 27, 2012 and found Officer Georgieff's testimony was more credible. The record reflects that Officer Georgieff described that William Cash Forbes drove the red conventional tow truck to the tow site (T. 116, L. 18-20) and then drove the blue rollback truck from the tow site. (T. 117, L. 21; T 118, L 1-2; T119,

L15-16). As a result, we agree with the ALJ's finding that William Cash Forbes was an 'operator' under COBAR when he was driving the tow truck(s) on that date. Further, there is no dispute that William Cash Forbes was convicted of a felony within the last ten (10) years. As a result, under COBAR.02.02.02.06G, we agree that he is an 'unqualified operator.'

Prior Incidents from 2008.

Weighing heavily on the ALJ's decision as to the appropriate penalty was his consideration of 2 incidents from 2008 in regard to actions by William Cash Forbes. Specifically, the ALJ considered an incident from March of 2008 in which William Cash Forbes was charged by FMR with theft for removing a truck from the FMR premises. The ALJ noted that Tina Forbes refused to testify against him at the trial in September of 2008 and that the charges were dropped. The ALJ also considered that on July 17, 2008 William Cash Forbes pled guilty to a traffic related offense while driving an FMR tow truck.

The Board finds that the occurrence of these prior incidents unduly influenced the ALJ's view of the appropriate penalty. First, both of the incidents occurred in 2008 which was nearly 4 years before FMR even submitted an application for either license. If these incidents were ever to be considered, they should have been considered by the County at the time of the application. Second, the March of 2008 incident was only a charge and did not even result in a conviction.

By considering the 2008 incidents, the ALJ found *intent* by FMR to disobey and ignore the regulations relating to towing companies:

Looking back on that totality, I find that there has been a repeated pattern of willful violations by Tina Marie Forbes and FMR of the ten (10) year felony ban, in spite of the clear knowledge and notice as to these regulations, culminating in a clear and intentional act of September 27, 2012 in spite of that knowledge.

As we see it, FMR was not subject to towing regulations in 2008. There was no need under the towing regulations to make a finding of “intent” because the ALJ hearing is not a trial by a criminal court. Consequently, to find that there was a “repeated pattern of willful violations” by FMR’s owner based on a charge which was dropped in September of 2008, and before FMR even received its license in March of 2012, is both arbitrary and capricious. The only issue which the ALJ should have considered is whether or not FMR is subject to disciplinary penalties for the September 27, 2012 incident.

Omitting William Cash Forbes on the Applications.

The Citation also charges FMR with omitting William Cash Forbes as an employee from the applications on December 28, 2011. We find that there were no facts to substantiate a finding by the ALJ that William Cash Forbes was left off the applications for towing licenses. The conclusion was made that he was left off the applications because he was driving the tow truck on September 27, 2012. Based on the evidence, the opposite conclusion should have been reached— *i.e.* that he was intentionally left off the applications because he was not an owner, operator or employee. In order to prove that FMR falsified the application, the County needed to prove that there was intent to deceive on December 28, 2011 when the applications were filed. The uncontradicted testimony of Tina Forbes was that she was not aware that William Cash Forbes could not drive a tow truck.

We further note that even the 2008 incidents (if permitted to be considered) do not support the conclusion that William Cash Forbes was omitted from the applications. It would be illogical to conclude that while FMR is charging William Cash Forbes with theft of its vehicles in 2008 he was, at the same time, an owner, operator or employee of FMR. Thus, we find that there was no violation in this regard.

Revocation of Police-Initiated Towing License.

Having found that William Cash Forbes was an ‘unqualified operator,’ the ALJ concluded that under BCC 21-116-125(b) and (c) and COBAR 02.02.02.10(A), the penalty is revocation of FMR’s police-initiated towing license. We disagree.

A) Revocation under BCC §21-116-125(b) and (c).

Based upon our review, we believe that the ALJ erroneously concluded that BCC §21-116-125(b) and (c) authorized him to revoke that license. It is clear to this Board that BCC §21-116-125 provides only criminal penalties which are imposed *after conviction* of a crime by a criminal court. Before any suspension or revocation can be considered under BCC §21-116-125(b), the towing company must first be charged with, and convicted of, a crime under Section (a) for which a \$100 fine can be assessed for each offense. Then, after conviction by a criminal court and in addition to the \$100 fine, the towing business may have its license suspended or revoked under Section (b) *but only if* the towing business has committed one of the 4 offenses listed. In review of this record, FMR was not convicted of any crime. Therefore, the requirements of Subsection (a) have not been satisfied. Because Subsection (a) is not satisfied, there can be no revocation of the license under Subsection (b).

Assuming arguendo, that Subsection (b) could be interpreted as authorizing suspension or revocation separately from Subsection (a), we also find that the requirements of Subsection (b) have not been independently satisfied. Under Subsection (b), a towing company must have committed one of the 4 offenses listed. The County contends that Section (b)(4) was violated (i.e. “is convicted by a court of competent jurisdiction of the crimes of .....any felony.”) because William Cash Forbes was convicted of a felony in 2003. However, Section (b)(4) specifically reads that it is the ‘towing business,’ - not a third party - which must be *convicted* of the felony.

Again, there was no finding made because there were no facts here to support a felony conviction of FMR.

B) Revocation under COBAR .02.02.02.10(A).

The ALJ concluded that he also had authority to revoke the license under COBAR .02.02.02.10. Based upon our review of COBAR, we find this conclusion to be in error. BCC §21-16-123(a) and (b) provide that PAI has the power to adopt regulations regarding police-initiated towings. Indeed, such regulations were approved and codified by the County Council in COBAR Title 02, Subtitle 02, Chapter 02. BCC §21-16-123 is cited as the authority for that Title.

As recited supra, COBAR .02.02.02.09A. entitled “Infractions/Penalties” divides infractions by towing companies into 3 *separate* categories namely:

- (1) Minor;
- (2) Serious; and
- (3) *Revocation*

(Emphasis Added).

In Section .09B, the County Council was very specific in defining what actions by towing companies would cause ‘infractions’ and even going so far as to specify, by way of example, that a defect in a head light on a tow truck would be considered a ‘minor infraction.’ COBAR, 02.02.02.09B(2)(f). In contrast, a ‘serious violation’ occurs when an “unqualified operator” is employed. COBAR 02.02.02.09C(10). Finally, Section .09D provides eight (8) specific infractions which may lead to ‘revocation’ of the license.

More importantly, Section .10 entitled “Disciplinary Penalties” is divided into two (2) Subsections, namely (A) and (B) which we interpret, must read together and work in conjunction with one another. Otherwise, the penalties listed in Subsection (B) would serve no purpose if not

invoked. We read Subsection (A) as providing a general statement about the potential for suspension or revocation after a towing company has a hearing. Then, Subsection (B) provides both the towing company and the County with what the penalty will be upon a finding after that hearing. Further, in contrast to BCC §21-116-125, that COBAR .02.02.02.10 concerns civil penalties.

Applying our interpretation, the ‘infraction’ by FMR for having an ‘unqualified operator’ drive its tow truck on September 27, 2012 is classified as a ‘serious’ infraction. There were no facts to support a finding of any of the 8 offenses which warrant ‘revocation’ in Section .09D. In addition, this was a first time infraction for FMR since receiving their licenses in March of 2012. Therefore, under COBAR .02.02.02.10B(1)(b), the penalty is, at most, a three (3) day suspension. The 3 day suspension has already been served by FMR since the ALJ’s decision on February 5, 2013.

Revocation of the Trespass Towing License.

The ALJ also concluded that FMR’s trespass towing license should be revoked based on the same findings of fact. There is no dispute that the September 27, 2012 incident was a police-initiated tow. In fact, neither incident involved a trespass tow. BCC §3-6-205 specifically provides that the County issue a citation that “describe[s] with particularity the *nature of the violation, ....*” Because there were no facts in evidence before the ALJ to substantiate a violation of the trespass tow regulations under COBAR, the County incorrectly sought, and the ALJ erroneously found, a violation of COBAR regarding the trespass towing license. Therefore, the Board finds that the ALJ erred as a matter of law in revoking FMR’s trespass tow license, which decision was arbitrary and capricious.

Trailer is not a motor vehicle.

FMR argued that there were no violations under the towing regulations because the tow involved a 'trailer' which is not a 'vehicle' or a 'motor vehicle.' The County argued that the definitions of "motor vehicle" found in the MD Code Ann, TP Article apply here. We found no language in the BCC or COMAR to substantiate this argument. Nevertheless, having resolved this case on other grounds, we need not decide this issue.

Presence of ALJ Stahl's daughter at hearing.

FMR objected to the presence of ALJ Stahl's daughter, Allyson Stahl, and argued that she was assisting the Assistant Baltimore County Attorney at the hearing. We find that there was no evidence that Judge Stahl's daughter had any influence over or affected the ALJ's decision in any way. We further find that FMR could have requested to voir dire Allyson Stahl on the record after the ALJ introduced her, if it had any questions regarding her role in the proceeding.

**ORDER**

**THEREFORE, IT IS THIS** 28<sup>th</sup> day of June, 2013, by the County Board of Appeals of Baltimore County

**ORDERED** that the decision of the Code Enforcement Hearing Officer dated February 5, 2013 that the trespass towing license be revoked is hereby **REVERSED**;


**ORDERED** that the decision of the Code Enforcement Hearing Officer dated February 5, 2013 that the police-initiated towing license be revoked is hereby **REVERSED**;

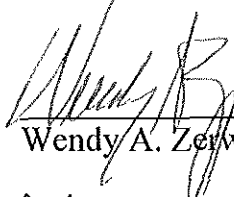
**ORDERED**, that FMR, Inc. committed a first "serious infraction" as defined in COBAR .02.02.02.09C(10) for employing an 'unqualified operator';

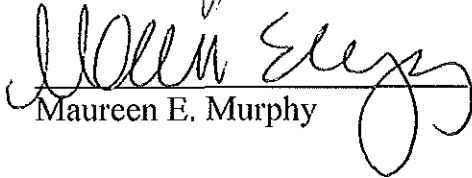
**ORDERED**, that FMR, Inc. is subject to a penalty for a first time serious infraction under COBAR .02.02.02.10B(1)(b) of a three (3) day suspension, which has already been served.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
\_\_\_\_\_  
Andrew M. Belt, Chair

  
\_\_\_\_\_  
Wendy A. Zerwitz

  
\_\_\_\_\_  
Maureen E. Murphy





## Board of Appeals of Baltimore County

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June 28, 2013

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Towson, MD 21204

RE: *In the Matter of: FMR, Inc – Respondent/Appellant*  
Case No.: CBA-13-023

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington  
Legal Secretary and Acting Administrator

Enclosure  
Duplicate Original Cover Letter

c: FMR, Inc./Tina Forbes, President  
Donald Brand P.E., Chief Code Administrator/PAI  
Lawrence M. Stahl, Managing Administrative Law Judge  
Karen L. Lewis, Acting Supervisor/Miscellaneous Permits/Licenses /PAI  
Arnold Jablon, Director/PAI  
Officer Scott Kepler, BCPD  
Captain Howard Hall, BCPD  
Nancy C. West, Assistant County Attorney  
Michael Field, County Attorney