COURT OF APPEALS STANDING COMMITTEE

ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms UL 4 and 5 of the Judicial Education and Conference Center, 2011 Commerce Park Drive, Annapolis, Maryland on April 12, 2019.

Members present:

Hon. Alan M. Wilner, Chair

Kenneth Armstrong, Esq.
Robert R. Bowie, Jr., Esq.
Hon. Yvette M. Bryant
James E. Carbine, Esq.
Sen. Robert G. Cassilly
Hon. John P. Davey
Hon. Angela M. Eaves
Alvin I. Frederick, Esq.
Pamela A. Harris, SCA
Del. Kathleen Dumais
Victor H. Laws, III, Esq.
Dawne D. Lindsey, Clerk
Bruce L. Marcus, Esq.
Donna Ellen McBride, Esq.
Hon. Danielle M. Mosley
Hon. Douglas R. M. Nazarian
Hon. Paula A. Price
Steven M. Sullivan, Esq.
Gregory K. Wells, Esq.
Hon. Dorothy J. Wilson
Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Colby L. Schmidt, Esq., Deputy Reporter
Shantell K. Davenport, Esq., Assistant Reporter
Hon. Thomas G. Ross, Circuit Court for Queen Anne's County
Hon. Mimi Cooper, Harford County District Court
Hon. Patrick Woodward, Senior Judge, Court of Special Appeals
Del. Lorig Charkoudian, District 20, Montgomery County
Tokunbo Ibitoye, Esq., Law Clerk, Circuit Court for Baltimore City
Angela B. Grau, Esq., Davis, Agnor, Rapaport & Skalny
Jeffrey H. Myers, Esq., Office of the Attorney General
Shannon Baker, ADR Deputy Director, District Courts
Jamie Walter, Program Director – Research Analysis, AOC
Kim Klein, Esq., Civil and Criminal Case Administrator, Anne Arundel Circuit Court
Justin Bernstein, Senior Researcher, Maryland Judiciary

Jay Knight, Program Director, Court of Special Appeals ADR
Nisa C. Subasinghe, Esq., Juvenile and Family Services,
Administrative Office of the Courts
Cynthia Jurrius, MACRO Senior Program Manager, AOC
Audre G. Davis, Esq., Director, Maryland Legal Services Program
Thomas B. Stahl, Esq., Spencer & Stahl, P.C.

The Chair convened the meeting. He welcomed the newest member of the Rules Committee, Delegate Kathleen Dumais. Delegate Dumais is the majority leader in the House of Delegates and is replacing Del. Joseph Vallario on the Committee.

The Chair informed the Committee that he had just concluded a meeting about amendments to various Rules that the Committee will need to consider soon. One of the topics discussed involves a substantial re-drafting of the Access Rules in Title 16. The Access Rules have not been reviewed comprehensively since their adoption in 2004. There have been amendments to the Rules, but much has happened since 2004 which warrants re-drafting.

The Chair also announced that the Court of Appeals will hold its open meeting on the 199th Report containing the revised Judicial Disabilities Rules on April 16, 2019, at 1:30 pm. He added that the Commission on Judicial Disabilities is pursuing changes that had been presented to the Committee and rejected. He noted that the Commission will have the opportunity to make its case on those issues at the Court's open meeting. The Chair

said that, so far, the Maryland Circuit Judges Association is not objecting to the Committee's revisions, with one exception. The Association is requesting that the Court adopt a Rule that presumptively permits expert witness testimony during Commission hearings. That request was rejected by the Committee and will be opposed when it is presented to the Court.

The Chair announced that the 200th Report, which includes a recommendation to eliminate the defendant class action device, also was sent to the Court. Comments have been received about the 200th Report, most of which concern Rule 2-231 and are in support of the Committee's recommendation, although there are one or two comments in opposition to the Committee's recommendation.

The Chair said that sometime next week the Committee will have a list of the legislation that passed the General Assembly in the 2019 session. He informed the Committee that staff reviews all enacted legislation to determine which matters need to be referred to subcommittees for possible Rules amendments.

The Chair stated that Committee members received three sets of meeting minutes prior to today's meeting. He called for a motion to approve the October 2018, November 2018, and January 2019 minutes. Judge Bryant moved to approve the meeting minutes. The motion was seconded and passed by a majority vote.

Agenda Item 1. Consideration of proposed Rules changes pertaining to Standards of Conduct for Mediators and other ADR Practitioners: Amendments to Rule 17-205 (Qualifications of Court-Designated Mediators), Rule 17-206 (Qualification of Court-Designated ADR Practitioners Other than Mediators), Rule 17-304 (Qualifications and Selection of Mediators and Settlement Conference Chairs), Rule 17-405 (Qualifications of Court-Designated Mediators), and Rule 17-603 (Qualifications of Court-Designated ADR Practitioners).

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Mr. Bowie said that the proposed Rule changes in Agenda Item 1 concern the approval and publication of the Standards of Conduct for Court-Designated Mediators and ADR Practitioners ("the Standards of Conduct").

The Chair said that it is important to note that the Standards of Conduct were developed by the Judicial Council's ADR Workgroup. The Workgroup presented the revised Standards of Conduct to the Judicial Council which, after some discussion, asked the Rules Committee to review them.

Mr. Bowie stated that the original Standards of Conduct for Mediators, Arbitrators, and other ADR Practitioners were approved by the Court of Appeals on October 31, 2001. Separate standards were created by the Maryland Program for Mediator Excellence ("MPME") and approved by the Mediator Excellence Council in 2006. The revised Standards of Conduct replace the 2001 standards adopted by the Court of Appeals and the 2006 MPME standards.

Mr. Bowie said that the Judicial Council considered the revised Standards of Conduct in November of 2018. At its February 2019 meeting, the ADR Subcommittee of the Rules Committee reviewed the revised Standards of Conduct and suggested some stylistic changes to the Standards. The ADR Subcommittee is also recommending amendments to five Rules. The proposed Rules changes require that the Standards of Conduct be approved by Administrative Order of the Court of Appeals and posted to the Judiciary website. Until recently, the Standards of Conduct have not been published on the Judiciary website. There appears to be universal approval for what is proposed.

Mr. Bowie presented Rules 17-205, Qualifications of Court-Designated Mediators; 17-206, Qualifications of Court-Designated ADR Practitioners Other than Mediators; 17-304, Qualifications and Selection of Mediators and Settlement Conference Chairs; 17-405, Qualifications of Court-Designated Mediators; and 17-603, Qualifications of Court-Designated ADR Practitioners, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-205 by deleting the word "any" from subsection (a)(6) and by

requiring court-designated mediators to abide by mediation standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website, as follows:

Rule 17-205. QUALIFICATIONS OF COURT-DESIGNATED MEDIATORS

(a) Basic Qualifications

A mediator designated by the court shall:

(1) unless waived by the parties, be at least 21 years old;

(2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104 or, for individuals trained prior to January 1, 2013, former Rule 17-106;

(3) be familiar with the rules, statutes, and practices governing mediation in the circuit courts;

(4) have mediated or co-mediated at least two civil cases;

(5) complete in each calendar year four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104;

(6) abide by ~~any~~ mediation standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website;

(7) submit to periodic monitoring of court-ordered mediations by a qualified mediator designated by the county administrative judge; and

(8) comply with procedures and requirements prescribed in the court's case management plan filed under Rule 16-302 (b) relating to diligence, quality assurance, and a willingness to accept, upon request by

the court, a reasonable number of referrals at a reduced-fee or pro bono.

(b) Business and Technology Cases

A mediator designated by the court for a Business and Technology Program case shall, unless the parties agree otherwise:

(1) have the qualifications prescribed in section (a) of this Rule; and

(2) within the two-year period preceding an application for approval pursuant to Rule 17-207, have served as a mediator in at least five non-domestic civil mediations at least two of which involved types of conflicts assigned to the Business and Technology Case Management Program.

(c) Economic Issues in Divorce and Annulment Cases

A mediator designated by the court for issues in divorce or annulment cases other than those subject to Rule 9-205 shall:

(1) have the qualifications prescribed in section (a) of this Rule;

(2) have completed at least 20 hours of skill-based training in mediation of economic issues in divorce and annulment cases; and

(3) have served as a mediator or co-mediator in at least two mediations involving marital economic issues.

(d) Health Care Malpractice Claims

A mediator designated by the court for a health care malpractice claim shall, unless the parties agree otherwise:

(1) have the qualifications prescribed in section (a) of this Rule;

(2) within the two-year period preceding an application for approval pursuant to Rule 17-207, have served as a mediator in at least five non-domestic civil mediations, at

least two of which involved types of conflicts assigned to the Health Care Malpractice Claims ADR Program;

(3) be knowledgeable about health care malpractice claims through experience, training, or education; and

(4) agree to complete any continuing education training required by the court.

Cross reference: See Code, Courts Article § 3-2A-06c.

(e) Foreclosure Cases

(1) This section does not apply to an ADR practitioner selected by the Office of Administrative Hearings to conduct a "foreclosure mediation" pursuant to Code, Real Property Article, § 7-105.1 and Rule 14-209.1.

(2) A mediator designated by the court in a proceeding to foreclose a lien instrument shall, unless the parties agree otherwise:

(A) have the qualifications prescribed in section (a) of this Rule; and

(B) through experience, training, or education, be knowledgeable about lien instruments and federal and Maryland laws, rules, and regulations governing foreclosure proceedings.

(f) Experience Requirement

The experience requirements in this Rule may be met by mediating in the District Court or the Court of Special Appeals.

Source: This Rule is derived in part from former Rule 17-104 (a), (c), (d), (e), and (f) (2012) and is in part new.

Rule 17-205 was accompanied by the following Reporter's note:

A proposed amendment to Rule 17-205 clarifies that standards applicable to court-designated mediators are adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website. When the Rule initially was promulgated, no mediation standards had been adopted by the Court. Because standards, as modified from time to time, now have been adopted, the word "any" is deleted from subsection (a)(6).

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-206 by deleting the word "any" from subsection (a)(1), by requiring court-designated ADR practitioners other than mediators to abide by standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website, and by making a stylistic change in subsection (a)(4), as follows:

Rule 17-206. QUALIFICATIONS OF COURT-DESIGNATED ADR PRACTITIONERS OTHER THAN MEDIATORS

(a) Generally

Except as provided in section (b) of this Rule, an ADR practitioner designated by the court to conduct ADR other than mediation shall, unless the parties agree otherwise:

(1) abide by ~~any~~ applicable standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website;

(2) submit to periodic monitoring of court-ordered ADR proceedings by a qualified person designated by the county administrative judge;

(3) comply with procedures and requirements prescribed in the court's case management plan filed under Rule 16-302 (b) relating to diligence, quality assurance, and a willingness, upon request by the court, to accept a reasonable number of referrals at a reduced-fee or pro bono;

(4) either (A) be a member in good standing of the Maryland bar and have at least five years of experience as (i) a judge, (ii) a practitioner in the active practice of law, (iii) a full-time teacher of law at a law school approved by the American Bar Association, or (iv) a Federal or Maryland administrative law judge, or (B) have equivalent or specialized knowledge and experience in dealing with the issues in dispute; and

(5) have completed any training program required by the court.

(b) Judges and Magistrates

An active or retired judge or a magistrate of the court may chair a non-fee-for-service settlement conference.

Cross references: Rule 18-103.9 and Rule 18-203.9.

Source: This Rule is derived from Rule 17-105(2012).

Rule 17-206 was accompanied by the following Reporter's note:

A proposed amendment to Rule 17-206 clarifies that standards applicable to court-designated ADR practitioners other than mediators are adopted by Administrative Order of the Court of Appeals and posted on

the Judiciary website. When the Rule initially was promulgated, no standards applicable to ADR practitioners had been adopted by the Court. Because standards, as modified from time to time, now have been adopted, the word "any" is deleted from subsection (a)(1).

The addition of the word "of" to subsection (a)(4) is stylistic, only.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 300 – PROCEEDINGS IN THE DISTRICT COURT

AMEND Rule 17-304 by deleting the word "any" from subsections (a)(9) and (b)(3)(A), by requiring court-designated mediators and settlement conference chairs to abide by applicable standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website, and by making stylistic changes in the Committee note following subsection (c)(1), as follows:

Rule 17-304. QUALIFICATIONS AND SELECTION OF MEDIATORS AND SETTLEMENT CONFERENCE CHAIRS

(a) Qualifications of Court-Designated Mediator

To be designated by the court as a mediator, an individual shall:

(1) unless waived by the parties, be at least 21 years old;

(2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of (A) Rule 17-104 or (B) for individuals trained prior to January 1, 2013, former Rule 17-106;

(3) be familiar with the Rules in Title 17 of the Maryland Rules;

(4) submit a completed application in the form required by the ADR Office;

(5) attend an orientation session provided by the ADR Office;

(6) unless waived by the ADR Office, observe, on separate dates, at least two District Court mediation sessions and participate in a debriefing with the mediator after each mediation;

(7) unless waived by the ADR Office, mediate on separate dates, at least two District Court cases while being reviewed by an experienced mediator or other individual designated by the ADR Office and participate in a debriefing with the observer after each mediation;

(8) agree to volunteer at least six days in each calendar year as a court-designated mediator in the District Court day-of-trial mediation program;

(9) abide by ~~any~~ mediation standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website;

(10) submit to periodic monitoring by the ADR Office;

(11) in each calendar year complete four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104; and

(12) comply with the procedures and requirements posted on the ADR Office's website relating to diligence and quality assurance.

(b) Qualifications of Court-Designated Settlement Conference Chair

To be designated by the court as a settlement conference chair, an individual shall be:

(1) a judge of the District Court;

(2) a senior judge; or

(3) an individual who, unless the parties agree otherwise, shall:

(A) abide by ~~any~~ applicable standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website;

(B) submit to periodic monitoring of court-ordered ADR by a qualified person designated by the ADR Office;

(C) be a member in good standing of the Maryland Bar and have at least three years of experience in the active practice of law;

(D) unless waived by the court, have completed a training program of at least six hours that has been approved by the ADR Office; and

(E) comply with the procedures and requirements posted on the ADR Office's website relating to diligence and quality assurance.

(c) Procedure for Approval

(1) Filing Application. An individual seeking designation to mediate or conduct settlement conferences in the District Court shall submit to the ADR Office a completed application substantially in the form required by that Office. The application shall be accompanied by documentation demonstrating that the applicant has met the applicable qualifications required by this Rule.

Committee note: Application forms are available from the ADR Office and on the ~~Maryland~~ Judiciary~~'s~~ website~~,~~ ~~www.mdcourts.gov/district/forms/general/adr001.pdf~~.

(2) Action on Application. After such investigation as the ADR Office deems appropriate, the ADR Office shall notify the applicant of the approval or disapproval of the application and the reasons for a disapproval.

(3) Court-approved ADR Practitioner and Organization Lists. The ADR Office shall maintain a list:

(A) of mediators who meet the qualifications of section (a) of this Rule;

(B) of settlement conference chairs who meet the qualifications set forth in subsection (b)(3) of this Rule; and

(C) of ADR organizations approved by the ADR Office.

(4) Public Access to Lists. The ADR Office shall provide to the Administrative Clerk of each District a copy of each list for that District maintained pursuant to subsection (c)(3) of this Rule. The clerk shall make a copy of the list available to the public at each District Court location. A copy of the completed application of an individual on a list shall be made available by the ADR Office upon request.

(5) Removal From List. After notice and a reasonable opportunity to respond, the ADR Office may remove a person as a mediator or settlement conference chair for failure to maintain the applicable qualifications of this Rule or for other good cause.

Source: This Rule is new.

Rule 17-304 was accompanied by the following Reporter's note:

> Proposed amendments to Rule 17-304 clarify that standards applicable to court-designated mediators and other ADR practitioners are adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website. When Rules establishing minimum qualifications for mediators and other practitioners were initially promulgated, no mediation standards or standards applicable to other ADR practitioners had been adopted by the Court. Because standards, as modified from time to time, now have been adopted, the word "any" is deleted from subsections (a)(9) and (b)(3)(A).
>
> Several stylistic changes to the Rule are made. The word "Maryland," the possessive "s" in "Judiciary," and the website URL are deleted from the Committee note following subsection (c)(1) so the language in the Committee note is consistent with the new language in subsections (a)(9) and (b)(3)(A). Additionally, the word "of" is added to subsection (b)(3)(C).

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 – PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

AMEND Rule 17-405 by deleting the word "any" from subsection (b)(1) and by requiring court-designated mediators to abide by mediation standards adopted by

Administrative Order of the Court of Appeals and posted on the Judiciary website, as follows:

Rule 17-405. QUALIFICATIONS OF COURT-DESIGNATED MEDIATORS

(a) Initial Approval

To be approved as a mediator by the Chief Judge, an individual shall:

(1) be (A) an incumbent judge of the Court of Special Appeals; (B) a senior judge of the Court of Appeals, the Court of Special Appeals, or a circuit court; or (C) a staff attorney from the Court of Special Appeals designated by the Chief Judge;

(2) have (A) completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104, or (B) conducted at least two Maryland appellate mediations prior to January 1, 2014 and completed advanced mediation training approved by the ADR Division;

(3) unless waived by the ADR Division, have observed at least two Court of Special Appeals mediation sessions and have participated in a debriefing with a staff mediator from the ADR Division after the mediations; and

(4) be familiar with the Rules in Titles 8 and 17 of the Maryland Rules.

(b) Continued Approval

To retain approval as a mediator by the Chief Judge, an individual shall:

(1) abide by mediation standards adopted by Administrative Order of the Court of Appeals~~, if any~~ and posted on the Judiciary website;

(2) comply with mediation procedures and requirements established by the Court of Special Appeals;

(3) submit to periodic monitoring by the ADR Division of mediations conducted by the individual; and

(4) unless waived by the Chief Judge, complete in each calendar year four hours of continuing mediation-related education in one or more topics set forth in Rule 17-104 or any other advanced mediation training approved by the ADR Division.

Source: This Rule is derived from former Rule 17-403 (a)(2015).

Rule 17-405 was accompanied by the following Reporter's note:

A proposed amendment to Rule 17-405 clarifies that standards applicable to court-designated mediators as amended from time to time and adopted by Administrative Order of the Court of Appeals are posted on the Judiciary website.

The deletion of the words "if any" from subsection (b)(1) is stylistic only.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 600 – PROCEEDINGS IN ORPHANS' COURT

AMEND Rule 17-603 by deleting the word "any" from subsection (a)(5), by adding language to subsection (a)(5) and new subsection (b)(4) which require court-designated mediators and settlement conference presiders to abide by applicable standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website, as follows:

Rule 17-603. QUALIFICATIONS OF COURT-DESIGNATED ADR PRACTITIONERS

(a) Court-Designated Mediators

A mediator designated by the court pursuant to Rule 17-602 (e)(1)(B) shall:

(1) unless waived by the parties, be at least 21 years old;

(2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104 or, for individuals trained prior to January 1, 2013, former Rule 17-106;

(3) be familiar with the rules, statutes, and procedures governing wills, the administration of estates, the authority of orphans' courts and registers of wills, and the mediation program operated by the orphans' court;

(4) complete in each calendar year four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104;

(5) abide by ~~any~~ mediation standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website; and

(6) submit to periodic monitoring of court-ordered mediations by a qualified mediator designated by the Chief Judge.

(b) Court-designated Settlement Conference Presiders

An individual designated as a settlement conference presider shall:

(1) be a member in good standing of the Maryland Bar and have at least three years of experience in the active practice of law;

(2) be familiar with the rules, statutes, and procedures governing wills,

the administration of estates, the authority of orphans' courts and registers of wills, and appropriate settlement conference procedures; ~~and~~

(3) have conducted at least three settlement conferences as a judge, senior judge, or magistrate, or pursuant to a designation by a Maryland court~~.~~; and

(4) abide by applicable standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website.

Source: This Rule is new.

Rule 17-603 was accompanied by the following Reporter's note:

A proposed amendment to Rule 17-603 clarifies that standards applicable to court-designated mediators and settlement conference presiders as amended from time to time and adopted by Administrative Order of the Court of Appeals are posted on the Judiciary website. This was accomplished by adding language to subsection (a)(5) and adding new subsection (b)(5).

The deletion of the word "any" from subsection (a)(5) is stylistic only.

Mr. Bowie noted that the existing Rules, except for Rule 17-405, distinguish between mediators and other ADR professionals such as arbitrators, fact-finders, neutral evaluators, and settlement conference practitioners. Under the revised Standards of Conduct, the same standards would apply to mediators and other ADR practitioners.

The Chair stated that the Rules amendments are the only items presented for the Rules Committee's consideration. The revised Standards of Conduct, which have been included as background materials for today's meeting (Appendix 1), will not appear in the Rules themselves. The Court of Appeals will have to adopt the revised Standards of Conduct by Administrative Order.

The Chair invited comments on the proposed amendments. There being no motion to amend or reject the proposed Rules, they were approved as presented.

The Chair asked the members of the mediation community present at the meeting whether the definition of "mediation" on page 4 of the revised Standards of Conduct permits what used to be referred to as "evaluative mediation" as opposed to simply facilitative mediation. He explained that when the Rules Committee first began developing the mediation Rules, there was an "orthodox mediation community" that was very firm on the belief that mediation was only to be facilitative. Based on that belief, mediators were never to offer an opinion on what a result should be, even if asked to do so. That view has changed over the years, particularly with respect to civil cases, which often involve private mediations that are evaluative. He asked whether the definitions in the revised Standards of Conduct

contemplate that the mediator will be able to provide an evaluative opinion, either on his or her own or if asked.

Judge Cooper responded that the definition of "mediator" that is provided in the revised Standards of Conduct does not contemplate an evaluation of the parties' case. However, the parties are not prohibited from deciding to use the mediator or ADR practitioner to provide what some would call "evaluative mediation." She said that a neutral practitioner could use many of the mediation skills with some level of evaluation added to the process, if that is what the parties want. The Chair asked whether additional language should be added to the revised Standards of Conduct to clarify that issue.

Laura Charkoudian, Executive Director of Community Mediation Maryland, addressed the Committee. She shared that she had the pleasure of working on mediation standards over the last 25 years with many of the guests present today. She pointed out that on page 15 of the revised Standards of Conduct, line nine reads, "Upon the request of a party, a mediator may provide information that the mediator is qualified by training or experience to provide, if the mediator can do so consistently with these Standards and any applicable statutes, Maryland Rules, program requirements, and other standards of conduct." She said that when a practitioner is conducting a settlement conference, that process will fall under other standards of

conduct. However, if within the context of mediation the parties express an interest in having additional information that the mediator may be qualified to provide, the section on page 15 allows the mediator to provide the information while abiding by the Standards of Conduct. The Chair commented that practitioners are not allowed to shift from one form of alternative dispute resolution to another. Ms. Charkoudian said that the Chair is correct. She said that practitioners cannot fully shift out of the mediation process except with the consent of the parties. She explained that the mediator must inform the parties that the mediation process is shifting into a different form of alternative dispute resolution. The section previously highlighted on page 15 provides for some flexibility within the context of what some would still consider a "mediation process."

Mr. Frederick commented that it struck him that what the Chair may be alluding to is the function of a settlement facilitator, as opposed to a mediator. A facilitator, as defined in the Rules, can assign his or her evaluative number to the case. The facilitator would have discussions back and forth with the parties to arrive at a settlement as opposed to conducting mediation. Typically, facilitators would make it clear to the parties that they are not mediators. The Rules and standards are different when a practitioner is acting as a settlement facilitator as opposed to a mediator. The Chair said

that Mr. Frederick's point was the reason for his initial question. If there are going to be standards adopted by the Court of Appeals, it needs to be clear whether the standards contemplate that a practitioner can shift from facilitating a mediation process to providing an evaluative opinion.

Ms. Charkoudian reiterated that the section on page 15 of the revised Standards of Conduct provides some flexibility within the mediation process. The mediator would have to inform the parties that he or she can conduct a settlement conference if that is what the parties want. If the parties agree, the mediator can fully shift into the settlement conference process, which comes with a different set of standards that govern the practitioner's behavior. She explained that a lot of training is provided to mediators. Mediators are advised that there are various ways to respond to questions from parties. If the parties express a desire for the mediator to provide a full analysis of the strengths and weaknesses of each side's case and provide a recommendation, then the mediator would inform the parties of his or her ability to do so and what that process would look like.

The Chair invited further comment on the issue of evaluative mediation.

Mr. Sullivan noted that separate definitions of "conflict of interest" are included on page 3 and page 8 of the revised

Standards of Conduct. He asked if there was a reason for not including a single definition as differing definitions could prompt a disagreement about which should apply in a situation.

Jay Knight, Director of the Court of Appeals ADR Division, responded that one challenge in developing the mediation standards was how to translate practice into standards that lawyers and non-lawyers would abide by. He noted that the Standards of Conduct are aspirational in nature and are not intended to be commandments. The mediator will have an ethical obligation to maintain his or her role as a mediator in accordance with established standards. Mr. Knight explained that the definition of "conflict of interest" included on page 3 of the revised Standards of Conduct is intended as a general guideline. There was a strong sentiment that definitions of key terms needed to be included early in the Standards of Conduct, so they could be easily referred to. On page 8, "conflicts of interest" are defined based on the various permutations that could cause a mediator to be biased. The term "conflict of interest" applies whether an ongoing, past, or future relationship exists between a participant and the mediator. Mr. Knight stated that the goal of redefining what constitutes a conflict of interest in the latter section of the revised Standards of Conduct is to provide boundary lines for practitioners. That is why there appear to be two different

definitions for the same term. The definitions could have been written differently, but the more in-depth definition is intended to provide examples of scenarios that would cause a conflict of interest.

The Chair commented that on page 7, paragraph 2 of the revised standards, impartiality is discussed. The section reads, in part, "A mediator shall not favor or disfavor any participant for any reason." The line continues to list several ways in which a mediator shall not favor a participant. The Chair noted that ethnicity and religion are not listed in this section. He asked whether those two bases are intended to be included under a term that is listed. Mr. Knight responded that ethnicity and religion are intended to be covered by the categories "values" and "beliefs." He said that religion was not explicitly listed because one may not know an individual's religion by appearance alone. However, based on what that individual says, their beliefs may become apparent. He said that he is always in favor of including ethnicity as a category under sections discussing impartiality. However, there were not lengthy discussions about the choice not to include "ethnicity" on the list since it would be covered by another category. He added that the list was intended to cover characteristics that could be immediately apparent to a mediator when a participant walks into the room. Mr. Bowie noted that the language in

paragraph 2 makes clear that a mediator "shall not favor or disfavor a participant for any reason such as" and goes on to list other categories. The phrase "any reason" would include both the categories of religion and ethnicity.

The Chair said he had one more matter that he wants to address regarding the revised standards. He noted that line 6 on page 12 reads, "A mediator shall maintain the confidentiality of all mediation communications, conduct, and outcomes unless disclosure is required or permitted by an applicable statute or provision of the Maryland Rules." He questioned whether the participants should be informed, where custody or visitation is at issue, that there is an exception to the confidentiality standards for reporting child abuse. Ms. Charkoudian noted that line 1 on page 12 reads, "A mediator shall explain mediation confidentiality, including any applicable statutes, rules, standards, and relevant exceptions, to all mediation participants as soon as practicable and at the beginning of the first mediation session." She said that sometimes the exceptions to the confidentiality standards may be specific to the subject that is being mediated. The ethical guidelines provided in the Standards of Conduct and the training mediators receive make clear that the confidentiality exceptions are to be explained to participants up front. Ms. Charkoudian said that mediators are currently instructed that they may or may not

disclose that they are about to break the terms of confidentiality. If a mediator finds out about child abuse, you don't want, at that point, for the mediator to say, "I'm going to break confidentiality on this," because that could warn the parents that an investigation can occur. She explained that there are circumstances in which disclosure about a break in confidentiality could put children at greater risk. The mediators are trained to explain the confidentiality exceptions up front so that everyone understands the exceptions. The exceptions are also contained in the consent to mediate form.

The Chair invited further comments on the revised Standards of Conduct. He thanked the guests for their participation and input.

There being no motion to amend or reject the proposed amendments to Rules 17-205, 17-206, 17-304, 17-405, and 17-603, they were approved as presented.

Agenda Item 2. Consideration of proposed Rules changes pertaining to attorneys in guardianship proceedings: Reconsideration of proposed amendments to Rule 10-106 (Attorney for Minor or Disabled Person) and proposed new Rule 10-106.1 (Pre-Hearing Statement). Consideration of proposed amendments to the Guidelines for Court-Appointed Attorneys in Guardianship Proceedings: conforming amendments to current Rule 10-106.1 [renumbered 10-106.2] (Appointment of Investigator), Rule 10-403 (Petition by Standby Guardian), and Rule 10-404 (Hearing).

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Mr. Laws informed the Committee that the Family/Domestic Subcommittee has been working on the Rules in Agenda Item 2 for some time. He said that there has been a lot of interest from the Judicial Council's Guardianship and Vulnerable Adults Workgroup and others who represent guardianship respondents, some of whom are present today.

Mr. Laws presented Rule 10-106, Attorney for Minor or Disabled Person, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANSHIPS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-106 by adding a new section (e) clarifying the role that an attorney for the minor or alleged disabled person serves in a guardianship proceeding, by adding a Committee note and a Cross reference following section (e), and by making stylistic changes, as follows:

Rule 10-106. ATTORNEY FOR MINOR OR DISABLED PERSON

(a) Authority and Duty to Appoint

(1) Minor Persons

Upon the filing of a petition for guardianship of the person, the property, or both, of a minor who is not represented by an attorney, the court may appoint an attorney for the minor.

Committee note: Appointment of an attorney for a minor is discretionary because, in many cases involving minors, the guardian is a parent or other close family member and the circumstances do not indicate a need for an attorney for the minor. The court should scrutinize the petition, however, for circumstances that may warrant the appointment of an attorney for the minor.

(2) Alleged Disabled Persons

Upon the filing of a petition for guardianship of the person, the property, or both, of an alleged disabled person who is not represented by an attorney of the alleged disabled person's own choice, the court shall promptly appoint an attorney for the alleged disabled person.

Cross reference: See Code, Estates and Trusts Article, §§ 13-211 (b) and 13-705 (d). See also Rule 19-301.14 of the Maryland Attorneys' Rules of Professional Conduct with respect to the attorney's role and obligations.

Committee note: This Rule applies to the appointment and payment of an attorney for a minor or alleged disabled person in proceedings to establish a guardianship for the minor or alleged disabled person, or their property, or both. Attorneys may be appointed in other capacities in guardianship proceedings--as an investigator pursuant to Rule ~~10-106.1~~ 10-106.2 or as a guardian pursuant to Rule 10-108.

(b) Eligibility for Appointment

(1) To be eligible for appointment, an attorney shall:

(A) be a member in good standing of the Maryland Bar;

(B) provide evidence satisfactory to the court of financial responsibility; and

Committee note: Methods of complying with subsection (b)(1)(B) include maintaining

appropriate insurance, providing an attestation of financial circumstances, or filing a bond.

(C) unless waived by the court for good cause, have been trained in aspects of guardianship law and practice in conformance with the *Maryland Guidelines for Court-Appointed Attorneys In Guardianship Proceedings* attached as an Appendix to the Rules in this Title.

(2) Exercise of Discretion

Except in an action in which the selection of a court-appointed attorney is governed by Code, Estates and Trusts Article, § 13-705 (d)(2), the court should fairly distribute appointments among eligible attorneys, taking into account the attorney's relevant experience and availability and the complexity of the case.

(c) Fees

(1) Generally

The court shall order payment of reasonable and necessary fees of an appointed attorney. Fees may be paid from the estate of the alleged disabled person or as the court otherwise directs. To the extent the estate is insufficient, the fee of an attorney for an alleged disabled person shall be paid by the State.

Cross reference: See Code, Estates and Trusts Article, § 13-705 (d)(1), requiring the State to pay a reasonable attorneys' fee where the alleged disabled person is indigent. There is no similar statutory requirement with respect to attorneys appointed for a minor.

(2) Determination of Fee

Unless the attorney has agreed to serve on a pro bono basis or is serving under a contract with the Department of Human Services, the court, in determining the reasonableness of the attorney's fee,

shall apply the factors set forth in Rule 2-703 (f)(3) and in the *Guidelines Regarding Compensable and Non-Compensable Attorneys' Fees and Related Expenses*, contained in an Appendix to the Rules in Title 2, Chapter 700.

(3) Disabled Person--Security for Payment of Fee

(A) Except as provided in subsection (c)(3)(B) of this Rule, in a proceeding for guardianship of the person, the property, or both, of an alleged disabled person, upon the appointment of an attorney for an alleged disabled person, the court may require the deposit of an appropriate sum into the court registry or the appointed attorney's escrow account within 30 days after the order of appointment, subject to further order of the court.

(B) The court shall not exercise its authority under subsection (c)(3)(A) of this Rule if payment for the services of the appointed attorney is the responsibility of (i) a government agency paying benefits to the alleged disabled person, (ii) a local Department of Social Services, or (iii) an agency eligible to serve as the guardian of the alleged disabled person under Code, Estates and Trusts Article, § 13-707.

Cross reference: See Code, Estates and Trusts Article, § 13-705 (d)(1).

(d) Termination or Continuation of Appointment

(1) Generally

If no appeal is taken from a judgment dismissing the petition or appointing a guardian other than a public guardian, the attorney's appointment shall terminate automatically upon expiration of the time for filing an appeal unless the court orders otherwise.

(2) Other Reason for Termination

A court-appointed attorney who perceives a present or impending conflict of interest or other inability to continue serving as attorney for the minor or disabled person shall immediately notify the court in writing and request that the court take appropriate action with respect to the appointment.

(3) Representation if Public Guardian Appointed

If a public guardian has been appointed for a disabled person, the court shall either continue the attorney's appointment or appoint another attorney to represent the disabled person before the Adult Public Guardianship Review Board.

Cross reference: Code, Family Law Article, § 14-404 (c)(2).

(4) Appointment After Establishment of Guardianship

Nothing in this section precludes a court from appointing, reappointing, or continuing the appointment of an attorney for a minor or disabled person after a guardianship has been established if the court finds that such appointment or continuation is in the best interest of the minor or disabled person. An order of appointment after a guardianship has been established shall state the scope of the representation and may include specific duties the attorney is directed to perform.

(e) Reports and Statements

The court may not require an attorney for a minor or an alleged disabled person to file an investigative report, but may require the attorney to file a pre-hearing statement pursuant to Rule 10-106.1.

Committee note: An attorney for a minor or alleged disabled person may be able to provide important information to the court as to whether a guardianship should be

created and, if so, who should be appointed as guardian and how the guardianship should be administered. Whether employed privately or appointed by the court, however, the attorney first and foremost is an advocate for his or her client, not an independent investigator, and needs to be mindful of the attorney-client privilege and an attorney's responsibilities under Rule 19-301.14. A court order to file an investigative report may create confusion or even a direct conflict with those responsibilities. There is less danger of that by directing the attorney, along with others, to file a pre-hearing statement pursuant to Rule 10-106.1. See, however, section 1.2 of the Maryland Guidelines for Court-Appointed Attorneys in Guardianship Proceedings.

Cross reference: See Code, Courts Article, § 9-108.

Source: This Rule is derived in part from former Rules R76 and V71 and is in part new.

Rule 10-106 was accompanied by the following Reporter's note:

A proposed amendment to Rule 10-106 adds section (e) to clarify that an attorney for the minor or alleged disabled person in a guardianship proceeding serves as an advocate for the client, and not as an investigator reporting to the court. A Committee note and cross reference after section (e) highlight the applicability of attorney-client privilege, as well as the attorney's responsibilities under Rule 19-301.14 and the Maryland Guidelines for Court-Appointed Attorneys in Guardianships.

Additionally, stylistic changes are made in the cross reference and Committee note following section (a).

Mr. Laws said that proposed amendments to Rule 10-106 add new section (e), which clarifies the role of an attorney appointed to represent a minor or alleged disabled person in a guardianship proceeding. A Committee note is added to make it clear that the court may not require an attorney to file an investigative report. The attorney in that role is an advocate rather than an investigator. However, section (e) does provide that the court may require the attorney to file a pre-hearing statement in accordance with Rule 10-106.1.

The Chair invited comments about Rule 10-106. He noted that the Committee received a comment from Judge Karen Murphy Jensen, Chair of the Guardianship and Vulnerable Adults Workgroup (Appendix 2), which addressed the Committee note following section (e).

Assistant Attorney General Jeffrey H. Myers addressed the Committee. He said that he has been a consultant to the Guardianship and Vulnerable Adults Workgroup. He said that the first sentence of the Committee note following section (e) begins, "An attorney for a minor or alleged disabled person may be able to provide important information to the court as to whether a guardianship should be created and, if so, who should be appointed as a guardian and how the guardianship should be

administered." The Workgroup was concerned about that sentence because it is equally true that an attorney may not be able to provide that information due to requirements to maintain confidentiality and privacy of the client's information. The Workgroup suggested alternative language for the first sentence of the Committee note.

Judge Jensen addressed the Committee. She stated that the Workgroup's April 5th memorandum, which was distributed to the Committee as a handout, contained proposed alternate language to the first sentence of the Committee note to section (e). She respectfully asked that the Committee adopt the Workgroup's proposed language.

The Chair invited comments about the suggested amendment. He asked whether there is a motion to approve the amendment. The Reporter said that the proposed Committee note following section (e) would read: "An attorney for a minor or alleged disabled person, whether employed privately or appointed by the court, is an advocate for his or her client, not an Independent Investigator, and needs to be mindful of the attorney-client privilege and an attorney's responsibilities under Rule 19-301.14. It is a conflict of interest for the attorney to be both an advocate and an investigator appointed pursuant to Rule 10-106.2. An attorney should be able to file a pre-hearing statement pursuant to Rule 10-106.1 without violating Rule 19-

301.14. See section 1.2 of the Maryland Guidelines for Court-Appointed Attorneys in Guardianship Proceedings." The Chair encouraged everyone to review the handout that includes the Workgroup's suggested language.

Delegate Dumais moved to adopt the language recommended by the Workgroup in its April 5th memorandum as a Committee note to Rule 10-106 (e). The motion was seconded.

Mr. Frederick commented that, for anyone who has not looked at Rule 19-301.14, it is difficult to understand. It instructs an attorney representing someone who is allegedly disabled to treat the client the same as a non-disabled client, to the extent that the attorney can. The Rule itself is relatively short but the comments section is a page and a half. He said that if anyone can read the comments and understand them, it would be helpful to explain what the comments mean. He explained that he tried a disbarment case on behalf of an attorney who represented an alleged disabled person in a guardianship proceeding. The disbarment case related to the attorney's actions on behalf of the client. He said that Bar Counsel "threw the book" at the attorney and charged the attorney with violating every single Rule except for Rule 19-301.14 because the attorney did the right thing pursuant to that Rule. However, the attorney still faced discipline for actions in the guardianship case.

Mr. Frederick said that the addition of a Committee note in Rule 10-106, which suggests that an attorney will not violate Rule 19-301.14, strikes him as an invitation for the attorney to act in a manner that may place the attorney at risk of discipline. The attorney may represent the client in a way that raises no concerns or act in a manner that can be interpreted as violating one of the Rules of Professional Conduct. He added that he has a concern about how the confidentiality requirements in Rule 19-301.6 come into play. He said that an attorney for a minor or alleged disabled person in a guardianship case cannot advocate against the interests of the client. The attorney is supposed to take appropriate action, such as trying to locate family members of the client. However, the attorney cannot petition for a guardianship of the alleged disabled person.

Mr. Fredrick expressed that the intent behind the suggested amendment to the Committee note is right. However, he has some concerns about the Committee telling the Court of Appeals what its Rules of Professional Conduct require. He added that he believes with the aging of the population, there will be an attorney who will face discipline, and the Court of Appeals will have to issue an opinion as to what Rule 19-301.14 requires. That issue is the subject of a great deal of interest across the country, and the individuals who deal with ethical conduct cannot seem to agree on a position.

The Chair noted that this issue was presented to the Family/Domestic Subcommittee and there was a great deal of debate that occurred. There was a proposal to prohibit a judge from directing an attorney for an alleged disabled person to make any report to the court. There was a lot of opposition to that proposal on the basis that the reports are very helpful to the presiding judge. The Chair said that in some instances, the attorney for the minor or alleged disabled person is the only person who has information or can obtain the information the court needs. If an attorney were to file a report, the attorney would have to be very careful not to violate attorney-client privilege. Those were the competing principles presented to the Subcommittee. Ultimately, he explained, the Subcommittee decided that a judge can direct the attorney to file a pre-hearing statement of what the attorney or his or her client intends to show.

Mr. Frederick commented that Rule 19-301.6 states, "An attorney shall not reveal information relating to the representation of a client" unless the disclosure is to "comply with these Rules, a court order or other law." If the court tells the attorney to provide a report, then the attorney probably is protected from the risk of discipline.

The Chair explained that this issue initially came up in the context of hospitals looking to discharge alleged disabled

people whose treatment had ended. There was a discussion about what alternatives are available in that situation because hospitals don't want to throw patients out on the street. One point of discussion was whether the alleged disabled person would have an attorney if the hospital sought an appointment of a guardian on behalf of the alleged disabled person and what, if anything, the attorney would be able to do.

The Chair invited comments on the issue.

Del. Dumais commented that without taking into account Mr. Frederick's concerns about Rule 19-301.14, the suggested amendment to remove language from the Committee note in Rule 10-106, which states that an attorney "may be able to provide important information" is consistent with another area of the law. Attorneys who are appointed as best interest attorneys in custody cases face similar circumstances. The Committee, as well as the legislature, has had long discussions about how the role of best interest attorneys is very different than the role of an attorney appointed as a child advocate. She said that the suggested amendment is consistent with the principle that if you are acting as an advocate, then you are in a position where you should not be making reports to the court. Although there are Rules that clearly prohibit best interest attorneys from filing written reports to the court, the attorneys are permitted to participate in the trial and provide certain information to the

factfinder. Del. Dumais added that she likes the amendment suggested by the Workgroup because it is consistent with what has been done in other contexts. However, the amendment doesn't fully address the concerns raised by Mr. Frederick.

Judge Bryant moved to remove any language referring to Rule 19-301.14 from the Workgroup's suggested amendment. The Chair noted that there is a motion pending before the Committee to adopt the Workgroup's proposed amendments to the Committee note following Rule 10-106 (e). He invited further comment on that motion. Judge Jensen stated that her Workgroup does not object to Judge Bryant's modification of their proposed amendment. She said that the Workgroup is satisfied with removing the reference to Rule 19-301.14 from the Committee note, as Mr. Frederick's concerns stemmed from that reference.

Mr. Frederick asked the Chair if there would be a problem with adding language to the Committee note that urges attorneys to read Rule 19-301.14. He said that currently, it strikes him that half of the bar is not reading the Rules and of those attorneys who are reading the Rules, he is not sure that they understand them.

Judge Wilner said that a cross reference to Rule 19-301.14 could be added to Rule 10-106. He called for any further discussion.

Judge Jensen commented that she believes that striking the final sentence in the Workgroup's proposed amendment will address the concerns expressed. The Reporter noted that there is a reference made to Rule 19-301.14 earlier in the Committee note. Judge Jensen responded that the goal is to alert the attorney to the Rules of Professional Conduct, so the attorney knows to read the Rules.

The Chair invited further comment on Del. Dumais' motion, as amended. The motion to amend Rule 10-106 passed by a majority vote.

Mr. Laws presented Rule 10-106.1, Pre-Hearing Statement, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANSHIPS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

ADD new Rule 10-106.1, as follows:

Rule 10-106.1. PRE-HEARING STATEMENT

(a) Generally

On its own initiative, the court may issue an Order directing the parties, interested persons who have filed a timely answer to the petition, or the attorneys for such parties or interested persons, to file a brief written pre-hearing statement **[substantially in the form approved by the**

**State Court Administrator]** on or before a date specified in the Order. **[The court shall include with the order a blank pre-hearing statement form.]**

(b) Contents

The pre-hearing statement form shall be limited to eliciting brief statements addressing the following matters:

(1) whether the minor or alleged disabled person will attend the hearing in person, by remote electronic participation, or not at all, and whether any special accommodations are needed to facilitate participation;

Cross reference: See the Rules in Title 2, Chapter 800, Remote Electronic Participation in Judicial Proceedings.

**[(2) if the minor or alleged disabled person will not be attending the hearing, the basis for the nonattendance;**

**Cross reference: See Code, Estates and Trusts Article, § 13-705 (e).]**

(3) whether the alleged disabled person waives the right to a jury trial;

(4) whether there is a stipulation or limitation of any issue, including:

(A) the need for guardianship,

(B) less restrictive alternatives to guardianship or limitations on the powers to be granted to the guardian,

(C) designation of the proposed guardian and any issue related to the proposed designation,

(D) the identity of any interested person not previously identified in a pleading or paper filed in the action, the relationship of that person to the minor or alleged disabled person, and any issue relating to the designation of, or service upon, the interested person,

(E) the description, location, and value of any property, including any property not previously identified in a pleading or paper filed in the action,

(F) expert testimony, and

(G) any other relevant issue;

(5) whether the guardianship petition requires expedited consideration by the court because of an imminent adverse effect on the health, safety, or property of the minor or alleged disabled person;

(6) whether any power of attorney, advance health care directive, or other similar document exists and, if so, identification of the document;

(7) whether mediation would be helpful, and if so, identification of each issue to be included in the mediation; and

(8) whether an independent investigator should be appointed, and if so, for what purpose.

Committee note: When completing a pre-hearing statement, an attorney for the minor or alleged disabled person should take care not to disclose information that is privileged or adverse to the client's position.

Source: This Rule is new.

Rule 10-106.1 was accompanied by the following Reporter's note:

Proposed new Rule 10-106.1, much like Rule 2-504.2, authorizes a court to issue an order directing the parties to file a pre-hearing statement [substantially in the form approved by the State Court Administrator] on or before a date specified in the order

> [, and requiring that a blank pre-hearing statement form be included with the order].
>
> A pre-hearing statement may not be necessary in every guardianship matter. This Rule is intended to permit a trial judge to direct the parties, interested persons that have filed timely answers to the petition, and attorneys for such parties and interested persons to file a pre-hearing statement when doing so will be useful to the court.

Mr. Laws said that Rule 10-106.1 is a proposed new Rule governing pre-hearing statements. Section (a) contains a provision that allows the court to issue an order directing the parties, interested persons, and the attorneys for the parties to file a brief written pre-hearing statement. The contents of the pre-hearing statement are specified in section (b).

Mr. Laws said that in an email to the Subcommittee dated April 1 (Appendix 3), he quibbled about some of the language included in Rule 10-106.1. He suggested that the word "eliciting" be removed from the introductory line of section (b). He added that the bigger issue is the conflation of two different concepts on the second page of Rule 10-106.1. Subsection (b)(4) spells out several issues that a court may find important to know about in the context of a guardianship dispute. He said that his issue is that the language in subsection (b)(4) limits some of the brief statements to those where there "is a stipulation or limitation of" the issues

listed below subsection (b)(4). The limitation of issues is one matter, but regardless of whether there are stipulations in a given case, the court should be informed about the items listed in subsections (b)(4)(A) through (G).

The Chair asked Mr. Laws if he would suggest adding a period after the word "issue" in subsection (b)(4) and creating a new subsection (b)(5). He added that the new subsection (b)(5) would read, "the parties' positions as to" with a semicolon at the end. The list of issues currently proposed under subsection (b)(4)(A) through (G) would then be listed under the new subsection (b)(5). Mr. Laws said that he agreed with that amendment, and he believes the Workgroup also agrees. Judge Jensen replied in the affirmative.

Judge Bryant suggested that subsection (b)(2), which addresses a statement regarding whether the minor or alleged disabled person will be attending the hearing, be changed to mirror the language of Code, Estates & Trusts Article, § 13-705(e). She explained that she would like to see Rule 10-106.1 require that a statement under subsection (b)(2) include facts supporting either the minor or alleged disabled person's inability to attend, or facts supporting incapacity. She stated that when she read through the proposed Rule, she realized that there have been times where she has rubber-stamped an attorney's verbiage indicating that, "my client waives his attendance" or

"my client is unable to attend due to a physical incapacity." In those instances, she didn't really explore further to make the finding necessary under the statute.

Judge Jensen commented that she wanted to remind everyone how this matter came before the Committee. She said that several months ago, the Committee approved the concept that attorneys for guardianship respondents cannot be ordered to file reports with the court. The Guardianship and Vulnerable Adults Workgroup asked that the Committee's recommendation be pulled from consideration by the Court of Appeals because there was a healthy minority of judges who believe that getting some type of information from the reports is helpful. There has been a debate on that issue among trial judges who preside over guardianship cases. She said that the Workgroup's April 5th memo sets out the majority view and the minority view on this issue. The majority view regarding subsection (b)(2) is that no basis should be provided for why the minor or alleged disabled person will not be attending the hearing. The primary fear is that if an attorney provides a basis for the client's waiver of appearance, the attorney may reveal otherwise confidential information about their client. The minority view is that some statement should be made regarding the minor or alleged disabled person's waiver of appearance. Another component is that the majority wants the pre-hearing statement to be provided on a

form, pre-approved by the State Court Administrator. There is a minority view that a form is not necessary.

Judge Jensen said that she defers to Judge Patrick Woodward on what information can be or should be given in a pre-hearing statement. She said that her position is that the knowingness and voluntariness of the waiver to appear is a separate issue that is not a Rule issue, but rather a practice issue for the trial court to determine what needs to be placed on the record to make the necessary finding.

Judge Woodward addressed the Committee. He said that he first wants to address the bracketed language in Rule 10-106.1 (a). The optional language provides for the pre-hearing statement to be submitted "substantially in the form approved by the State Court Administrator." A majority of the Workgroup supports having a pre-hearing statement form. Judge Woodward said that he supports the majority view because many attorneys do not read the Rules as carefully as they should. Judge Woodward reiterated that there is tension between those who hold the position that more information in the pre-hearing statements is a good idea versus those who raise concerns about the attorney's obligations to maintain confidentiality and protect the rights of the client. He stated that there are many reports currently being filed that violate the attorney's obligations to maintain confidentiality, which is why the original

recommendation was made several months ago for the Committee to specifically exclude or forbid the filing of reports.

Judge Woodard noted that while most courts find certain information contained in the reports to be valuable, not all jurisdictions ask for reports. He said that when he sat on the Circuit Court for Montgomery County, the judges never asked for reports from the attorneys because the judges felt that they did not need them. Whether or not reports were asked for or filed in a given jurisdiction was a matter of local practice. Judge Woodward said that to accommodate the differing positions, the Workgroup believes that it can draft a pre-hearing statement form to elicit the information that many judges want. He cautioned that if there is no form that specifies exactly what information is to be provided to the court, the problem of attorneys violating client confidentiality will continue. Judge Woodward acknowledged that without a draft of what the pre-hearing statement form would look like, his comments on the form issue are being made in a vacuum. However, he said that there is a majority of the Workgroup that would like the opportunity to develop a form. The form would be submitted to the State Court Administrator to receive her blessing then presented to the Rules Committee at a future meeting.

Judge Woodward reiterated that a majority of the Workgroup strongly believes that a basis for an alleged disabled person's

waiver of appearance should not be provided in the pre-hearing statement. He said that the court makes findings on the record pursuant to Code, Estates and Trusts Article, § 13-705(e). Any information from the attorney regarding a client's waiver of appearance should also be placed on the record, not in writing, and provided at the time the court makes the necessary findings.

Judge Bryant said that the cases she presides over in Baltimore City often present different factual scenarios than the cases that may be heard in other counties. She said that the need for information emanates from the fact that many of the petitions filed in her jurisdiction provide very little information about the alleged disabled person's circumstances. She noted that there are instances where petitioners or interested persons, such as neighbors and friends, seek to become guardians of an alleged disabled person and their intentions are predatory. Without gathering more information from the parties, the court runs the risk of placing an alleged disabled person in a harmful situation. Ultimately, the court is the guardian of the alleged disabled person. She noted that many of her guardianship cases involve alleged disabled persons who have no family members to "go to bat" for them. It is uncommon for alleged disabled persons to be represented by private attorneys. Often, the attorneys who are appointed to represent the alleged disabled persons are good attorneys with

good intentions. However, sometimes the petitions provide the court with a bare minimum of information. Judge Bryant stated that she believes a balance can be struck between the two positions expressed today. She said that the court should be provided with the basis for the waiver of appearance so that the court can make proper findings as to whether the waiver was knowingly and voluntarily made. Without any basis for the non-appearance, the court is simply rubber-stamping the attorney's submission of a waiver. She added that there must be a way for attorneys to uphold their client's rights while providing some information to the court. She said that if the decision is made for the Workgroup to develop a pre-hearing statement form, she would like the members of the Workgroup to be mindful of the fact that attorneys have different skillsets. There are many private attorneys who provide great representation to their clients because of their access to resources. On the other hand, there are some attorneys who are appointed by the court with a large caseload, no resources to investigate, and no one to obtain information from.

The Chair stated that his understanding is that a training requirement for attorneys who represent alleged disabled persons is currently in place. He said that hopefully the training will ameliorate some of the concerns expressed about the quality of representation alleged disabled persons receive.

Judge Jensen commented that, with respect to the form issue, the idea is that the form will contain all the elements required by the pre-hearing statement Rule. She said that she would like to resolve today whether the form should require the attorney for the alleged disabled person to provide a basis for the client's waiver of appearance at the hearing. Whatever the Committee's pleasure is on that issue will be reflected in the Workgroup's form.

Mr. Laws suggested that there are three issues being presented to the Committee, each of which requires a motion to resolve. The first issue is whether the pre-hearing statement should be form-driven. That issue is presented as the boldface typed language contained in Rule 10-106.1 (a). Mr. Laws said that Judge Woodward is making a strong case in support of including the first bracketed statement, which requires the pre-hearing statement to be substantially in the form approved by the State Court Administrator.

The Chair commented that on a related note, there has been a discussion about the various forms included in the Rules. He said that many of the forms do not need to be created and maintained by Rule. The Committee has been carving out, on an *ad hoc* basis, certain forms that should stay in the Rules. Those are the forms that are of particular importance and should not be left to the responsibility of a forms committee or any

one person. The Chair said that the Committee must decide whether the contents of the pre-hearing statement will be set forth in 10-106.1 or in a form approved by the State Court Administrator. He asked the Committee what their pleasure is on that issue. The Reporter commented that section (b) of Rule 10-106.1 sets forth the contents of the pre-hearing statement. She said that if a form is created, the contents of the form would be limited to the topics listed in the Rule.

Mr. Laws moved to keep the boldface typed language presented in section (a) of Rule 10-106.1. He added that he believes a form would be helpful. The motion was seconded and passed by a majority vote.

Mr. Laws said that the second issue regarding Rule 10-106.1 is the boldface typed language of subsection (b)(2). He said that Judge Bryant has expressed a desire to "beef up" the requirement that the pre-hearing statement includes the basis for the minor or alleged disabled person's non-attendance at the hearing. On the other hand, Judge Woodward has expressed a desire to remove the language of subsection (b)(2) entirely. Mr. Laws stated that he believes the language of subsection (b)(2) strikes a middle-ground between the two viewpoints. He moved to keep the boldface typed language in the Rule, with the cross reference. The motion was seconded.

The Chair remarked that he presided over a case many years ago where the niece of the alleged disabled person filed a petition for guardianship. The niece asked to be appointed as the guardian and stated that her allegedly disabled aunt was unable to attend the hearing due to her age. The guardianship petition alleged that the aunt had cancer and refused to seek medical treatment. The Chair said he asked the niece for her aunt's address and went to visit the aunt at her home. The aunt was 93 years old at the time, perfectly lucid, and clearly stated that she did not want to receive cancer treatment. The Chair explained that he would have never obtained that information if he had not spoken with the woman in person. He said that case has stuck with him over the years because it would have been easy to rely on the niece's statement as to why the aunt could not come to the hearing. He acknowledged that every judge is not able to visit with the alleged disabled person. However, the issue of requiring a basis for the minor or alleged disabled person's non-attendance is an important one.

The Chair called for further comments on Mr. Laws's motion to keep the bolded language in subsection (b)(2).

Angela Grau, a private practitioner from Howard County, addressed the Committee. Ms. Grau said that if she were required to stand before the court and explain that her client is unable to attend the guardianship hearing because of a

physical or mental disability, she believes that would violate the rights of her client. It is the petitioner's burden in a guardianship case to prove that a disability exists. If an attorney for an alleged disabled person informs the court of the client's disability, the attorney would be helping the petitioner meet the burden of proof. Ms. Grau said that in her opinion, the issue is with the statute and not the proposed Rule. She said that the statute probably needs to be addressed by the General Assembly at some point. However, she has concerns that if attorneys are required to provide the court with a factual basis for their client's waiver of appearance, that would require the attorney to waive a certain level of privilege on behalf of the client. Judge Bryant responded that she appreciated Ms. Grau's comments. She said that as a jurist who is required to make the statutory findings, she cannot make a finding if no basis for the waiver is provided. Judge Bryant acknowledged that there is certainly a tension between the opposing viewpoints.

Judge Wilner invited further comments on the motion.

Senator Cassilly posed a question to Ms. Grau. He asked whether she would ever find it appropriate to inform the court of her client's disability if she believed a guardianship to be in the best interest of her client. He also asked whether it is her opinion that it is always a violation of confidentiality for

an attorney to reveal a client's disability. Ms. Grau responded that in her view, an attorney who reveals a client's disability will have violated the duty of confidentiality. She stated that there is case law that explicitly states that it is the duty of a court-appointed attorney to advocate for the client's position. If the client is not able to express his or her position, the attorney is to advocate for what is in the client's best interest. Ms. Grau reiterated that she does not believe it is ever appropriate for a court-appointed attorney to advocate for the appointment of a guardian. The Reporter asked Ms. Grau whether she was referring to the case of *In re Sonny E. Lee*, 132 Md. App. 696 (2000). Ms. Grau responded in the affirmative.

Mr. Frederick commented that this issue relates to what he mentioned earlier about Rule 19-301.14, which contains a cross reference to Rule 19-301.16 governing confidentiality. He said that attorneys are not supposed to breach the confidentiality owed to clients. He expressed a fear that, if an attorney is required to explain a client's nonattendance at a guardianship hearing, the attorney would have to reveal some information that would otherwise be confidential. Mr. Frederick suggested that rather than requiring that a basis for nonattendance be provided in the pre-hearing statement form, the presiding judge could direct the attorney to have an *ex parte* conversation with a

magistrate or a senior judge of the court. The attorney could make a confidential disclosure to the magistrate or senior judge, whose sole obligation in the case would be to report back to the presiding judge whether the waiver of attendance is supported by a factual basis. Judge Bryant responded that she is wary of *ex parte* communications. Mr. Zollicoffer questioned how the process suggested by Mr. Frederick would make a difference since the magistrate or senior judge would simply be acting as a straw man to provide the court with the same information from the attorney. Mr. Frederick responded that the magic behind his proposed process is that a magistrate or senior judge would have the same sensitivities as the presiding judge and could question the basis provided by the attorney. He said that he is unsure of whether there is a workable solution to the issue at hand.

Senator Cassilly expressed concern for a situation where an attorney appointed for an alleged disabled person evaluates a client and determines that a guardianship is in the client's best interest. However, the petitioner or attorney for the petitioner fails to meet the burden of proof and the request for guardianship is denied. At that point, the alleged disabled person may be at risk of losing money or possibly facing death. He questioned how that outcome can be justified. He said that several years ago when he was involved in guardianship cases for

alleged disabled persons, he believed that his obligation as the attorney for the alleged disabled person was to evaluate his client and inform the court of what he believed to be in his client's best interest. He said that for an alleged disabled person to defeat a petition for guardianship simply because the Rules say that the attorney cannot disclose their client's disability seems unjust. Mr. Laws commented that an attorney providing a basis for why his or her client cannot attend a guardianship hearing is not tantamount to saying that a guardian should be appointed. He said that a judge should not presume, from the alleged disabled person's nonattendance, that the person is, in fact, disabled and in need of a guardianship. The judge is required to determine the degree to which a person is disabled and what power should be given to the guardian. Mr. Laws added that he does not think that it is fair to say that proposed Rule 10-106.1 (b)(2) requires attorneys to provide damaging information about their clients to the degree that a judge will determine that a guardian must be appointed.

The Chair noted that Rule 19-301.6 contains an exception whereby an attorney may breach confidentiality by revealing information relating to the representation of a client to the extent the attorney reasonably believes it is necessary to prevent reasonably certain death or substantial bodily harm. He asked whether that provision pertains to the death or

substantial bodily harm to the client or to others. Mr. Frederick responded that he believes the Rule contemplates the death or bodily harm to the client. He noted that the language of the Rule contains a permissive "may" rather than a "shall."

Judge Price commented that the Committee was using a broad sense of what information is confidential. She questioned how the fact that a client is in the hospital can be considered confidential. She said that it is rare that a court-appointed attorney is going to be providing a basis for the client's nonappearance and in doing so breach the attorney-client privilege. Often, when a guardianship is sought for an alleged disabled person, the alleged disabled person is incapacitated.

Judge Bryant commented that the reason she is in favor of requiring attorneys to provide a basis for their client's nonappearance is to protect the client's right to participate in the guardianship proceeding. The court's determination as to whether the alleged disabled person's waiver of appearance is knowing and voluntary has nothing to do with the ultimate determination on whether to appoint a guardian. The court must make sure that the client has not been intentionally excluded from meaningfully participating in the proceedings.

Mr. Carbine stated that he firmly believes that not everything a client says to an attorney is privileged. He said that privileged information includes facts provided to an

attorney for the purpose of obtaining legal advice. In civil litigation, there often are disputes regarding an attorney's refusal to provide the opposing side with documents because the attorney believes the documents contain privileged information. Often, the court rules that the documents are not protected by the attorney-client privilege. Mr. Carbine asked Mr. Frederick to address the issue of attorney-client privilege with the Committee. Mr. Frederick said that the Court of Appeals addressed a similar issue in *Attorney Grievance Comm'n of Maryland v. Sperling*, 432 Md. 471 (2013). He noted that the determination as to whether an attorney's communications are material is for the court to decide, not the attorney.

The Chair noted that Rule 19-301.14 (b) provides that, "[w]hen an attorney reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in the client's own interest, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian." The Chair added that the Rule permits the attorney to seek a guardianship in certain circumstances and does not require the client's consent. Mr. Frederick commented that the holding in *Attorney Grievance Comm'n of Maryland v. Framm*, 449

Md. 620 (2016), suggests that an attorney should not participate in seeking a guardian on behalf of a client but can urge it to occur. He noted that there are nuances that have yet to be clarified regarding the role an attorney should play when a client needs a guardian. Mr. Frederick stated that he does not know of any attorney who wishes to be the subject of the test case that is sent to the Court of Appeals for clarification on this issue.

Mr. Myers commented that if an attorney has been appointed to represent an alleged disabled person, a petition seeking guardianship of that alleged disabled person already has been filed. He said that the issue currently being discussed by the Committee involves two important public policies, which are in direct conflict with one another. On the one hand, the court is supposed to ensure that the alleged disabled person has waived the right to appear at the guardianship hearing. There are incidents where attorneys, unfortunately, have represented to the court that their clients have waived the right to appear, only for it to later be discovered that the clients did not make a waiver. The second public policy issue involves ensuring that attorneys are upholding the confidentiality of their clients' information. In many instances, requiring an attorney to provide a basis for a client's waiver of appearance would cut against the client's interest in fighting the guardianship. The

client may have some diminished capacity, but can articulate the fact that he or she does not want a guardianship or does not want anyone dictating medical procedures.

Mr. Myers stated that it is ultimately the attorney appointed on behalf of the alleged disabled person who must make a judgment call. The attorney must decide whether to bring a client who suffers from Alzheimer's disease into court for the judge to see. That client may have some good days and some bad days, and the attorney may have no clue as to what mental or physical state the client will be in on the day of the hearing. Mr. Myers acknowledged that the attorney's interest in zealously representing a client's position may be at odds with the statutory findings the court is required to make regarding the alleged disabled person's waiver of appearance. Mr. Myers said that Judge W. Michel Pierson in Baltimore City is who has urged the Workgroup to develop a Rule to require a basis to support an alleged disabled person's waiver of appearance. He said that he hopes the discussion today will guide the creation of the pre-hearing statement form and will ensure that attorneys are not going to be required to reveal confidential information. Important issues that will be addressed by the form include whether the party intends to call expert witnesses, whether the guardianship is contested, or whether the party is contesting who should be appointed as guardian. The goal of the pre-

hearing form will be to help the court determine the potential length of the hearing.

The Chair inquired as to whether the physicians' certificates required in some cases can indicate, as a matter of medical opinion, whether the alleged disabled person can come to court. Judge Jensen responded in the affirmative. She added that in most guardianship cases, it is evident from the physician's certificate what the alleged disabled person's physical or mental condition is. The physicians who provide the certificates are not required to attend the court hearing unless the advocate for the alleged disabled person demands the physician's presence. The information contained in the certificate alone would be *prima facie* evidence of the alleged disabled person's disability. It is common for physician's certificates to indicate that the alleged disabled person has Alzheimer's disease or dementia and that the alleged disabled person is not capable of actively participating in the guardianship proceedings. She said that physician's certificates can be completed by psychologists, social workers, and medical doctors. The certificates specifically require the physicians to certify whether, in their professional opinion, the alleged disabled person can participate in the legal proceedings.

Judge Jensen stated that a training issue exists. She said that if the Rules Committee decides that the form should require that a basis be provided, then court-appointed attorneys are going to need proper training to ensure that they do not violate confidentiality Rules. In some cases, the basis may simply be that the alleged disabled person does not want to attend the hearing. In that instance, the trial judge must decide how much further to inquire about the basis provided. She stated that it is possible that a judge who is not the ultimate fact-finder in the case may have to visit the alleged disabled person to verify that the waiver of appearance is knowing and voluntary. Unfortunately, there have been cases in which alleged disabled persons wishing to attend the hearings, the attorney has not done his or her due diligence, and the attorney informs the court that the client has waived his or her appearance. As a practical matter, it is clear that attorneys and judges will require training on this issue.

Judge Bryant said that part of the folly of the argument against requiring that a basis for the waiver be provided is that the guardianship hearing is not scheduled until the physician's certificates are filed with the court. Judges review the case file prior to the guardianship hearings and are aware of the alleged disabled person's condition as reported in the physician's certificates. Judge Bryant reiterated that the

basis provided for an alleged disabled person's waiver of appearance will not be determinative of the court's final decision on whether to appoint a guardian. Rather, the information is necessary for the court to determine, under a clear and convincing standard, whether the alleged disabled person has been allowed to participate in the guardianship proceedings.

The Reporter clarified that the current motion before the Committee made by Mr. Laws is in favor of keeping the bolded language provided in subsection (b)(2). The Chair invited further comment on Mr. Laws's motion. The Chair called for a vote on Mr. Laws's motion, and the motion passed by a majority vote.

Mr. Laws stated that the third issue that needs to be addressed regarding Rule 10-106.1 involves the two concepts contained in subsections (b)(4) and (5). Mr. Laws moved to make several changes to subsection (b)(4). The first change is to remove the comma after the word "issue" in the stem of subsection (b)(4) and replace it with a semicolon. The second change is to remove the word "including" and the colon from subsection (b)(4). The next change is to add a new subsection (b)(5) beneath subsection (b)(4), which would read "the parties' positions as to" with a colon at the end of that line. The nine topics listed as (A) through (F) would remain, however

subsection (G) would be removed. Mr. Laws's motion was seconded. The Chair invited comments on Mr. Laws's motion. The motion passed by a majority vote.

Judge Jensen commented that there was a request made by the Workgroup that the language under proposed subsection (b)(5) be changed. The concern is that the parties may attempt to circumvent the recently enacted Rules regarding how to obtain an expedited guardianship hearing. To address that concern, the Workgroup asked that the language in proposed subsection (b)(5) be removed and new language be added stating, "whether there are special scheduling concerns not addressed by Rule 10-201 (f)," which is the Rule governing expedited hearings. Mr. Zollicoffer moved to amend the language contained in subsection (b)(5) as suggested by Judge Jensen. The motion was seconded. The Chair invited comments on Mr. Zollicoffer's motion. The motion passed by a majority vote.

Mr. Laws presented amendments to the Appendix following Title 10 (Appendix 4). Mr. Laws stated that amendments to the Appendix include several stylistic changes, the renumbering of former section 1 as new section 1.1., and adding section 1.2, which deals with the information provided by court-appointed attorneys to the court.

The Chair noted that the amendments to the Appendix are recommended by the Subcommittee. He invited comments on the

proposed amendments. There being no motion to amend or reject the proposal, the amendments were approved as presented.

Judge Jensen commented that the Workgroup also recommends amending the Appendix to apply to private attorneys as well. The Appendix could be restyled as "Maryland Guidelines for Attorneys Representing Minors and Alleged Disabled Persons in Guardianship Proceedings with references to "court-appointed attorney" throughout the Appendix restyled to apply to all relevant attorneys. Mr. Laws moved to amend the Appendix as requested by Judge Jensen. The motion was seconded. The Chair invited comments on the motion. The motion passed by a majority.

Mr. Laws presented Rule 10-106.2, Appointment of Investigator, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANSHIPS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-106.1 to renumber it, as follows:

Rule ~~10-106.1~~ 10-106.2. APPOINTMENT OF INVESTIGATOR

(a) In Connection With Petition to Establish Guardianship

The court may appoint an independent investigator in connection with a petition to establish a guardianship of the person, the property, or both of an alleged disabled person or a minor to (1) investigate specific matters relevant to whether a guardianship should be established and, if so, the suitability of one or more proposed guardians and (2) report written findings to the court.

(b) After Guardianship Established

The court may appoint an independent investigator after a guardianship has been established to investigate specific issues or concerns regarding the manner in which the guardianship is being administered and to report written findings to the court.

(c) Selection of Investigator

If the court concludes that it is appropriate to appoint an independent investigator, it shall appoint an individual particularly qualified to perform the tasks to be assigned. If there is an issue as to abuse, neglect, or exploitation of the disabled person, the court may refer the matter to an appropriate public agency to conduct the investigation.

(d) Fee

The court shall fix the fee of an appointed independent investigator, which shall be paid from the estate unless the court directs otherwise.

Source: This Rule is new. It is derived from former Rule 10-106 (c) (2016).

Rule 10-106.2 was accompanied by the following Reporter's note:

With the addition of proposed new Rule 10-106.1, current Rule 10-106.1 is renumbered as Rule 10-106.2.

Mr. Laws stated that Rule 10-106.2 governs the appointment of an investigator in a guardianship case. He said that the only change to this Rule is to renumber it.

The Chair invited comments about Rule 10-106.2. There being no motion to amend or reject the proposed change, the amendment was approved as presented.

Mr. Laws presented Rule 10-403, Petition by Standby Guardian, for consideration.

HANDOUT

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 400 – STANDBY GUARDIAN

AMEND Rule 10-403 by adding evidence of the adverse immigration action to the documentation required under subsection (d)(3)(C) and by making a conforming amendment to the Cross reference following subsection (d)(4), as follows:

Rule 10-403. PETITION BY STANDBY GUARDIAN

...

(d) Documentation

Subject to subsections (d)(3) and (4) of this Rule, the petitioner shall file with the petition:

(1) The written parental designation of the standby guardian signed or consented to by each person having parental rights over the child, if available, and, if not, the documentation required by Code, Estates and Trusts Article, § 13-904 (f)(4);

(2) If a person having parental rights over the child did not sign or consent to the designation, a verified statement containing the following information, to the extent known: (A) the identity of the person, (B) if not known, what efforts were made to identify and locate the person, (C) if the person declined to sign or consent to the designation, the name and whereabouts of the person and the reasons the person declined, and (D) if the designation was due to an adverse immigration action and the person having parental rights who did not sign or consent to the designation resides outside the United States, a statement to that effect.

Cross reference: See Code, Estates and Trusts Article, § 13-904 (f).

(3) A copy, as appropriate, of:

(A) A physician's determination of incapacity or debilitation of the parent pursuant to Code, Estates and Trusts Article, § 13-906;

(B) If a determination of debilitation is filed, the parental consent to the beginning of the standby guardianship; or

(C) If the designation was due to an adverse immigration action against the parent, the parental consent to the beginning of the guardianship, evidence of the adverse immigration action, and a copy of the birth certificate or other evidence of parentage for each child for whom the standby guardian is designated.

(4) If more than three months have elapsed since the standby guardianship became effective, (A) a statement from the

child's primary healthcare provider that the child receives appropriate healthcare, (B) if the child is enrolled in school, a copy of the child's most recent report card or other progress report, and (C) a reference to all court records pertaining to the child during that period.

Cross reference: See Rule ~~10-106.1~~ 10-106.2 regarding the appointment of an investigator if the court has a concern about the health, education, or general well-being of the child.

...

Rule 10-403 was accompanied by the following Reporter's note:

Two amendments to Rule 10-403 are proposed.

The phrase, "evidence of the adverse immigration action," is added to subsection (d)(3)(C). This conforms the subsection to a statutory requirement set forth in Code, Estates and Trusts Article, § 13-904 (f)(2)(ii)(2).

The Cross reference following subsection (d)(4) contains a conforming amendment because of the proposed re-numbering of existing Rule 10-106.1 to Rule 10-106.2.

Mr. Laws explained that Rule 10-403 covers petitions by standby guardians. A conforming amendment to the cross reference following subsection (d)(4) is proposed. The current

reference to Rule 10-106.1 has been updated to reference Rule 10-106.2.

The Reporter drew the Committee's attention to the handout version of Rule 10-403 distributed prior to the meeting. She explained that it was determined that a statutory requirement from Code, Estates and Trusts Article, § 13-904 should be added to subsection (d)(3)(C). The statute requires "evidence of the adverse immigration action" as part of the documentation, if applicable. This conforms the Rule with Code, Estates and Trusts Article, § 13-904 (f)(2)(ii)(2). The conforming amendment to the cross reference following subsection (d)(4) is still proposed.

The Chair called for a motion to approve the handout version of Rule 10-403. The motion was made, seconded, and passed by a majority vote. There being no further motion to amend or reject the proposed Rule, the handout version was approved as presented.

Mr. Laws presented Rule 10-404, Hearing, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 400 – STANDBY GUARDIAN

AMEND Rule 10-404 by making a conforming amendment to the Committee note, as follows:

Rule 10-404. HEARING

Before ruling on a petition filed under Rule 10-402 or 10-403, the court shall hold a hearing and shall give notice of the time and place of the hearing to all interested persons. The proposed standby guardian, the minor named in the petition, and, unless excused for good cause shown, the petitioner shall be present at the hearing.

Committee note: A court may exercise its other powers, such as appointing an attorney for the minor under Rule 10-106 or appointing an independent investigator pursuant to Rule ~~10-106.1~~ 10-106.2, where the court is unable to obtain reliable and credible information necessary for a decision on a petition, or in any other circumstance where the court deems it necessary.

Rule 10-404 was accompanied by the following Reporter's note:

The Committee note of Rule 10-404 contains a conforming amendment because of the proposed re-numbering existing Rule 10-106.1 to Rule 10-106.2.

Mr. Laws stated that the final Rule for consideration in Agenda Item 2 is Rule 10-404, which governs standby guardianship hearings. Rule 10-404 contains a conforming amendment in the Committee note of the Rule. The reference to current Rule 10-

106.1 has been updated to reflect its renumbering as Rule 10-106.2.

The Chair invited comments about Rule 10-404. There being no motion to amend or reject the proposed Rule, it was approved as presented.

Agenda Item 3. Consideration of Rules changes pertaining to petitions in guardianship proceedings. Proposed amendments to Rule 10-110 (Combination of Guardianship Petitions), Rule 10-111 (Petition for Guardianship of Minor), and Rule 10-112 (Petition for Guardianship of Alleged Disabled Person).

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Mr. Laws presented Rule 10-111, Combination of Guardianship Petitions, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANSHIPS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-110 by adding a requirement that a separate petition be filed for each individual as to whom a guardianship is sought, as follows:

Rule 10-110. COMBINATION OF GUARDIANSHIP PETITIONS

A petition for the appointment of a guardian of the person of a minor or alleged disabled person may also include a request for the appointment of a guardian of the

person's property, and vice versa. If guardianship of more than one individual is sought, a separate petition shall be filed for each individual.

Source: This Rule is derived in part from former Rule R71 a, and is in part new.

Rule 10-110 was accompanied by the following Reporter's note:

> The Department of Juvenile and Family Services of the Administrative Office of the Courts has been advised by the Court Operations Department that guardianship petitions naming more than one minor or more than one alleged disabled person are being filed. This causes docketing, indexing, and case management problems, especially in MDEC.
>
> To address these problems, a proposed amendment to Rule 10-110 requires the filing of a separate petition for each individual as to whom a guardianship is sought. Conforming amendments to the Notes at the top of the form petitions in Rules 10-111 and 10-112 also are proposed.

Mr. Laws stated that the amendment to Rule 10-110 requires that individual petitions for appointment of a guardian be filed if a guardianship of more than one individual is sought. The Chair invited comments on the proposed amendment to Rule 10-110.

Jamie Walter, Director of Court Operations for the Administrative Office of the Courts, addressed the Committee. Ms. Walter said that the basis for the recommendation to change Rule 10-110 is stated well in the Reporter's note. The

Administrative Office of the Courts discovered that there is an issue when MDEC counties report data to the FBI for use in the National Instant Criminal Background Check System. States are required to provide data to the FBI on guardianship cases and when more than one minor or alleged disabled person is named on a guardianship petition or order, only the first name listed appears in the data transfer.

The Chair thanked Ms. Walter for her comments. There being no motion to amend or reject the changes to Rule 10-110, the Committee approved the Rule as presented.

Mr. Laws presented Rule 10-111, Petition for Guardianship of Minor, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-111 by replacing the Note at the top of the form petition with Instructions to clarify which form petition shall be used if a guardianship of a minor is sought and that a separate petition must be filed for each minor as to whom a guardianship is sought, by making stylistic changes to sections 5, 6, and 8, and by adding the word "ADDITIONAL" to the heading of the Instructions at the bottom of the form, as follows:

Rule 10-111. PETITION FOR GUARDIANSHIP OF MINOR

A petition for guardianship of a minor shall be substantially in the following form:

[CAPTION]

In the Matter of _____ (Name of minor)

In the _____ Court for _____ (County)

_____ (docket reference)

PETITION FOR GUARDIANSHIP OF MINOR

~~Note: This form is to be used where the only ground for the petition is minority.~~

INSTRUCTIONS

(1) Use this form of petition when a guardianship of a minor is sought, even if the minor also is disabled.

(2) If the subject of the petition is not a minor, use the form petition set forth in Rule 10-112.

(3) If guardianship of more than one minor is sought, a separate petition must be filed for each minor.

[ ] Guardianship of Person [ ] Guardianship of Property [ ] Guardianship of Person and Property

The petitioner, _____ (name), _____ (age) whose address is _____, and whose telephone number is _____, represents to the court that:

1. The minor _____, age _____,

born on the _____ day of _____, _____,
(month) (year)

a [ ] male or [ ] female child of _____

and _____, resides at

_____. A birth certificate of the minor is attached.

2. If the minor does not reside in the county in which this petition is filed, state the place in this county where the minor is currently located _____

_____.

NOTE: For purposes of this Form, "county" includes Baltimore City.

3. The relationship of petitioner to the minor is _____

_____.

4. The minor

[ ] is a beneficiary of the Veterans Administration and the guardian may expect to receive benefits from that Administration.

[ ] is not a beneficiary of the Veterans Administration.

5. *Complete Section 5~~.~~ if the petitioner is asking the court to appoint <u>the petitioner</u> as the guardian.*

(Check <u>only</u> one of the following boxes)

[ ] I have not been convicted of a crime listed in Code, Estates and Trusts Article, §11-114.

[ ] I was convicted of such a crime, namely _____

_____.

The conviction occurred in _____,
(year)

in the _____, but
(Name of court)

the following good cause exists for me to be appointed as

guardian: _____

_____.

*6. Complete Section 6~~.~~ if the petitioner is asking the court to appoint an individual other than the petitioner as the guardian.*

6 a. Prospective Guardian of the Person *(Complete section 6 a~~.~~ if seeking guardianship of the person.)*

The name of the prospective guardian of the person is

_____

and that individual's age is _____. The relationship of

that individual to the minor is _____.

(Check only one of the following boxes)

[ ] _____ has not been convicted of a crime
(Name of prospective guardian)

listed in Code, Estates and Trusts Article, §11-114.

[ ] _____ was convicted of such a crime,
(Name of prospective guardian)

namely _____.

The conviction occurred in _____ in the _____

(year)

_____, but the
(Name of court)

following good cause exists for the individual to be appointed

as guardian: _____

_____.

6 b. Prospective Guardian of the Property *(Complete section 6 b. if the prospective guardian of the property is different from the prospective guardian of the person or if guardianship of the person is not sought.)*

The name of the prospective guardian of the property is

_____

and that individual's age is _____. The relationship of

that individual to the minor is _____.

(Check only one of the following boxes)

[ ] _____ has not been convicted of a crime
(Name of prospective guardian)

listed in Code, Estates and Trusts Article, §11-114.

[ ] _____ was convicted of such a crime,
(Name of prospective guardian)

namely _____.

The conviction occurred in _____ in the _____
(year)

_____, but the
(Name of court)

following good cause exists for the individual to be appointed

as guardian: _____

_____.

7. State the name and address of any additional person on whom service shall be made on behalf of the minor, including a minor who is at least ten years of age: _____

_____

_____.

8. The following is a list of the names, addresses, telephone numbers, and e-mail addresses, if known, of all interested persons (see Code, Estates and Trusts Article, §13-101 (k)).

List of Interested Persons

| | Name | Address | Telephone Number | E-mail Address (if known) |
|---|---|---|---|---|
| Parents: | _____ | _____ | _____ | _____ |
| | _____ | _____ | _____ | _____ |
| Siblings: | _____ | _____ | _____ | _____ |
| | _____ | _____ | _____ | _____ |
| | _____ | _____ | _____ | _____ |
| | _____ | _____ | _____ | _____ |
| Any Other Heirs at Law: | _____ | _____ | _____ | _____ |
| Guardian (if appointed): | _____ | _____ | _____ | _____ |

| | | | | |
|---|---|---|---|---|
| Any Person Holding a Power of Attorney of the Minor: | _____ | _____ | _____ | _____ |
| Minor's Attorney: | _____ | _____ | _____ | _____ |
| Any Other Person ~~Having~~ Who Has Assumed Responsibility for the Minor: | _____ | _____ | _____ | _____ |
| Any Government Agency Paying Benefits to or for the Minor: | _____ | _____ | _____ | _____ |
| Any Person Having an Interest in the Property of the Minor: | _____ | _____ | _____ | _____ |
| All Other Persons Exercising Control over the Minor or the Minor's Property: | _____ | _____ | _____ | _____ |
| A Person or Agency Eligible to Serve as Guardian of the Person of the Minor: | _____ | _____ | _____ | _____ |

9. The names and addresses of the persons with whom the minor resided over the past five years, and the approximate dates of the minor's residence with each person are, as follows:

| Names | Addresses | Approximate Dates |
|---|---|---|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

10. Guardianship is sought for the following reason(s):

_____

_____

_____.

11. If this Petition is for Guardianship of the Property, the following is the list of all the property in which the minor has any interest including an absolute interest, a joint interest, or an interest less than absolute (e.g. trust, life estate).

| Property | Location | Value | Trustee, Custodian, Agent, etc. |
|---|---|---|---|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

12. The petitioner's interest in the property of the minor listed in 11. is _____

_____.

13. (a) All other proceedings regarding the minor (including any proceedings in juvenile court) are, as follows:

_____

_____

_____.

(b) All proceedings regarding the petitioner and prospective guardian filed in this court or any other court are, as follows:

_____

_____

_____.

14. All exhibits required by the Instructions below are attached.

WHEREFORE, Petitioner requests that this court issue an order to direct all interested persons to show cause why a guardian of the [ ] person [ ] property [ ] person and property of the minor should not be appointed, and (if applicable) _____ (Name of prospective guardian) should not be appointed as the guardian.

_____ _____
Attorney's Signature Petitioner's Name

_____
Attorney's Name

_____

Address

_____
Telephone Number

_____
E-mail Address

Petitioner solemnly affirms under the penalties of perjury that the contents of this document are true to the best of Petitioner's knowledge, information, and belief.

_____
Petitioner's Name

_____
Petitioner's Signature

ADDITIONAL INSTRUCTIONS

1. The required exhibits are as follows:

   (a) A copy of any instrument nominating a guardian [Code, Estates and Trusts Article, §13-701 and Maryland Rule 10-301 (d)];
   (b) If the petition is for the appointment of a guardian for a minor who is a beneficiary of the Department of Veterans Affairs, a certificate of the Administrator or the Administrator's authorized representative, setting forth the age of the minor as shown by the records of the Veterans Administration, and the fact that appointment of a guardian is a condition precedent to the payment of any moneys due the minor from the Veterans Administration shall be prima facie evidence of the necessity for the appointment [Code, Estates and Trusts Article, §13-802 and Maryland Rule 10-301 (d)].

2. Attached additional sheets to answer all the information requested in this petition, if necessary.

Source: This Rule is new.

Rule 10-111 was accompanied by the following Reporter's note:

> A proposed amendment to Rule 10-111 replaces the Note at the top of the form with Instructions that clarify that a guardianship petition pertaining to a minor, including a minor who is disabled, must be filed using the form set forth in Rule 10-111, and not the form set forth in Rule 10-112. Also contained in the Instructions is a statement of the requirement that a separate petition be filed for each minor as to whom a guardianship is sought. This statement conforms the Instructions to the proposed amendment to Rule 10-110.
>
> Also, the following stylistic changes are made to sections 5, 6, and 8, and the heading of the Instructions at the bottom of the form. In sections 5 and 6, periods following section numbers are deleted in four places. In section 8, the language "Having" is replaced with "Who Has." The word "ADDITIONAL" is added to the heading of the Instructions at the bottom of the form because the former Note at the top has been replaced with Instructions.

Mr. Laws said that Rule 10-111 contains the form for a petition for guardianship of a minor. Proposed amendments replace the note at the top of the form with instructions to clarify which form is to be used when seeking guardianship of a minor. The instructions also make it clear that separate petitions must be filed for each minor.

The Chair commented that a suggestion was made to change the portion of the form that identifies the county where the

petition is being filed. Petitioners in Baltimore City may simply write "Baltimore" in that section. However, it is important for the petitioners to identify the correct county. The Chair suggested adding a number four under the instructions section, which reads, "If the petition is going to be filed in Baltimore City, then write 'City' in the caption."

Mr. Laws suggested that the word "County" could be stricken from the form caption. The Chair responded that Mr. Laws's suggested change can be made by the Style Subcommittee. The Chair invited comments about Rule 10-111. By consensus, the Committee approved the Rule, subject to revisions by the Style Subcommittee.

Mr. Laws presented Rule 10-112, Petition for Guardianship of Alleged Disabled Person, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-112 by replacing the Note at the top of the form petition with Instructions to clarify which form petition shall be used if a guardianship of an alleged disabled person is sought and that a separate petition must be filed for each alleged disabled person as to whom a guardianship is sought, by making stylistic changes to section 5, 6, and 8, and by adding the word "ADDITIONAL" to the heading

of the Instructions at the bottom of the form, as follows:

Rule 10-112. PETITION FOR GUARDIANSHIP OF ALLEGED DISABLED PERSON

A petition for guardianship of an alleged disabled person shall be substantially in the following form:

[CAPTION]

In the Matter of _____ (Name of Alleged Disabled Individual)

In the Circuit Court for _____ (County)

_____ (docket reference)

PETITION FOR GUARDIANSHIP OF ALLEGED DISABLED PERSON

~~Note: This form is to be used only when where the subject of the petition is an individual, regardless of the individual's age, who has a disability other than minority.~~

INSTRUCTIONS

(1) Use this form of petition when a guardianship of an alleged disabled person, as defined in Code, Estates & Trusts Article, §13-101(f) and Rule 10-103 (b) is sought.

(2) If the subject of the petition is a minor including a disabled minor, use the form petition set forth in Rule 10-111.

(3) If guardianship of more than one alleged disabled person is sought, a separate petition must be filed for each alleged disabled person.

[ ] Guardianship of Person [ ] Guardianship of Property [ ] Guardianship of Person and Property

The petitioner, _____, _____, whose

(name) (age)

address is _____, and whose telephone number is _____, represents to the court that:

1. The alleged disabled person _____, age _____, born on the _____ day of _____, _____, a [ ] male or [ ] female resides at _____ (month) (year)

_____.

2. If the alleged disabled person does not reside in the county in which this petition is filed, state the place in this county where the alleged disabled person is currently located

_____

_____.

NOTE: For purposes of this Form, "county" includes Baltimore City.

3. The relationship of petitioner to the alleged disabled person is _____.

4. The alleged disabled person

[ ] is a beneficiary of the Veterans Administration and the guardian may expect to receive benefits from that Administration.

[ ] is not a beneficiary of the Veterans Administration.

5. *Complete Section 5~~.~~ if the petitioner is asking the court to appoint the petitioner as the guardian.*

(Check only one of the following boxes)

[ ] I have not been convicted of a crime listed in Code, Estates and Trusts Article, §11-114.

[ ] I was convicted of such a crime, namely _____

_____.

The conviction occurred in _____ in the _____
(year)

_____, but the following good cause
(name of court)

exists for me to be appointed as guardian: _____

_____.

6. *Complete Section 6~~.~~ if the petitioner is asking the court to appoint an individual other than the petitioner as the guardian.*

6 a. Prospective Guardian of the Person *(Complete section 6 a~~.~~ if seeking guardianship of the person.)*

The name of the prospective guardian of the person is _____ and that individual's age is _____. The relationship of that individual to the alleged disabled person is _____

_____.

(Check only one of the following boxes)

[ ] _____ has not been convicted
(Name of prospective guardian)

of a crime listed in Code, Estates and Trusts Article, §11-114.

[ ] _____ was convicted of such a crime, namely _____ _____. The conviction occurred in _____ (year) in the _____ (Name of court), but the following good cause exists for the individual to be appointed as guardian: _____.

6 b. Prospective Guardian of the Property *(Complete section 6 b~~.~~ if the prospective guardian of the property is different from the prospective guardian of the person or if guardianship of the person is not sought.)*

The name of the prospective guardian of the property is _____ and that individual's age is _____. The relationship of that individual to the alleged disabled person is _____ _____.

(Check only one of the following boxes)

[ ] _____ (Name of prospective guardian) has not been convicted of a crime listed in Code, Estates and Trusts Article, §11-114.

[ ] _____ was convicted of such a crime, namely _____ _____. The conviction occurred in _____ (year) in the _____ (Name of court), but the

following good cause exists for the individual to be appointed as guardian: _____

_____.

7. If the alleged disabled person resides with petitioner, then state the name and address of any additional person on whom initial service shall be made: _____

_____.

8. The following is a list of the names, addresses, telephone numbers, and e-mail addresses, if known of all interested persons (see Code, Estates and Trusts Article, §13-101 (k)):

| | Name | Address | Telephone Number | E-mail Address (if known) |
|---|---|---|---|---|
| Person or Health Care Agent Designated in Writing by Alleged Disabled Person: | _____ | _____ | _____ | _____ |
| Spouse: | _____ | _____ | _____ | _____ |
| Parents: | _____ | _____ | _____ | _____ |
| | _____ | _____ | _____ | _____ |
| Adult Children: | _____ | _____ | _____ | _____ |
| | _____ | _____ | _____ | _____ |
| | _____ | _____ | _____ | _____ |
| | _____ | _____ | _____ | _____ |
| Adult | | | | |

| | | | | |
|---|---|---|---|---|
| Grandchildren*: | _____ | _____ | _____ | _____ |
| | _____ | _____ | _____ | _____ |
| Siblings*: | _____ | _____ | _____ | _____ |
| | _____ | _____ | _____ | _____ |
| | _____ | _____ | _____ | _____ |
| | _____ | _____ | _____ | _____ |
| Any Other Heirs at Law: | _____ | _____ | _____ | _____ |
| Guardian (If appointed): | _____ | _____ | _____ | _____ |
| Any Person Holding a Power of Attorney of the Alleged Disabled Person: | _____ | _____ | _____ | _____ |
| Alleged Disabled Person's Attorney: | _____ | _____ | _____ | _____ |
| Any Other Person ~~Having~~ Who Has Assumed Responsibility for the Alleged Disabled Person: | _____ | _____ | _____ | _____ |
| Any Government Agency Paying Benefits to or for the Alleged Disabled Person: | _____ | _____ | _____ | _____ |
| Any Person Having an Interest in the Property of the Alleged Disabled Person: | _____ | _____ | _____ | _____ |
| All Other Persons Exercising Control over | | | | |

the Alleged Disabled
Person or the Person's
Property: _____ _____ _____ _____

A Person or Agency Eligible to Serve as Guardian of the Person of the Alleged Disabled Person (Choose A or B below):

A. Director of the
Local Area Agency on Aging
(if Alleged Disabled Person
is Age 65 or over): _____ _____ _____ _____

B. Local Department of
Social Services (if
Alleged Disabled
Person is Under Age 65):
_____ _____ _____ _____

***** Note: Adult grandchildren and siblings need not be listed unless there is no spouse and there are no parents or adult children.

9. The names and addresses of the persons with whom the alleged disabled person resides or has resided over the past five years and the approximate dates of the alleged disabled person's residence with each person are as follows:

| Name | Address | Approximate Dates |
|---|---|---|
| _____ | _____ | _____ |
| _____ | _____ | _____ |

10. A brief description of the alleged disability and how it affects the alleged disabled person's ability to function is as follows:

_____.

11. (a) Guardianship of the Person is sought because

_____
(Name of Alleged Disabled Person)

cannot make or communicate responsible decisions concerning health care, food, clothing, or shelter, because of mental disability, disease, habitual drunkenness, addiction to drugs, or other addictions. State the relevant facts:

_____.

(b) Describe less restrictive alternatives that have been attempted and have failed (see Code, Estates and Trusts Article, §13-705 (b)):

_____.

12. (a) Guardianship of the Property is sought because

_____ cannot manage property
(Name of Alleged Disabled Person)

and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs or other addictions, imprisonment, compulsory hospitalization, detention by a foreign power, or disappearance.
State the relevant facts:

_____.

(b) Describe less restrictive alternatives that have been attempted and have failed (see Code, Estates and Trusts Article, §13-201):

_____.

13. If this Petition is for Guardianship of the Property, the following is the list of all the property in which the alleged disabled person has any interest including an absolute interest, a joint interest, or an interest less than absolute (e.g. trust, life estate):

| Property | Location | Value | Sole Owner, Joint Owner (specific type), Life Tenant, Trustee, Custodian, Agent, etc. |
|---|---|---|---|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

14. The petitioner's interest in the property of the alleged disabled person listed in 13. is _____

_____.

15. If a guardian or conservator has been appointed for the alleged disabled person in another proceeding, the name and address of the guardian or conservator and the court that appointed the guardian or conservator are as follows:

_____ _____
Name Address

_____
Court

16. All other proceedings regarding the alleged disabled person (including criminal) are as follows:

_____.

17. All exhibits required by the Instructions below are attached.

WHEREFORE, Petitioner requests that this court issue an order to direct all interested persons to show cause why a guardian of the

[ ] person [ ] property [ ] person and property of the alleged disabled person should not be appointed, and (if applicable) _____ should not
(Name of prospective guardian)
be appointed as the guardian.

_____ _____
Attorney's Signature Petitioner's Name

_____
Attorney's Name

_____
Address

_____
Telephone Number

_____
E-mail Address

Petitioner solemnly affirms under the penalties of perjury that the contents of this document are true to the best of Petitioner's knowledge, information, and belief.

_____
Petitioner's Name

_____
Petitioner's Signature

ADDITIONAL INSTRUCTIONS

1. The required exhibits are as follows:

(a) A copy of any instrument nominating a guardian;

(b) A copy of any power of attorney (including a durable power of attorney for health care) which the alleged disabled person has given to someone;

(c) Signed and verified certificates of two physicians licensed to practice medicine in the United States who have examined the alleged disabled person, or of one licensed physician, who has examined the alleged disabled person, and one licensed psychologist or licensed certified social worker-clinical, who has seen and evaluated the alleged disabled person. An examination or evaluation by at least one of the health care professionals must have occurred within 21 days before the filing of the petition (see Code, Estates and Trusts Article, §13-103 and §1-102 (a) and (b)).

(d) If the petition is for the appointment of a guardian of an alleged disabled person who is a beneficiary of the Department of Veterans Affairs, then in lieu of the certificates required by (c) above, a certificate of the Secretary of that Department or an authorized representative of the Secretary setting forth the fact that the person has been rated as disabled by the Department.

2. Attach additional sheets to answer all the information requested in this petition, if necessary.

Source: This Rule is new.

Rule 10-112 was accompanied by the following Reporter's note:

A proposed amendment to Rule 10-112 replaces the Note at the top of the form with Instructions that clarify that this petition pertains only to alleged disabled persons as defined in Code, Estates & Trusts Article, § 13-101(f) and Rule 10-103(b). The definitions of "disabled person" contained in the statute and Rule exclude individuals who are minors. If the subject of a guardianship petition is a minor, including a disabled minor, the form of petition set forth in Rule 10-111 is to be used, rather than the form set forth in Rule 10-112. Also contained in the Instructions is a statement of the requirement that a separate petition be filed for each individual as to whom a guardianship is sought. This statement conforms the Instructions to the proposed amendments to Rule 10-110.

Also, the following stylistic changes are made to sections 5, 6, and 8, and the heading of the instructions at the bottom of the form. In sections 5 and 6, periods following section numbers are deleted in four places. In section 8, the language "Having" is replaced with "Who Has." The word "ADDITIONAL" is added to the heading of the Instructions at the bottom of the form because the former Note at the top has been replaced with Instructions.

Mr. Laws said that Rule 10-112 contains the petition for guardianship of alleged disabled person form. The Chair noted that the same changes suggested for Rule 10-111 will need to be made to Rule 10-112. The Chair invited comments about Rule 10-112. By consensus, the Committee approved the Rule, subject to revision by the Style Subcommittee.

Agenda Item 4. Consideration of proposed amendments to: Rule 10-206 (Annual Report – Guardianship of a Minor or Disabled Person); Rule 10-707 (Inventory and Information Report); and Rule 10-708 (Fiduciary's Account and Report of Trust Clerk).

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Mr. Laws presented Rule 10-206, Annual Report – Guardianship of a Minor or Disabled Person, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANSHIPS AND OTHER FIDUCIARIES

CHAPTER 200 – GUARDIAN OF PERSON

AMEND Rule 10-206 by deleting the annual report forms from the Rule and by requiring that the reports be substantially in the form approved by the State Court Administrator and posted on the Judiciary website, as follows:

Rule 10-206. ANNUAL REPORT—GUARDIANSHIP OF A MINOR OR DISABLED PERSON

...

(e) Form of Annual Report of Guardian ~~of Disabled Person~~

The guardian's report shall be substantially in the form of the Annual Report of the Guardian of a Disabled Person or Annual Report of the Guardian of a Minor, as appropriate, approved by the State Court Administrator and posted on the

Judiciary website. ~~The guardian's report shall be in substantially the following form:~~

~~[CAPTION]~~

~~_____ANNUAL REPORT OF_____,~~

~~GUARDIAN OF THE PERSON OF _____,~~

~~WHO IS DISABLED~~

~~1. The name and permanent residence of the disabled person are:~~

~~2. The disabled person currently resides or is physically present in:~~

~~___ own home~~ ~~___ guardian' home~~

~~___ nursing home~~ ~~___ hospital of medical facility~~

~~___ foster or boarding Home~~ ~~___ relative's home:_____ relationship~~

~~___ other~~

~~(If other than disabled person's permanent home, state the name and address of the place where the disabled person lives.)~~

~~3. The disabled person has been in the current location since _____(date). If the person has moved within the past year, the reasons for the change are:~~

~~4. The physical and mental condition of the disabled person is as follows:~~

5. During the past year, the disabled person's physical or mental condition has changed in the following respects:

6. The disabled person is presently receiving the following care:

7. I have applied funds as follows from the estate of the disabled person for the purpose of support, care, or education:

8. The plan for the disabled person's future care and well-being, including any plan to change the person's location, is:

9. [ ] I have no serious health problems that affect my ability to serve as guardian.

[ ] I have the following serious health problems that may affect my ability to serve as guardian:

10. This guardianship

[ ] should be continued.

[ ] should not be continued, for the following reasons:

11. My powers as guardian should be changed in the following respects and for the following reasons:

12. The court should be aware of the following other matters relating to this guardianship:

I solemnly affirm under the penalties of perjury that the contents of this document are true to the best of my knowledge, information, and belief.

Date Guardian's Signature

Guardian's Name (typed or printed)

Street Address or Box Number

City and State

Telephone Number

[CAPTION]

ORDER

The foregoing Annual Report of a Guardian having been filed and reviewed, it is by the Court, this _____ day of_____(month), _____(year).

ORDERED, that the report is accepted, and the guardianship is continued.

(or)

ORDERED, that a hearing shall be held in this matter on _____(date).

JUDGE

(f) Form of Annual Report of Guardian of Minor

[CAPTION]

ANNUAL REPORT OF _____, GUARDIAN OF THE PERSON OF _____, WHO IS A MINOR

1. The name and permanent residence of the minor are:

2. The minor currently resides or is physically present in:

___ own home

___ foster or boarding Home

___ guardian's home

___ hospital of medical facility

___ relative's home:_____ relationship

___ other

(If other than minor's permanent home, state the name and address of the place where the minor lives.)

3. The minor has been in the current location since _____(date). If the person has moved within the past year, the reasons for the change are:

~~4. The physical and mental condition of the minor is as follows:~~

~~5. During the past year, the minor's physical or mental condition has changed in the following respects:~~

~~6. The minor is presently receiving the following care:~~

~~7. I have applied funds as follows from the estate of the minor for the purpose of support, care, or education:~~

~~8. The plan for the minor's future care and well-being, including any plan to change the person's location, is:~~

~~9. [ ] I have no serious health problems that affect my ability to serve as guardian.~~

~~[ ] I have the following serious health problems that may affect my ability to serve as guardian:~~

~~10. This guardianship~~

~~[ ] should be continued.~~

~~[ ] should not be continued, for the following reasons:~~

~~11. My powers as guardian should be changed in the following respects and for the following reasons:~~

~~12. The court should be aware of the following other matters relating to this guardianship:~~

~~I solemnly affirm under the penalties of perjury that the contents of this document are true to the best of my knowledge, information, and belief.~~

~~Date~~ ~~Guardian's Signature~~

~~Guardian's Name (typed or printed)~~

~~Street Address or Box Number~~

~~City and State~~

~~Telephone Number~~

~~[CAPTION]~~

~~ORDER~~

~~The foregoing Annual Report of a Guardian having been~~

~~filed and reviewed, it is by the Court, this _____ day of _____(month), _____(year).~~

~~ORDERED, that the report is accepted, and the guardianship is continued.~~

~~(or)~~

~~ORDERED, that a hearing shall be held in this matter on _____(date).~~

~~JUDGE~~

Source: This Rule is new and is derived as follows:
Section (a) is derived from Code, Estates and Trusts Article, § 13-708(b)(7) and former Rule V74 c 2(b).
Section (b) is derived from former Rule V74 c 2(b).
Section (c) is patterned after Rule 6-417(d).
Sections (d) and (e) are new.
~~Section (f) is new.~~

Rule 10-206 was accompanied by the following Reporter's note:

> The Guardianship and Vulnerable Adult Work Group of the Maryland Judicial Council Domestic Law Committee recommends removing the Annual Report of Guardian of Disabled Person (Rule 10-206 (e)), Annual Report of Guardian of Minor (Rule 10-206 (f)) Inventory and Information Report (Rule 10-707 (a)), and the Fiduciary's Account (Rule 10-708 (a)) from the bodies of their respective Rules and instead requiring that these forms be "in the form approved by the State Court Administrator, posted on the Judiciary's website, and available in the

> offices of the clerks of the circuit courts and registers of wills."
>
> As drafted, the forms are complex for pro se guardians, and court staff have asked for various revisions that are burdensome to make through Rule changes. Managing the forms through Judicial Council's Form Subcommittee would allow for more flexibility in the contents and structure of the forms. The State Court Administrator fully supports this recommendation, and the Probate/Fiduciary Subcommittee concurs in the recommendation.

Mr. Laws said that the proposed amendments to Rule 10-206 delete the annual report of guardian form and the form Order for grating acceptance of the annual report from the current Rule. Under proposed new section (e), an annual report of the guardian is required to be substantially in the form approved by the State Court Administrator and posted on the Judiciary website. He noted that the proposed amendment came from the Guardianship and Vulnerable Adult Work Group.

The Chair invited comments about Rule 10-206. There being no motion to amend or reject the proposal, the Rule was approved as presented.

Mr. Laws presented Rule 10-707, Inventory and Information Report, for consideration.

TITLE 10 – GUARDIANSHIPS AND OTHER FIDUCIARIES

CHAPTER 700 – FIDUCIARY ESTATES INCLUDING GUARDIANSHIP OF THE PROPERTY

AMEND Rule 10-707 by deleting the form set out in section (a) and by requiring that the fiduciary file an inventory and information report substantially in the form approved by the State Court Administrator and posted on the Judiciary website, as follows:

Rule 10-707. INVENTORY AND INFORMATION REPORT

(a) Duty to File

Within 60 days after jurisdiction has been assumed or a fiduciary has been appointed, the fiduciary shall file an inventory and information report in substantially the following form approved by the State Court Administrator and posted on the Judiciary website.:

~~Part I.~~

~~[CAPTION]~~

~~INVENTORY~~

~~The FIDUCIARY ESTATE now consists of the following assets: (attach additional sheets, if necessary; each item listed shall be valued by the fiduciary at its fair market value, as of the date of the appointment of the fiduciary or the assumption of jurisdiction by the court; unless the court otherwise directs, it shall not be necessary to employ an appraiser to make any~~

~~valuation; state amount of any mortgages, liens, or other indebtedness, but do not deduct when determining estimated fair market value)~~

~~A. REAL ESTATE~~

~~(State location, liber/folio, balance of mortgage, and name of lender, if any)~~

~~ESTIMATED FAIR MARKET VALUE~~

~~$~~

~~TOTAL $~~

~~B. CASH AND CASH EQUIVALENTS~~

~~(State name of financial institution, account number, and type of account)~~

~~PRESENT FAIR MARKET VALUE~~

~~$~~

~~TOTAL $~~

~~C. PERSONAL PROPERTY~~

~~(Itemize motor vehicles, regardless of value; describe all other property generally if total value is under $1500; state amount of any lien; itemize, if total value is over $1500)~~

| | ~~ESTIMATED FAIR MARKET VALUE~~ |
|---|---|
| | ~~$~~ |

~~TOTAL $~~

~~D. STOCKS~~

~~(State number and class of shares, name of corporation)~~

| | ~~PRESENT FAIR MARKET VALUE~~ |
|---|---|
| | ~~$~~ |

~~TOTAL $~~

~~E. BONDS~~

~~(State face value, name of issuer, interest rate, maturity date)~~

~~PRESENT FAIR~~

~~MARKET VALUE~~

~~$~~

~~TOTAL $~~

~~F. OTHER~~

~~(Describe generally, e.g., debts owed to estate, partnerships, cash value of life insurance policies, etc.)~~

~~ESTIMATED FAIR~~

~~MARKET VALUE~~

~~$~~

~~TOTAL $~~

~~Part II.~~

~~INFORMATION REPORT~~

~~(1) Are there any assets in which the minor or disabled person holds a present interest of any kind together with another~~

~~person in any real or personal property, including accounts in a credit union, bank, or other financial institution?~~

~~[ ] No [ ] Yes~~

~~If yes, give the following information as to all such property:~~

~~Name, Address, and Relationship of Co-Owner~~

~~Nature of Property~~

~~Description of Interest~~

~~Total Value of Property~~

~~(2) Does the minor or disabled person hold an interest less than absolute in any other property which has not been disclosed in question (1) and has not been included in the inventory (e.g., interest in a trust, a term for years, a life estate)?~~

~~[ ] No [ ] Yes~~

~~If yes, give the following information as to each such interest:~~

~~Description of Interest and Amount or Value~~

~~Date and Type of Instrument Establishing Interest~~

~~VERIFICATION:~~

~~I solemnly affirm under the penalties of perjury that the contents of this document are true to the best of my knowledge, information, and belief.~~

~~Date~~

~~Signature of Fiduciary~~

~~Address~~

~~Telephone Number~~

~~Name of Fiduciary's Attorney~~

~~Address~~

~~Telephone Number~~

~~Facsimile Number~~

~~Date~~

~~Signature of Fiduciary~~

~~Address~~

~~Telephone Number~~

~~E-mail Address~~

(b) Examination Not Required

Unless the court otherwise directs, it shall not be necessary that the assets listed in the report be exhibited to or examined by the court, the trust clerk, or auditor.

(c) Notice

Unless the court orders otherwise, the trust clerk or fiduciary shall furnish a copy of the report to any interested person who has made a request for it.

Source: This Rule is derived as follows:

Section (a) is in part derived from former Rule V74 b 1 and 2 and is in part new.

Section (b) is derived from former Rule V74 b 3.

Section (c) is new.

Rule 10-707 was accompanied by the following Reporter's note:

See the Reporter's Note to Rule 10-206.

Mr. Laws stated that Rule 10-707 governs the inventory and information report, which is required to be filed when guardianship of property is obtained. The proposed amendments to Rule 10-707 are similar to those proposed for the previous Rule. Under section (a), the inventory and information report form has been removed. Language has been added to section (a) to require that the inventory and information report be filed

substantially in the form approved by the State Court Administrator and posted on the Judiciary website.

The Chair invited comments about the amendments to Rule 10-707. Mr. Laws noted that there has been some discussion regarding section (c) of Rule 10-707. He said that ultimately, the consensus was to leave section (c) as it currently reads. Mr. Laws invited the Chair to comment on that consensus. The Chair explained that a question was raised regarding whether limitations should be placed on interested persons who receive copies of inventory and information reports. He said that under the Access Rules in Title 16, Chapter 900, guardianship case records are not available for public inspection unless there is a legal authority or court order that permits access.

The Chair invited further comment on the issue.

Judge Mosley asked the Chair whether permitting interested persons to view the report at the courthouse, rather than furnishing every interested person a copy of the report would be a better policy. The Chair responded that he does not have strong feelings about the issue. He stated that several months ago, the Committee agreed to shield all guardianship case records, except for the orders and docket entries. The rationale was that many guardianship records contain medical and financial information that needs to be protected. Judge Mosley expressed concern that an interested person, who is not an

attorney, may obtain a copy of an inventory and information report and show it to someone else. Mr. Laws suggested adding a cross reference or instructions in Rule 10-707 that would direct the individual preparing the inventory and information report to redact information such as account numbers. He noted that Rules governing the redaction of personal identifier information existed prior to the rollout of MDEC. Mr. Laws said that, especially because many lay people are involved in the guardianship process, it would be helpful to direct filers to use the last four digits of an account number.

Mr. Frederick recounted that years ago, the Chair told him about a man who had perfected an algorithm that could generate a complete Social Security number when the last four digits are entered. Mr. Frederick said that he called the man over the phone and provided the last four digits of his Social Security number. Within 30 seconds, the algorithm produced Mr. Frederick's full Social Security number. The Chair noted that the individual who used the algorithm did not do so with malicious intent. The goal of testing the algorithm was to explain the dangers that exist regarding redacted personal identifier information. Under proposed new Access Rules, the last four digits of an individual's Social Security number must be redacted from public filings. Mr. Laws questioned how personal identifying information can truly be protected. He

said that court orders, which would be accessible by the public, would certainly contain personal identifier information. The Chair responded that any financial or personally identifying information would be redacted from the order or shielded from public access. Judge Bryant said that, at a minimum, the clerk should ensure that any account information is redacted from public filings. She said that the dual filing requirement, which requires that certain documents containing financial or personal identifier information be filed under seal, often is not followed. The clerks need to ensure that any documents containing personal identifier information are redacted before the document is disseminated.

Judge Bryant noted that there is a counter-balancing interest to consider. She said that an interested party may question how a guardianship of property is being handled. If that interested party is seeking information to help decide whether to seek legal representation, it would seem unfair to bar that individual from access to important information. Mr. Laws noted that section (c) of Rule 10-707 authorizes the trust clerk to furnish a copy of the inventory and information report to interested persons.

The Chair invited further comments about Rule 10-707. There being no motion to amend or reject the Rule, it was approved as presented.

Mr. Laws presented Rule 10-708, Fiduciary's Account and Report of Trust Clerk, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANSHIPS AND OTHER FIDUCIARIES

CHAPTER 700 – FIDUCIARY ESTATES INCLUDING GUARDIANSHIP OF THE PROPERTY

AMEND Rule 10-708 by deleting the form set out in section (a) and by requiring that the Fiduciary's Account be substantially in the form approved by the State Court Administrator and posted on the Judiciary website, as follows:

Rule 10-708. FIDUCIARY'S ACCOUNT AND REPORT OF TRUST CLERK

(a) Form of Account

The Fiduciary's Account shall be filed in substantially the following form approved by the State Court Administrator and posted on the Judiciary website.:

~~[CAPTION]~~

~~FIDUCIARY'S ACCOUNT~~

~~I, _____, make this [ ] periodic [ ] final Fiduciary's Account for the period from _____ to _____.~~

~~The Fiduciary Estate consists of the following assets as [ ] reported on the Fiduciary's Inventory [ ] carried forward from last Fiduciary Account:~~

~~A. REAL ESTATE~~ ~~$_____~~

~~B. CASH & CASH EQUIVALENTS~~ ~~$_____~~

~~C. PERSONAL PROPERTY~~ ~~$_____~~

~~D. STOCKS~~ ~~$_____~~

~~E. BONDS~~ ~~$_____~~

~~F. OTHER~~ ~~$_____~~

~~TOTAL~~ ~~$_____~~

~~The following changes in the assets of the Fiduciary Estate have occurred since the last account: (Please include real or personal property that was bought, sold, transferred, exchanged, or disposed of and any loans that were taken out on any asset in the estate. Attach additional sheets, if necessary.)~~

~~A. INCOME~~

~~Date Received~~

~~Type of Income (e.g., pension, social security, rent, annuity, dividend, interest, refund)~~

~~Source~~

~~Amount~~

~~$~~

~~TOTAL~~

~~$~~

~~B. DISBURSEMENTS~~

~~Date of Payment~~

~~To Whom Paid~~

~~Purpose of Payment~~

~~Amount~~

~~$~~

~~TOTAL~~

~~$~~

~~C. ASSETS ADDED~~

~~Date~~

~~Description of Transaction~~

~~Gross Purchase Price~~

~~Value at date of acquisition if other than by purchase~~

~~D. ASSETS DELETED~~

~~Date~~

~~Description of Transaction~~

~~Gross Sale Proceeds~~

~~Selling Costs~~

~~Carrying Value~~

~~Gain or (Loss)~~

~~SUMMARY~~

~~Total Income~~ ~~$_____~~

~~Total Disbursements~~ ~~$_____~~

~~Total Assets Added~~ ~~$_____~~

~~Total Assets Deleted~~ ~~$_____~~

~~Total Changes~~ ~~$_____~~

~~A Summary of the Fiduciary Estate to be carried forward to next account:~~

~~A. REAL ESTATE~~ ~~$_____~~

~~B. CASH & CASH EQUIVALENTS~~ ~~$_____~~

~~C. PERSONAL PROPERTY~~ ~~$_____~~

~~D. STOCKS~~ ~~$_____~~

~~E. BONDS~~ ~~$_____~~

~~F. OTHER~~ ~~$_____~~

~~TOTAL~~ ~~$_____~~

~~The Fiduciary bond, if any, has been filed in this action in the amount of $ _____.~~

~~VERIFICATION:~~

~~I solemnly affirm under the penalties of perjury that the contents of this document are true to the best of my knowledge, information, and belief.~~

~~Date~~ ~~Date~~

~~Signature of Fiduciary~~ ~~Signature of Fiduciary~~

~~Address~~ ~~Address~~

~~Telephone Number~~ ~~Telephone Number~~

~~Name of Fiduciary's Attorney~~

~~Address~~

~~Telephone Number~~

~~Facsimile Number~~

~~E-mail Address~~

(b) Report of the Trust Clerk and Order of Court

The Report of the Trust Clerk and Order of Court shall be filed in substantially the following form:

REPORT OF TRUST CLERK AND ORDER OF COURT

I, the undersigned Trust Clerk, certify that I have examined the attached Fiduciary's Account in accordance with the Maryland Rules.

Matters to be called to the attention of the Court are as follows:

Date

Signature of Trust Clerk

Address of Trust Clerk

Telephone No. of Trust Clerk

ORDER

The foregoing Fiduciary's Account having been filed and reviewed, it is by the Court, this _____ day of _____(month), _____(year).

ORDERED, that the attached Fiduciary's Account is accepted.

(or)

ORDERED, that a hearing shall be held in this matter on _____(date).

JUDGE

Source: This Rule is new.

Rule 10-708 was accompanied by the following Reporter's note:

See the Reporter's Note to Rule 10-206.

Mr. Laws said that the proposed amendments to Rule 10-708 remove the form for the fiduciary's account from the Rule and require that the fiduciary's account be filed in the form approved by the State Court Administrator and posted on the Judiciary website.

The Reporter stated that Judge Jensen submitted a comment regarding Rule 10-708. The comment noted that when the Rules Committee first reviewed Rule 10-708 in November 2017, the Committee approved language that does not appear in the draft presented today. In the 2017 draft, the report of trust clerk form and the order form included the following language, "covering the period of _____ through ____ ." Judge Jensen suggested that the language should be added back into the Rule.

Judge Eaves moved to amend Rule 10-708 to incorporate the changes discussed by the Reporter. The motion was seconded and

passed by a majority vote. There being no further motion to amend or reject the proposed Rule, it was approved as amended.

Agenda Item 5. Consideration of a proposed amendment to Rule 10-209 (Termination of a Guardianship of the Person).

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Mr. Laws presented Rule 10-209 Termination of a Guardianship of the Person, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANSHIPS AND OTHER FIDUCIARIES

CHAPTER 200 – GUARDIAN OF PERSON

AMEND Rule 10-209 by deleting the word "certified" from subsection (b)(1), as follows:

Rule 10-209. TERMINATION OF A GUARDIANSHIP OF THE PERSON

...

(b) Termination Not Requiring Prior Notice

(1) Petition; Grounds

Upon a petition filed in conformity with this section, the court shall terminate a guardianship of the person without prior notice upon a finding that either (A) a minor not otherwise disabled has attained the age of majority or (B) the minor or disabled person has died, and that (C) the guardian has exercised no control over any

property of the disabled person. The petition may be filed by a minor not otherwise disabled or by the guardian of a minor or disabled person. It shall contain or be accompanied by the guardian's verified statement that the guardian has exercised no control over any property of the minor or disabled person, and shall also be accompanied by either a copy of the minor person's birth certificate or other satisfactory proof of age or a ~~certified~~ copy of the minor or disabled person's death certificate.

(2) Time for Filing

A minor who is not disabled may file a petition at any time after attaining the age of majority. A guardian shall file a petition within 45 days after discovery that grounds for termination exist.

(3) Venue

The petition shall be filed in the court that appointed the guardian or that has assumed jurisdiction over the fiduciary estate.

(4) Copy of Order

The court shall send a copy of the order terminating the guardianship to the guardian, the person whose minority has ended, and any other person whom the court designates.

...

Source: This Rule is in part derived from former Rule V78 and is in part new.

Rule 10-209 was accompanied by the following Reporter's note:

The Guardianship and Vulnerable Adults Workgroup of the Maryland Judicial Council Domestic Law Committee recommends removing

the requirement that guardians of the person file a certified copy of the minor or disabled person's death certificate with a petition to terminate guardianship of the person from Md. Rule 10-209 (d). A copy is sufficient, and the cost to acquire a certified death certificate is burdensome for lay guardians and public agencies. Additionally, the expansion of electronic filing makes this requirement unnecessary.

The Probate/Fiduciary Subcommittee concurs in the Workgroup's recommendation.

Mr. Laws stated that the proposed amendment to Rule 10-209 is to remove the word "certified" from subsection (b)(1). The Chair invited comments about Rule 10-209. There being no motion to amend or reject the Rule, it was approved as presented.

Agenda Item 6. Consideration of a "housekeeping" amendment to Rule 18-603 (Financial Disclosure Statement by Judges).

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The Reporter presented Rule 18-603, Financial Disclosure Statement by Judges, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 600 – MISCELLANEOUS PROVISIONS

AMEND Rule 18-603 to remove surplus language from section (b), as follows:

Rule 18-603 Financial Disclosure Statement by Judges

(a) Definitions

In this Rule, "judge" means(A) an incumbent judge of the Court of Appeals, the Court of Special Appeals, a circuit court, the District Court, or an orphans' court and (B) an individual who, in the preceding calendar year, served as an incumbent judge of one of those courts or was a senior judge.

(b) Requirement

Each judge and senior judge shall file with the State Court Administrator a financial disclosure statement in the form prescribed by the Court of Appeals. ~~When filed, a financial disclosure statement is a public record.~~

(c) When Due; Period Covered

(1) Generally

Except as provided in subsection (c)(2) of this Rule, the statement shall be filed on or before April 30 of each year and shall cover the preceding calendar year or that portion of the preceding calendar year during which the individual was a judge or a senior judge, except that a newly appointed or elected judge or a judge who leaves office shall file a statement within the time set forth in the instructions to the financial disclosure statement form.

(2) Exception

If a judge or other individual who files a certificate of candidacy for nomination for an election to an elected judgeship has filed a statement pursuant to Code, General Provisions Article, § 5-610, the individual need not file a financial disclosure statement under this Rule for the same period of time. The State Court

Administrator is designated as the individual to receive statements from the State Administrative Board of Election Laws pursuant to Code, General Provisions Article, § 5-610.

(3) Presumption of Filing

A judge's or senior judge's financial disclosure statement is presumed to have been filed unless the State Court Administrator, no later than five days after the statement was due, notifies the judge or senior judge that the statement for the preceding calendar year or portion thereof was not received.

(d) Extension of Time for Filing

(1) Application

Except when required to file a statement pursuant to Code, General Provisions Article, § 5-610, a judge or senior judge may apply to the State Court Administrator for an extension of time for filing the statement. The application shall be submitted prior to the deadline for filing the statement and shall set forth in detail the reasons an extension is requested and the date when a completed statement will be filed.

(2) Decision

For good cause, the State Court Administrator may grant a reasonable extension of time for filing the statement. Whether the request is granted or denied, the State Court Administrator shall furnish the judge or senior judge and the Judicial Ethics Committee with a written statement of the reasons for the decision and the facts upon which the decision was based.

(3) Review by Judicial Ethics Committee

A judge or senior judge may seek review of the State Court Administrator's decision by the Judicial Ethics Committee by filing with the Committee, within ten days

after the date of the decision a statement of reasons for the judge's or senior judge's dissatisfaction with the decision. The Committee may take the action it deems appropriate with or without a hearing or the consideration of additional documents.

(e) Failure to File Statement; Incomplete Statement

(1) Notice; Referral to Judicial Ethics Committee

The State Court Administrator shall (A) give written notice to each judge or senior judge who fails to file a timely statement or who files an incomplete statement and (B) in the notice, set a reasonable time, not to exceed ten days, for the judge or senior judge to file or supplement the statement. If the judge or senior judge fails to correct the deficiency within the time allowed, the State Court Administrator shall report the deficiency to the Judicial Ethics Committee.

(2) Duties of Committee

(A) After an inquiry, the Committee shall determine whether (i) the judge or senior judge was required to file the statement or the omitted information was required to be disclosed, and (ii) if so, whether the failure to file or the omission of the required information was inadvertent or in a good faith belief that the judge or senior judge was not required to file the statement or to disclose the omitted information.

(B) If the Committee determines that the judge or senior judge was not required to file the statement or disclose the omitted information, it shall notify the State Court Administrator and the judge or senior judge and terminate the inquiry.

(C) If the Committee determines that the statement was required to be filed or that the omitted information was required to

be disclosed but that the failure to do so was inadvertent or in a good faith belief that the filing or disclosure was not required, the Committee shall send notice of that determination to the State Court Administrator and the judge or senior judge and, in the notice, set a reasonable time, not to exceed 15 days, within which the judge or senior judge shall correct the deficiency.

(D) If the Committee (i) finds that the statement was required to be filed or that the omitted information was required to be disclosed and that failure to file or disclose the omitted information was not inadvertent or in a good faith belief, or (ii) after notice was given pursuant to subsection (e)(2)(C) of this Rule, the judge or senior judge failed to correct the deficiency within the time allowed, the Committee shall report the matter to the Commission on Judicial Disabilities and notify the State Court Administrator and the judge or senior judge that it has done so.

(f) Public Record

When filed, a financial disclosure statement is a public record.

Source: This Rule is derived from former Rule 16-815 (2016).

Rule 18-603 was accompanied by the following Reporter's note:

A proposed amendment to Rule 18-603 removes surplus language from section (b). The last sentence of section (b) reads, "[w]hen filed, a financial disclosure statement is a public record." This is identical to the only language contained in section (f). Removal of the surplus language from section (b) makes the structure of Rule 18-603 consistent with the structure of Rule 18-604.

The Reporter stated that Mr. Schmidt noticed that the last sentence in Rule 18-603 section (b) is identical to the only sentence contained in section (f). The proposed amendment is to remove the surplus language from section (b).

Judge Eaves moved to approve the suggested amendment to Rule 18-603. The motion was seconded and passed by a majority vote.

There being no further business before the Committee, the Chair concluded the meeting.