

COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee virtually held
via Zoom for Government on September 10, 2020.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.	Victor H. Laws, III, Esq.
Julia Doyle Bernhardt, Esq.	Dawne D. Lindsey, Clerk
Hon. Vicki Ballou-Watts	Donna Ellen McBride, Esq.
Julia D. Bernhardt, Esq.	Stephen S. McCloskey, Esq.
Hon. Pamela J. Brown	Hon. Douglas R. M. Nazarian
Stan Derwin Brown, Esq.	Hon. Paula A. Price
Hon. Yvette M. Bryant	Scott D. Shellenberger, Esq.
Sen. Robert G. Cassilly	Gregory K. Wells, Esq.
Hon. John P. Davey	Hon. Dorothy J. Wilson
Del. Kathleen M. Dumais	Thurman W. Zollicoffer, Esq.
Alvin I. Frederick, Esq.	
Pamela Q. Harris, State Court Administrator	

In attendance:

Sandra F. Haines, Esq., Reporter
Colby L. Schmidt, Esq., Deputy Reporter
Heather Cobun, Esq., Assistant Reporter
Meredith A. Drummond, Esq., Assistant Reporter
Hon. Matthew J. Fader, Chief Judge, Court of Special Appeals
Allan J. Gibber, Esq., Neuberger, Quinn, Gielen, Rubin & Gibber,
P.A.
Lisa H. Goldberg, Esq., Baltimore City State's Attorney's Office
Amber Herrmann, Deputy Director, District Court Admin. Services
Jonathan G. Lasley, Esq., Stewart, Plant & Blumenthal, LLC
Lauren R. Lipscomb, Esq., Baltimore City State's Attorney's
Office
Byron Macfarlane, Esq., Register of Wills, Howard County
Lisa M. Mannisi, Esq., Circuit Court for Anne Arundel County
Richard Montgomery, Director of Legislative Relations, MSBA
Hon. John P. Morrissey, Chief Judge, District Court of Maryland

Michaela Cavanaugh Muffoletto, Esq., Neuberger, Quinn, Gielen,
Rubin & Gibber, P.A.
Stephen J. Musselman, Esq., Office of the Public Defender
Michele M. Nethercott, Esq., Director, Univ. of Baltimore
Innocence Project
Scott Patterson, Esq., State's Attorney for Talbot County
Thomas Stahl, Esq., Spencer & Stahl, P.C.
Hon. Dennis M. Sweeney, Ret.
Gillian Tonkin, Esq., Staff Attorney, District Court Chief
Clerk's Office
Mark H. Weisner, Esq., Levin & Gann, P.A.
Carrie Williams, Esq., Director, Office of Attorney General,
Criminal Appeals Division
Brian Zavin, Esq., Deputy Chief Attorney, Office of the Public
Defender, Appellate Division

The Chair convened the meeting. He said that the Rules Committee has submitted the 203rd, 204th, and 205th reports to the Court of Appeals and they were approved. He announced that the Committee is working on several major projects. A workgroup is finalizing a complete revision of the Rules governing juvenile proceedings and preparing to provide its draft to the Juvenile Subcommittee. The Attorneys and Judges Subcommittee is discussing revisions to the Attorney Grievance Commission Rules. The Committee is also working to amend Rule 5-702 (Testimony by Experts) following the Court of Appeals ruling in *Stanley Rochkind v. Starlena Stevenson*, No. 47, Sept. Term 2019 (opinion on Aug. 28, 2020) which adopted the *Daubert* standard for expert testimony (*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)). Finally, the Committee is discussing what may

be required when the remaining jurisdictions move to Maryland Electronic Courts (MDEC).

Ms. Haines reminded Committee members and attendees that the meeting is being recorded and anyone who speaks is consenting to the recording. She also told attendees to mute themselves when they are not speaking.

Agenda Item 7. Consideration of proposed amendments to: Rule 19-202 (Application for Admission), Rule 19-205 (Character Questionnaire), Rule 19-206 (Notice of Intent to Take the UBE in Maryland), Rule 19-207 (Notice of Intent to Transfer a Qualifying UBE Score), Rule 19-210 (Re-Examination After Failure), Rule 19-215 (Eligibility of Out-of-State Attorney for Admission without Examination), and Rule 19-216 (Admission of Out-of-State Attorney without Examination - Procedure).

The Chair said that the Committee would take items on the agenda out of order, beginning with Item 7.

Mr. Frederick presented Rule 19-202, Application for Admission; Rule 19-205, Character Questionnaire; Rule 19-206, Notice of Intent to Take the UBE in Maryland; Rule 19-207, Notice of Intent to Transfer a Qualifying UBE Score; Rule 19-210, Re-Examination After Failure; Rule 19-215, Eligibility of Out-of-State Attorney for Admission without Examination; and Rule 19-216, Admission of Out-of-State Attorney without Examination - Procedure, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

AMEND Rule 19-202 (b) by clarifying that the withdrawal of a character questionnaire constitutes a withdrawal of an application for admission, as follows:

RULE 19-202. APPLICATION FOR ADMISSION

. . .

(b) Withdrawal of Application

At any time, an applicant may withdraw an application by filing with the Board written notice of withdrawal. Where an individual has filed a character questionnaire pursuant to Rule 19-205 (c) without then filing a Notice of Intent, withdrawal of the character questionnaire pursuant to Rule 19-205 (f) shall constitute withdrawal of the application. No fees will be refunded.

. . .

Rule 19-202 was accompanied by the following Reporter's note.

REPORTER'S NOTE

The proposed amendment to Rule 19-202 (b) clarifies that a character questionnaire filed then later withdrawn pursuant to Rule 19-205 (f) constitutes withdrawal of an application, whether a notice of intent has been filed pursuant to Rule 19-206 or 19-207.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

AMEND Rule 19-205 by adding new section (f), as follows:

RULE 19-205. CHARACTER QUESTIONNAIRE

(a) Who May File

An individual who meets the requirements of Rule 19-201(a)(1) may commence an application for admission to the Bar of this State by filing with the Board a completed Character Questionnaire and the prescribed fee.

Cross reference: See Rule 19-206 (Notice of Intent to Take the UBE in Maryland) and Rule 19-207 (Notice of Intent to Transfer a Qualifying UBE Score).

(b) Form of Questionnaire

(1) Generally

The character questionnaire shall be on a form prescribed by the Board and shall be answered under oath. The questionnaire shall elicit the information the Board considers appropriate concerning the applicant's character, education, and eligibility to become an applicant and (A) require the applicant to provide the applicant's Social Security number, and (B) include an authorization to release confidential information pertaining to the applicant's character and fitness for the practice of law to a Character Committee, the Board, and the Court.

(2) Pre-legal education

The character questionnaire shall be accompanied by satisfactory evidence that the applicant meets the pre-legal education requirements of Rule 19-201 (a) (1).

(c) Time for Filing

The character questionnaire shall be filed prior to or contemporaneously with any Notice of Intent to Take the UBE in Maryland pursuant to Rule 19-206 or any Notice of Intent to Transfer a Qualifying UBE Score pursuant to Rule 19-207.

(d) Preliminary Determination of Eligibility

On receipt of a character questionnaire, the Board shall determine whether the applicant is eligible to file a character questionnaire pursuant to section (a) of this Rule. If the Board concludes that the requirements have been met, it shall forward the character questionnaire to a Character Committee. If the Board concludes that the requirements have not been met, it shall promptly notify the applicant in writing.

(e) Updated Character Questionnaire

If a character questionnaire has been pending for more than three years since the date of the applicant's most recent character questionnaire or updated character questionnaire, the applicant shall file with the Board an updated character questionnaire contemporaneously with filing any Notice of Intent to Take the UBE in Maryland or any Notice to Transfer a Qualifying UBE Score. The updated character questionnaire shall be under oath, filed on the form prescribed by the Board, and accompanied by the prescribed fee.

(f) Withdrawal of Character Questionnaire

At any time, an applicant may withdraw a character questionnaire by filing with the Board written notice of withdrawal. Withdrawing a character questionnaire shall result in withdrawal of the application for admission under 19-202 (b). No fees will be refunded.

Source: This Rule is new in part and derived from former Rule 19-202 (2018) in part.

Rule 19-205 was accompanied by the following Reporter's note.

REPORTER'S NOTE

The proposed new section (f) to Rule 19-205 explains the effect of the withdrawal of a character questionnaire. An application for admission consists of a notice of intent pursuant to either Rule 19-206 or 19-207 and a character questionnaire.

The proposed amendment to Rule 19-202 (b) clarifies that the withdrawal of a character questionnaire, which can be filed contemporaneously to the notice of intent, constitutes withdrawal of an application. The proposed amendment to Rule 19-205 re-states this concept.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

AMEND Rule 19-206 by clarifying the prerequisites for filing a notice of intent

in subsection (a) (3), by adding certain requirements to the filing procedure in section (a), by correcting an internal reference in section (b) and a cross reference following section (b), and by making stylistic changes, as follows:

RULE 19-206. NOTICE OF INTENT TO TAKE THE UBE IN MARYLAND

(a) Filing

An applicant may file a Notice of Intent to Take the UBE in Maryland if the applicant:

(1) meets the pre-legal educational requirements of Rule 19-201 (a) (1) ~~τ~~i;

(2) unless the requirements of Rule 19-201 (a) (2) have been waived pursuant to Rule 19-201 (b), meets the legal education requirements of Rule 19-201 (a) (2), or will meet those requirements before the first day of taking the UBE in Maryland, ~~;~~i and

(3) contemporaneously files, or has previously filed, a completed character questionnaire pursuant to Rule 19-205 that has not been withdrawn pursuant to ~~Rule 19-202 (b)~~ 19-205 (f), and the applicant has not withdrawn or been denied admission pursuant to Rule 19-203, or rejected pursuant to Rule 19-204.

The Notice of Intent shall be under oath, filed on the form prescribed by the Board, and accompanied by the prescribed fee.

(b) Request for Test Accommodation

An applicant who seeks a test accommodation under the ADA for the bar examination shall indicate that request on the Notice of Intent to Take the UBE in Maryland, and shall file with the Board an "Accommodation Request" on a form prescribed

by the Board, together with the supporting documentation that the Board requires. The form and documentation shall be filed no later than the deadline stated in section ~~(e)~~(d) of this Rule for filing the Notice of Intent to Take the UBE in Maryland. The Board may reject an accommodation request that is (1) substantially incomplete or (2) filed untimely. The Board shall notify the applicant in writing of the basis of the rejection and shall provide the applicant an opportunity to correct any deficiencies in the accommodation request before the filing deadline for the current examination or, if the current deadline has passed, before the filing deadline for the next administration of the examination.

Committee note: An applicant who may need a test accommodation is encouraged to file an Accommodation Request as early as possible.

Cross reference: See Rule ~~19-205~~ 19-208 for the procedure to appeal a denial of a request for a test accommodation.

. . .

Source: This Rule is derived from former Rule 19-204 (2018).

Rule 19-206 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Proposed amendments to Rule 19-206 (a)(3) clarify the prerequisites for filing a notice of intent, which can only be filed if the applicant has contemporaneously or previously filed a character questionnaire which has not been withdrawn and their application has not been denied pursuant to the character review process. The amendment references new Rule 19-205 (f), which states

the effect of the withdrawal of a character questionnaire. A requirement that the filing be made under oath, in the form prescribed, and accompanied by the prescribed fee makes the Rule consistent with Rule 19-207 and Rule 19-102 (h).

Procedures pertaining to the appeal of a denial of a request for a test accommodation, formerly in Rule 19-205, have been transferred to Rule 19-208. Proposed amendments to Rule 19-206 correct an internal reference in section (b) and update the cross reference following section (b) to reflect the new location of the procedures for appeal.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

AMEND Rule 19-207 by clarifying the prerequisites for filing a notice of intent in subsection (a)(3), by adding new section (c) pertaining to time for filing, and by making stylistic changes, as follows:

RULE 19-207. NOTICE OF INTENT TO TRANSFER A QUALIFYING UBE SCORE

(a) Filing

Beginning on July 1, 2019, an applicant may file a Notice of Intent to Transfer a Qualifying UBE Score if the applicant:

(1) meets the pre-legal educational requirements of Rule 19-201 (a)(1) to become admitted to the Maryland Bar⁷;

(2) unless the requirements of Rule 19-201 (a)(2) have been waived pursuant to Rule

19-201 (b), meets the legal education requirements of Rule 19-201 (a) (2), *i*

(3) contemporaneously files or has previously filed a completed character questionnaire pursuant to Rule 19-205 that has not been withdrawn pursuant to Rule ~~19-202 (b)~~ 19-205 (f), and the applicant has not withdrawn or been ~~or~~ denied admission pursuant to Rule 19-204 *i*; and

(4) has achieved a qualifying UBE score in another UBE State.

The Notice of Intent shall be under oath, filed on the form prescribed by the Board, and accompanied by the prescribed fee.

(b) Verification of Legal Education

The applicant shall cause the Board to receive an official transcript that reflects the date of the award to the applicant of a qualifying law degree under Rule 19-201 (a) prior to or contemporaneously with filing the Notice of Intent to Transfer a Qualifying UBE Score, unless the official transcript already is on file with the Board or the applicant has received a waiver under Rule 19-201 (b).

(c) Time for Filing

An applicant who intends to apply for admission by transferring a qualifying UBE score shall file the Notice of Intent to Transfer a Qualifying UBE Score no later than the last day that the transferred score constitutes a qualifying UBE score as defined by Board Rule.

Source: This Rule is new.

Rule 19-207 was accompanied by the following Reporter's note.

REPORTER'S NOTE

The proposed amendment to Rule 19-207 (a)(3) clarifies the prerequisites for filing a Notice of Intent, which can only be filed if the applicant has contemporaneously or previously filed a character questionnaire which has not been withdrawn and their application has not been denied pursuant to the character review process. The amendment references proposed new section (f) of Rule 19-205, which states the effect of the withdrawal of a character questionnaire.

Proposed new section (c) clarifies that the time for filing a Notice of Intent to Transfer a Qualifying UBE Score expires when the score no longer constitutes a qualifying UBE Score as defined by Board Rule.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

AMEND Rule 19-210 by adding a reference to Rule 19-206, as follows:

RULE 19-210. RE-EXAMINATION AFTER FAILURE

(a) Notice of Intent to Take Another Scheduled UBE in Maryland

An unsuccessful applicant may file another Notice of Intent to Take the UBE in Maryland pursuant to Rule 19-206. The Notice of Intent shall be on the form prescribed by the Board and shall be accompanied by the required examination fee.

. . .

Rule 19-210 was accompanied by the following Reporter's note.

REPORTER'S NOTE

The proposed amendment to Rule 19-210 clarifies that the Rule 19-206 prerequisites for filing a notice of intent apply to a re-examination application. Amendments to Rule 19-206 explain the character questionnaire requirements which must be met contemporaneously to or prior to filing a notice of intent.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

AMEND Rule 19-215 (c) by correcting a reference to Rule 19-216, as follows:

RULE 19-215. ELIGIBILITY OF OUT-OF-STATE ATTORNEY FOR ADMISSION WITHOUT EXAMINATION

. . .

(c) Practitioner of Law

(1) Subject to subsections (c)(2) and (3) of this Rule, a practitioner of law is an individual who has regularly engaged in the authorized practice of law:

(A) in a state;

(B) as the principal means of earning a livelihood; and

(C) whose professional experience and responsibilities have been sufficient to satisfy the Board that the individual should be admitted under this Rule and Rule ~~19-213~~ 19-216.

(2) As evidence of the requisite professional experience, for purposes of subsection (c) (1) (C) of this Rule, the Board may consider, among other things:

(A) the extent of the individual's experience in the practice of law;

(B) the individual's professional duties and responsibilities, the extent of contacts with and responsibility to clients or other beneficiaries of the individual's professional skills, the extent of professional contacts with practicing attorneys and judges, and the individual's professional reputation among those attorneys and judges; and

(C) any professional articles or treatises that the individual has written.

(3) The Board may consider, as the equivalent of practice of law in a state, practice outside the United States if the Board concludes that the nature of the practice makes it the functional equivalent of practice within a state.

. . .

Rule 19-215 was accompanied by the following Reporter's note.

REPORTER'S NOTE

The proposed amendment to Rule 19-215 (c) corrects a reference to the process for admission of out-of-state attorneys. The applicant must have sufficient professional experience to be admitted under Rules 19-215 and 19-216.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

AMEND Rule 19-216 by correcting subsection numbering in section (a), as follows:

RULE 19-216. ADMISSION OF OUT-OF-STATE ATTORNEY WITHOUT EXAMINATION - PROCEDURE

(a) Petition

(1) Beginning on July 1, 2019, an individual eligible pursuant to Rule 19-215 may file with the Board a petition under oath on a form prescribed by the Board. The petition shall be accompanied by (A) the fees required by the Board and the costs assessed for the character and fitness investigation and report by the National Conference of Bar Examiners, and (B) the supporting documents and information required by the Board as to the petitioner's professional experience and character and fitness to practice law in Maryland.

(2) The petitioner shall list (A) each state in which the petitioner has been admitted to the Bar and whether each admission was by examination, by diploma privilege or on motion; and (B) the additional facts showing that the petitioner meets the requirements of section (a)(3) of Rule 19-215 or should be qualified under section (e) of Rule 19-215.

~~(4)~~(3) The petitioner shall be under a continuing obligation to report to the Board any material change in information previously furnished.

. . .

Rule 19-216 was accompanied by the following Reporter's note.

REPORTER'S NOTE

The proposed amendment to Rule 19-216 (a) corrects the numbering to remove a blank subsection.

Mr. Frederick said that the amendments were all pro forma and asked the Committee to approve them. There being no motion to amend or reject the proposed Rules, they were approved as presented.

Agenda Item 3. Consideration of proposed Rules changes pertaining to the elective share of a surviving spouse.

Mr. Laws presented Rules 6-411, Election to Take Elective Share; Rule 6-416, Attorney's Fees or Personal Representative's Commissions; Rule 6-418, Statement and Certification of Elective Share; Rule 6-434, Transmitting Issues; and Rule 6-107, Extension of Time, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-411 by changing references from "statutory share" to "elective share," by specifying where an election shall be filed, by adding a reference to the code section in the form of election, by altering forms to allow for an unrepresented party to provide contact information, by adding subsection (a)(2) to allow a specifically authorized guardian or agent to make the election with certain notice requirements, by allowing the guardian or agent to petition for an extension of time, by adding cross references, and by making stylistic changes, as follows:

Rule 6-411. ELECTION TO TAKE STATUTORY ELECTIVE SHARE

(a) Form of Election

(1) By Surviving Spouse

A surviving spouse may elect to take ~~a statutory~~ an elective share by the timely filing of an election in the court in which the personal representative of the decedent was appointed. If the election is filed prior to the appointment of the personal representative, the spouse may file with the register in the county in which the decedent was domiciled or in any county in which the decedent resided on the date of the decedent's death or in which real property or a leasehold interest in real property of the decedent is located.

The election shall be substantially in the following form:

[CAPTION]

ELECTION TO TAKE ~~STATUTORY~~ ELECTIVE SHARE OF ESTATE

I, _____, surviving spouse of _____, late of the County _____ (City) of _____, ~~renounce all provisions of my spouse's will pertaining to myself and~~ elect to take my statutory elective share of the decedent's estate subject to election under § 3-403 of the Estates and Trusts Article of the Annotated Code of Maryland.

Witness:

Surviving Spouse

Date: _____

Attorney If There is No Attorney:

Address Surviving Spouse's Address:

Telephone Number Surviving Spouse's Telephone Number:

Facsimile Number Surviving Spouse's Facsimile Number:

Email Address Surviving Spouse's Email Address:

Cross reference: Code, Estates and Trusts Article, ~~§ 3-203~~ § 3-408.

(2) By the Guardian or Agent

(A) Subject to subsection (B), a specifically authorized guardian or agent of the surviving spouse may exercise the right of the surviving spouse to elect to take an elective share by timely filing the election substantially in the following form:

[CAPTION]

ELECTION TO TAKE ELECTIVE SHARE OF ESTATE

I, _____, in my capacity as the
specifically authorized guardian or agent of
_____, surviving spouse
of _____, late of the
County (City) of _____, elect to
take the surviving spouse's elective share
of the decedent's estate subject to election
under § 3-403 of the Estates and Trusts
Article of the Annotated Code of Maryland.

Witness:

_____	<u>Guardian/Agent</u> <u>Signature</u>
	Date: _____
_____	<u>If There is No</u> <u>Attorney:</u>
_____	<u>Guardian or Agent's</u> <u>Address:</u>
_____	<u>Guardian or Agent's</u> <u>Telephone Number:</u>
_____	<u>Guardian or Agent's</u> <u>Facsimile Number:</u>
_____	<u>Guardian or Agent's</u> <u>Email Address:</u>

Cross reference: Code, Estates and Trusts
Article, § 3-405 (b).

(B) Prior to or concurrent with the
filing of an election pursuant to subsection
(a) (2) (A) of this Rule, the guardian or
agent promptly shall deliver notice of the
election to (i) all interested persons in
the decedent's estate and (ii) all persons

who would inherit from the surviving spouse if the surviving spouse died intestate and unmarried at the time the election is made.

(C) An exercise of a right of election by a guardian or agent is valid unless (i) within 30 days after delivery of notice under subsection (a) (2) (B) a person with standing makes an objection in the court in which the election was filed and (ii) following a hearing the court finds that the election is not in the best interests of the surviving spouse.

Cross reference: Code, Estates and Trusts Article, § 3-405 (c).

(b) Time Limitation for Making Election

An election to take ~~a statutory~~ an elective share shall be filed within the later of nine months after the date of the decedent's death or six months after the date of the first appointment of a personal representative ~~under a will~~, unless extended pursuant to this Rule.

Cross reference: Code, Estates and Trusts Article, § 3-407.

(c) Extension of Time for Making Election

Within the period for making an election, the surviving spouse or the specifically authorized guardian or agent of the surviving spouse may file with the court a petition for an extension of time. The petitioner shall deliver or mail a copy of the petition to the personal representative. For good cause shown, the court may grant extensions not to exceed three months at a time, provided each petition for extension is filed before the expiration of the period originally prescribed or before the expiration of any period extended by a previous order. The court may rule on the petition without a hearing or, if time permits, with a hearing.

If an extension is granted without a hearing, the register shall serve notice on the personal representative and such other persons as the court may direct. The notice shall be in the following form:

[CAPTION]

NOTICE OF EXTENSION OF TIME
TO ELECT ~~STATUTORY~~ ELECTIVE SHARE

On the ____ day of _____, _____,
(month) (year)
an extension of time to elect a ~~statutory~~ an elective share of the estate was granted to _____, the decedent's surviving spouse or specifically authorized guardian or agent of the surviving spouse. The extension expires on the ____ day of _____, _____.
(month) (year)

If you believe there is good cause to object to the extension, within 20 days after service of this notice you may file with the court, in writing, a petition to shorten the time for filing an election. A copy of the petition shall be served on the surviving spouse or specifically authorized guardian or agent of the surviving spouse.

Register of Wills

(d) Withdrawal

The surviving spouse or the specifically authorized guardian or agent of the surviving spouse may file with the register a withdrawal of the election at any time before the expiration of the time, or any extension thereof granted by the court, for filing an election.

Rule 6-411 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Proposed amendments to Rule 6-411 implement Chapter 435, 2019 Laws of Maryland (HB 99), which is effective October 1, 2020.

The Code exclusively uses the term "elective share," rather than "statutory share," and Rule 6-411 has been amended to conform terminology to the law. The form in subsection (a)(1) is amended to comply with the statute and modified to allow for a pro se surviving spouse to provide contact information. New subsection (a)(2)(A) creates a process for a specifically authorized guardian or agent to make the election and includes a form modeled after (a)(1). Subsections (a)(2)(B) and (a)(2)(C) incorporate the notice and objection procedure from the Code. Sections (c) and (d) are amended to allow a guardian or agent to petition for an extension or to withdraw the election.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-416 by adding new subsection (a)(1)(A) to describe the general contents of a petition for compensation, by requiring that a petition state anticipated or previously allowed fees in connection with an elective share, by adding new subsection (a)(1)(B) to describe the contents of a petition for additional fees and commissions in connection with an elective share, by adding a Committee note after subsection (a)(1)(B) stating that such compensation is presumed reasonable under certain circumstances, by adding new

subsection (b) (1) (A) to describe the procedure for obtaining payment of compensation by consent, by specifying that payment of additional compensation in connection with an elective share may be obtained by consent in certain circumstances, by altering the form in subsection (b) (2) (B) to delineate compensation for regular estate administration and for additional compensation in connection with an elective share, and by making stylistic changes, as follows:

RULE 6-416. ATTORNEY'S FEES OR PERSONAL REPRESENTATIVE'S COMMISSIONS

(a) Subject to Court Approval

(1) Contents of Petition

(A) Generally

When a petition for the allowance of attorney's fees or personal representative's commissions is required, it shall be verified and shall state in reasonable detail the basis for the current request and ~~(A)~~ (i) the amount of all fees or commissions previously allowed, (B) (ii) the amount of fees or commissions that the petitioner reasonably estimates will be requested in the future, (C) (iii) the amount of fees or commissions currently requested, (iv) any additional fees or commissions anticipated or previously allowed in connection with an election by or on behalf of a surviving spouse to take an elective share, and (E) (v) that the notice required by subsection (a) (3) of this Rule has been given.

(B) Compensation in Connection with an Elective Share

When a petition for the allowance of additional attorney's fees or personal representative's commissions in connection

with an election by or on behalf of a surviving spouse to take an elective share under Code, Estates and Trusts Article, § 7-603(b) is required, it shall be verified and shall state in reasonable detail the basis for the current request and (i) the amount of all fees or commissions previously allowed, (ii) the amount of fees or commissions that the petitioner reasonably estimates will be requested in the future, (iii) the amount of fees or commissions currently requested, (iv) the amount of fees or commissions under this subsection consented to by all interested persons, and (v) that the notice required by subsection (a) (3) of this Rule has been given. A petition under this subsection may be combined with a petition under subsection (a) (1) (A) of this Rule.

Committee note: Code, Estates and Trusts Article, § 7-603 (b) (2) states that the amount of compensation or attorney's fees consented to by all interested persons is presumed to be reasonable.

(2) Filing - Separate or Joint Petitions

Petitions for attorney's fees and personal representative's commissions shall be filed with the court and may be filed as separate or joint petitions.

(3) Notice

The personal representative shall serve on each unpaid creditor who has filed a claim and on each interested person a copy of the petition accompanied by a notice in the following form:

NOTICE OF PETITION FOR ATTORNEY'S FEES OR
PERSONAL REPRESENTATIVE'S COMMISSIONS

You are hereby notified that a petition for allowance of attorney's fees or personal representative's commissions has been filed. You have 20 days after service of the

petition within which to file written exceptions and to request a hearing.

(4) Allowance by Court

Upon the filing of a petition, the court, by order, shall allow attorney's fees or personal representative's commissions as it considers appropriate, subject to any exceptions.

(5) Exception

An exception shall be filed with the court within 20 days after service of the petition and notice and shall include the grounds therefor in reasonable detail. A copy of the exception shall be served on the personal representative.

(6) Disposition

If timely exceptions are not filed, the order of the court allowing the attorney's fees or personal representative's commissions becomes final. Upon the filing of timely exceptions, the court shall set the matter for hearing and notify the personal representative and other persons that the court deems appropriate of the date, time, place, and purpose of the hearing.

(b) Payment of Attorney's Fees and Personal Representative's Commissions Without Court Approval

(1) Payment of Contingency Fee for Services Other Than Estate Administration

Payment of attorney's fees may be made without court approval if:

(A) the fee is paid to an attorney representing the estate in litigation under a contingency fee agreement signed by the decedent or by a previous personal representative;

(B) the fee is paid to an attorney representing the estate in litigation under a contingency fee agreement signed by the current personal representative of the decedent's estate provided that the personal representative is not acting as the retained attorney and is not a member of the attorney's firm;

(C) the fee does not exceed the terms of the contingency fee agreement;

(D) a copy of the contingency fee agreement is on file with the register of wills; and

(E) the attorney files a statement with each account stating that the scope of the representation by the attorney does not extend to the administration of the estate.

(2) Consent in Lieu of Court Approval

(A) Procedure

Upon the filing of a completed Consent to Compensation for Personal Representative and/or Attorney form substantially in the form set forth in subsection (b) (2) (B) of this Rule, ~~Payment~~ payment of attorney's fees and personal representative's commissions may be made without court approval if the combined sum of all payments of attorney's fees and personal representative's commissions authorized under Code, Estates and Trusts Article, § 7-603(a) does not exceed the amounts provided in Code, Estates and Trusts Article, § 7-601; and. In addition, attorney's fees and personal representative's commissions authorized under Code, Estates and Trusts Article, § 7-603(b) may be included in the Consent form and paid without court approval if the total combined sum of all payments of attorney's fees and personal representative's commissions authorized under Code, Estates and Trusts Article, §§ 7-603(a) and 7-603(b)

does not exceed the amounts provided in Code, Estates and Trusts Article, § 7-601.

(B) Form of Consent

~~a-written~~ The consent stating the amounts of the payments shall be signed by (i) each creditor who has filed a claim that is still open and (ii) all interested persons, ~~is~~ and filed with the register substantially in the following form:

BEFORE THE REGISTER OF WILLS FOR
_____, MARYLAND

IN THE ESTATE OF: _____ Estate No.

CONSENT TO COMPENSATION FOR PERSONAL
REPRESENTATIVE AND/OR ATTORNEY

I understand that the law, Estates and Trusts Article, § 7-601, provides a formula to establish the maximum total commissions to be paid for personal representative's commissions. If the total compensation for personal representative's commissions and attorney's fees being requested falls within the maximum allowable commissions, and the request is consented to by all unpaid creditors who have filed claims and all interested persons, this payment need not be subject to review or approval by the Court. A creditor or an interested party may, but is not required to, consent to these fees.

The formula sets total compensation at 9% of the first \$20,000 of the adjusted estate subject to administration PLUS 3.6% of the excess over \$20,000. Based on this formula, the adjusted estate subject to administration known at this time is _____. The total allowable statutory maximum commission based on the adjusted estate subject to administration known at this time is _____, LESS any personal representative's commissions and attorney's fees previously approved as required by law

and paid. To date, \$ _____ in personal representative's commissions and \$ _____ in attorney's fees have been paid.

IF ALL REQUIRED CONSENTS ARE NOT OBTAINED, A PETITION SHALL BE FILED, AND THE COURT SHALL DETERMINE THE AMOUNT TO BE PAID.

Cross reference: See 90 Op. Att'y. Gen. 145 (2005).

Total combined fees being requested are \$ _____, including \$ _____ under Code, Estates and Trusts Article, § 7-603(a) and \$ _____ under Code, Estates and Trusts Article § 7-603(b), to be paid as follows:

Amount	To	Name of Personal Representative/Attorney
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I have read this entire form and I hereby consent to the payment of personal representative and/or attorney's fees in the above amount.

Date	Signature	Name (Typed or Printed)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Attorney

Personal

Representative

Address

Personal
Representative

Telephone Number

Facsimile Number

Email Address

Committee note: Nothing in this Rule is intended to relax requirements for approval and authorization of previous payments.

(3) Designation of Payment

When rendering an account pursuant to Rule 6-417 or a final report under modified administration pursuant to Rule 6-455, the personal representative shall designate any payment made under this section as an expense.

Cross reference: Code, Estates and Trusts Article, §§ 7-502, 7-601, 7-602, 7-603, and 7-604.

Rule 6-416 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Proposed amendments to Rule 6-416 implement Chapter 435, 2019 Laws of Maryland (HB 99), which permits a petition for attorney's fees or personal representative's commissions to seek additional fees or commissions in connection with an election

to take an elective share by or on behalf of a surviving spouse.

Subsection (a) (1) is restructured to create new subsection (a) (1) (A), which contains the current required contents of a petition for the allowance of fees and commissions. The subsection is reorganized and a reference to additional fees and commissions anticipated in connection with the elective share election is added to the requirements.

New subsection (a) (1) (B) outlines the required contents of a petition for the allowance of the additional fees, which mirrors the requirements in (a) (1) (A) but also asks the petitioner to state the amount of the additional fees and commissions to which the interested persons have consented. A Committee note following subsection (a) (1) (B) highlights the presumption in the statute that consented-to compensation is reasonable. A petition under subsection (a) (1) (B) may be combined with a petition under subsection (a) (1) (A).

Subsection (b) (2) is amended to add subsection (b) (2) (A), outlining the procedure for payment of attorney's fees and personal representative's commissions that are consented to by interested persons and creditors and that do not exceed the statutory maximums in Code, Estates and Trusts Article, § 7-601. The subsection specifies that the consent process can include additional fees and commissions related to the elective share so long as the combined payments of all fees and commissions do not exceed the statutory maximums.

Subsection (b) (2) (B) is restyled to describe the form of consent, and the form is amended to include references to compensation under Code, Estates and Trusts Article, §§ 7-603(a) and 7-603(b).

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

ADD New Rule 6-418, as follows:

Rule 6-418. STATEMENT AND CERTIFICATION OF ELECTIVE SHARE

(a) Statement of Elective Share

(1) On final payment, the personal representative of the decedent, the trustee of any revocable trust of the decedent, or the person responsible for filing the estate tax return, as appropriate, shall file with the register a signed statement verified by the surviving spouse stating the value of the elective share and that the elective share has been paid in full.

(2) The statement of the elective share shall be served on each person entitled to request a certification under section (b) prior to filing.

(3) On request of the surviving spouse, personal representative, trustee of any revocable trust of the decedent, or the person responsible for filing the estate tax return, the register shall redact the value of the elective share.

(b) Certification of Accuracy

(1) The surviving spouse, the personal representative of the decedent, the trustee of any revocable trust of the decedent, the person responsible for filing the estate tax return, any payor of any portion of the elective share, and any other person having

an interest in the assets from which the elective share has been paid may request that the register certify in writing the accuracy of the calculation and payment of the portion of the augmented estate subject to election.

(2) A request for certification shall be filed no more than 30 days from the date of service of the statement of the elective share.

(3) If a certification is requested, the register may request in writing information and documentation the register deems necessary to verify the calculation and payment.

Cross reference: Code, Estates and Trusts Article, § 3-412.

Rule 6-418 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Proposed new Rule 6-418 implements Chapter 435, 2019 Laws of Maryland (HB 99) and establishes the process for filing a statement of the elective share after it has been paid and for an interested party to seek certification of accuracy of the calculation and payment, pursuant to Code, Estates and Trusts Article, § 3-412.

Subsection (a) (1) states the requirement from the statute. Subsection (a) (2) requires the filer to serve the statement on individuals who are entitled to request certification of accuracy of calculation and payment of the elective

share. Once the statement is served, individuals authorized by the statute have 30 days to request the register certify the accuracy of the calculation and payment of the elective share. Attorneys, including one involved in the drafting of the legislation, advised that there should be a time period to request certification and suggested 30 days.

If certification is requested, subsection (b)(3) permits the register to make written requests for information and documentation. The statute does not specify how the register can request the necessary information, and attorneys recommended specifying that the request be in writing.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-434 by restyling section (a) to refer to transmitting issues on petition, by adding new section (b) to allow for transmission of elective share issues, by clarifying a reference to the orphans' court in section (c), and by making stylistic changes as follows:

RULE 6-434. TRANSMITTING ISSUES

(a) ~~Petition~~ Transmitting on Petition

In any proceeding, the orphans' court, upon petition by a person with standing, may transmit contested issues of fact within its jurisdiction for trial to the circuit court of the county in which the orphans' court is located.

(1) Contents

The petition shall set forth separately each issue to be transmitted. Each issue shall present a single, definite, and material question of fact.

~~(b)~~ (2) Response

A response may include objections to the issues set forth in the petition and offer additional issues.

(b) Transmitting Elective Share Issues

In a proceeding where the surviving spouse has made an election under Code, Estates and Trusts Article, § 3-403, the court, on its own initiative, may transmit issues of fact relating to the value or sources of payment of an elective share for trial to the circuit court of the county in which the election is filed.

Cross reference: Code, Estates and Trusts Article, § 3-413.

(c) Framing of Issues

The orphans' court, by order, shall frame the issues to be transmitted and transmit them to the appropriate circuit court. The order may designate the plaintiff and defendant for purposes of trial in the circuit court.

(d) Amendment, Modification or Supplementation of Issues

Upon petition, the orphans' court may amend, supplement or modify issues previously transmitted to a circuit court. If the change is made within 15 days of a scheduled trial date, leave of the circuit court must be obtained.

Cross reference: Code, Estates and Trusts Article, § 2-105.

Committee note: See Nugent v. Wright, 277 Md. 615 (1976) (issues of law are impermissible). See also Hill v. Lewis, 21 Md. App. 121 (1974). Section (d) changes the rule set forth in Pegg v. Warford, 4 Md. 385 (1853), and recently reaffirmed in Kao v. Hsia, 309 Md. 366 (1987).

Rule 6-434 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Proposed amendments to Rule 6-434 implement Chapter 435, 2019 Laws of Maryland (HB 99). Code, Estates and Trusts Article § 3-413 permits an orphans' court, on its own initiative, to transmit issues of fact relating to the elective share to the appropriate circuit for trial. New section (b) provides for this power in addition to section (a), which allows for transmission of issues on petition of a party.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-107 by rewording a cross reference, as follows:

Rule 6-107. EXTENSION OF TIME

(a) By Request to Register or Court

The court or the register, upon written request, may extend to a specified date the time for filing an inventory (Rule

6-402), an information report (Rule 6-404), an application to fix inheritance tax on non-probate assets (Rule 6-405), or an account (Rule 6-417). The request may be made ex parte.

(b) By Petition

Except as otherwise provided in this section, when these rules, an order of court, or other law require or allow an act to be done at or within a specified time, the court, upon petition filed pursuant to Rule 6-122 and for good cause shown, may extend the time to a specified date. The court may not extend the time for filing a claim, a caveat, or a notice of appeal or for taking any other action where expressly prohibited by rule or statute.

Cross reference: Code, Estates and Trusts Article, §§ 5-304 and 5-406. For extension of time to elect ~~statutory~~ to take a spousal elective share, see Rule 6-411. For extension of time to file a final report and make distribution in a modified administration, see Rule 6-456.

Rule 6-107 was accompanied by the following Reporter's note.

REPORTER'S NOTE

The proposed amendment to Rule 6-107 makes a conforming change to the cross reference following section (b). Chapter 435, 2019 Laws of Maryland (HB 99), which is effective October 1, 2020, exclusively uses the term "elective share."

Mr. Laws explained that a 2019 statute changes the elective share law in Maryland to include both probate and non-probate assets in an augmented estate. A surviving spouse can elect to

take a statutory share of those assets under the statute. He said that the Probate and Fiduciary Subcommittee approved a series of Rule amendments and new Rules to implement the statute.

Mr. Laws stated that Rule 6-411 is amended to clarify terms and modify forms. Rule 6-416 addresses attorney's fees and personal representative's commissions, which are capped by statute. The amendments reflect that the elective share law allows for additional fees and commissions for work in connection with the spousal election. New Rule 6-418 provides for the certification of the amount of the elective share and verification by the surviving spouse that it has been paid. Rule 6-434 is amended to permit the transmission of elective share issues to the circuit court for factual determinations. Rule 6-107 is amended to change a cross reference. There being no motion to amend or reject the proposed Rules, they were approved as presented.

Agenda Item 4. Consideration of proposed Rules changes pertaining to revocable trusts.

Mr. Laws presented Rule 6-413, Claim Against Decedent - Procedure, and new Title 10, Chapter 800, Revocable Trusts, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-413 by adding new subsection (a)(2), by adding a cross-reference after subsection (a)(2), by adding new section (d) providing for a certain notice to the trustee of a certain revocable trust, by adding to section (f) notice to the trustee of a certain revocable trust of disallowance of a claim, and by allowing a certain trustee to file a petition pursuant to section (g), as follows:

RULE 6-413. CLAIM AGAINST ~~ESTATE~~ DECEDENT -
PROCEDURE

(a) Presentation of Claim

(1) A claimant may make a claim against the estate, within the time allowed for presenting claims, ~~(1)(A)~~ by serving it on the personal representative, ~~(2)(B)~~ by filing it with the register and serving a copy on the personal representative, or ~~(3)(C)~~ by filing suit. If the claim is filed prior to the appointment of the personal representative, the claimant may file the claim with the register in the county in which the decedent was domiciled or in any county in which the decedent resided on the date of the decedent's death or in which real property or a leasehold interest in real property of the decedent is located.

(2) Except in a small estate proceeding, a claim properly presented under this rule preserves a claim against property of a trust that was revocable at the death of the decedent-settlor, subject to disallowance pursuant to section (f).

Cross reference: See Code, Estates and Trusts Article, § 14.5-508 (b) (1) for preservation of claims against revocable trust property.

(b) Content of Claim

A claim against the decedent's estate shall indicate (1) the basis of the claim, (2) the name and address of the claimant, (3) the amount claimed, (4) if the claim is not yet due, the date when it will become due, (5) if the claim is contingent, the nature of the contingency, and (6) if the claim is secured, a description of the security. Unless the claim is made by filing suit, it shall be verified.

(c) Form of Claim

A claim against a decedent's estate may be filed or made substantially in the following form:

In the Estate of: Estate No. _____
_____ Date _____

CLAIM AGAINST DECEDENT'S ESTATE

The claimant certifies that there is due and owing by the decedent in accordance with the attached statement of account or other basis for the claim the sum of \$_____.

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

_____	_____
Name of Claimant	Signature of claimant or person authorized to make verifications on behalf of claimant
_____	_____

Name and Title of Address
Person Signing
Claim

Telephone Number

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of
_____ (month), _____ (year), I []
delivered or [] mailed, first class,
postage prepaid, a copy of the foregoing
Claim to the personal representative,

(name and address)

Signature of Claimant

Instructions:

1. This form may be filed with the Register of Wills upon payment of the filing fee provided by law. A copy must also be sent to the personal representative by the claimant.
2. If a claim is not yet due, indicate the date when it will become due. If a claim is contingent, indicate the nature of the contingency. If a claim is secured, describe the security.

(d) Notice to Trustee of Revocable Trust

(1) If the personal representative has knowledge of the existence of a revocable trust for which the decedent was settlor, the personal representative shall notify the trustee of the existence of a claim.

(2) Prior to allowance of a claim in whole or in part, the personal representative shall notify the trustee of the intended allowance. A trustee who wishes to dispute the allowance shall petition the court to intervene within 20 days after receipt of the notice.

~~(d)~~ (e) Disallowance of Claim or Petition for Determination of Validity

If the claim or any part thereof is not to be allowed, the personal representative shall either disallow the claim in whole or in part in the manner provided by section ~~(e)~~(f) of this Rule, or petition the court for determination of the validity of the claim.

~~(e)~~ (f) Form of Disallowance of Claim

Upon disallowing a claim the personal representative shall file with the register and mail to the claimant and the trustee of each revocable trust known to the personal representative for which the decedent was settlor a notice in the following form:

[CAPTION]

NOTICE OF DISALLOWANCE

Your claim has been allowed in the amount of \$_____ and disallowed in the amount of \$_____. Your claim in the amount disallowed will be forever barred against the estate and any revocable trust of the decedent-settlor unless within 60 days after the mailing of this notice you file a petition for allowance of the disallowed amount in the Orphans' Court or a suit against the personal representative. If your claim has not been filed timely pursuant to the Code, Estates and Trusts Article, § 8-103, your claim will not be paid and it is forever barred.

Personal Representative

CERTIFICATE OF SERVICE

I certify that the disallowance of claim was mailed, postage prepaid, this _____ day of _____ (month), _____ (year), to _____, claimant, at _____.

Personal Representative/Attorney

Name (printed)

Address

Telephone Number

~~(f)~~ (g) Claimant's Petition

(1) No Action Taken

If no action has been taken by the personal representative disallowing the claim in whole or in part, the claimant or trustee of a revocable trust of the decedent-settlor may petition the court for determination of the validity of the claim.

(2) After Disallowance

A claimant whose claim has been disallowed in whole or in part may file with the court a petition for allowance within 60 days after mailing of the notice of disallowance.

~~(g)~~ (h) Hearing

Upon the filing of a petition by the personal representative or a claimant, the court shall hold a hearing on the petition

after notice to the personal representative, the claimant, and such other persons as the court may direct.

~~(h)~~ (i) Notice to Register of Suit

If suit is filed against the personal representative by a claimant whose claim is disallowed in whole or in part, the personal representative shall notify the register in writing of the pendency of the suit within ten days after being served with the complaint.

Rule 6-413 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Chapter 100, 2015 Laws of Maryland (HB 666) added to Code, Estates and Trusts Article, § 14.5-508 provisions to protect the property, trustee, and beneficiaries of a trust that was revocable at the time of the death of the settlor from claims of creditors not presented within the time periods in § 8-103 or within six months of publication of notice by the trustee if a proceeding for a regular or modified estate has not been commenced. The law was designed to allow trustees to avail themselves of the same protections afforded to personal representatives rather than subject them to limitations periods of anywhere from three to twelve years.

Proposed amendments to Rule 6-413 seek to clarify the process for personal representatives, trustees, and creditors where an estate other than a small estate is open and a creditor wishes to preserve the creditor's claim against the decedent-settlor's trust property.

New subsection (a) (2) states that a properly presented claim under the Rule preserves a claim against trust property. A cross reference to the Code section is added after subsection (a) (2).

New section (d) requires notice of a claim to the trustee and notice prior to the allowance of a claim, in whole or in part. Subsection (d) (2) allows the trustee to intervene to dispute the validity of the claim.

Re-lettered section (f) is amended to require the personal representative to mail notice of disallowance to the trustee. The Committee is advised that often the representative and trustee are the same individual; however, if there is a third-party trustee, the added notice provisions ensure that the trustee is alerted to the claim.

The notice of disallowance form in section (f) informs the creditor that claims against the estate and any revocable trust property will be barred unless the creditor acts within the specified time. Subsection (g) (1) allows the creditor or trustee to petition the court to determine the validity of a claim if the personal representative does not act.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 800 - REVOCABLE TRUSTS

ADD New Rule 10-801, as follows:

RULE 10-801. NOTICE UPON DEATH OF SETTLOR

(a) Notice to Personal Representative

If a proceeding other than for a small estate under Code, Estates and Trusts Article Title 5, Subtitle 6 is commenced to administer the estate of the decedent-settlor of a trust that was revocable at the time of death, the trustee of the trust shall notify the personal representative of the existence of the trust and the identity of each trustee within 60 days after the date the trustee acquires knowledge of the decedent's death.

Cross reference: See Code, Estates and Trusts Article, § 14.5-508(b)(1) for the effect of a claim filed in an estate proceeding on trust property. See Rule 6-413 for the right of a trustee to intervene before a claim is allowed in the estate proceeding.

(b) Notice to Surviving Spouse

If the decedent-settlor is survived by a spouse, the trustee shall notify the surviving spouse of the existence of the trust, the identity of each trustee, and of the surviving spouse's right to request a copy of the trust instrument within 60 days of after the date the trustee acquires knowledge of the decedent's death.

Cross reference: For the duties of a trustee in connection with the calculation and payment of the elective share, see Code, Estates and Trusts Article, § 3-409.

Rule 10-801 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Proposed new Title 10, Chapter 800 is intended to implement Chapter 100, 2015 Laws of Maryland (HB 666), which was brought to the Committee's attention as a potential area requiring clarification, and Chapter 435, 2019 Laws of Maryland (HB 99), which changes the elective share law to an augmented estate format.

HB 666 extended protections to the trustee, trust property, and beneficiaries of a trust that was revocable at the death of the decedent-settlor if a claim is not presented within certain statutory deadlines. If an estate proceeding other than a small estate is commenced, the creditor must present the claim within the required time to preserve a claim against any revocable trust property. If no estate or a small estate proceeding is commenced, the trustee may obtain protection by publishing his or her own notice to creditors, which is outlined in proposed new Rule 802.

Section (a) requires notice to the personal representative, if one exists, of the existence of a trust. Practitioners noted that the personal representative has no way to know about revocable trusts of the decedent unless the personal representative also serves as the trustee or some other circumstance brings it to the attention of the personal representative. Similarly, a trustee who is not otherwise involved in the estate proceeding has no definitive way to be alerted to claims filed in the estate, which the personal representative may act to allow or disallow, impacting the trust. New Rule 10-801 provides a mechanism for the trustee to receive notice of claims against the decedent that are presented in the estate proceeding. A cross reference to Code, Estates and Trusts Article, § 14-508(b)(1) and Rule 6-413 follows section (a).

Section (b) requires notice to the surviving spouse, if one exists, as mandated by the new elective share law.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 800 - REVOCABLE TRUSTS

ADD New Rule 10-802, as follows:

RULE 10-802. LIABILITY FOR CLAIMS AGAINST
DECEDENT-SETTLOR

(a) Generally

After the death of a settlor, subject to Code, Estates and Trusts Article, § 14.5-508(b)(1) and the right of the settlor to direct the source from which liabilities will be paid, the property of a trust that was revocable at the death of the settlor is subject to claims of the creditors of the decedent-settlor.

Cross-reference: See Code, Estates and Trusts Article, § 14.5-508(a)(5).

(b) Responsibilities of Trustee Where
Estate Proceeding Commenced

If a proceeding has been commenced to administer the estate of a decedent-settlor other than a small estate, the trustee, property, and beneficiaries of a revocable trust are not liable for claims of creditors of the settlor that are not presented in the estate proceeding pursuant to Rule 6-413.

(c) Responsibilities of Trustee Where No Estate Proceeding Commenced

(1) If a proceeding to administer the estate of the decedent-settlor has not been commenced, or if a small estate has been commenced, the trustee of a revocable trust of which the decedent was a settlor may publish a notice pursuant to subsections (c) (2) and (3) of this Rule. Publication of the notice shall afford the trust property, trustee, and beneficiaries of the trust with the protections afforded in Code, Estates and Trusts Article, § 8-103, for claims presented more than six months after the date of the first publication of the notice.

(2) The trustee's notice to creditors shall be substantially in the following form:

Notice to Creditors of a Settlor of a Revocable Trust

To all persons interested in the trust of _____:

This is to give notice that _____ died on or about _____. Before the decedent's death, the decedent created a revocable trust for which the undersigned, _____, whose address is _____, is now a trustee.

To have a claim satisfied from the property of this trust, a person who has a claim against the decedent shall present the claim on or before the date that is six months after the date of the first publication of this notice to the undersigned trustee at the address stated above. The claim shall include the following information:

1. A verified written statement of the claim indicating its basis;

2. The name and address of the claimant;
3. If the claim is not yet due, the date on which it will become due;
4. If the claim is contingent, the nature of the contingency;
5. If the claim is secured, a description of the security; and
6. The specific amount claimed.

Any claim not presented to the trustee on or before that date or any extension provided by law is unenforceable.

(Signature of Trustee)

Date of first publication: _____.

(3) The trustee shall publish the notice once a week for three successive weeks in a newspaper of general circulation in what would otherwise be the proper venue for an administration of judicial probate for that decedent.

(4) Claims against the decedent-settlor are forever barred as against the trust property, trustee, and beneficiaries of the trust unless, within six months of first publication of notice, the creditor (A) files an action against the trustee and serves a copy of the complaint on the trustee within 30 days of filing or (B) presents a claim to the trustee with the information required by the notice.

(5) If the trustee disallows the claim wholly or in a stated amount, the claimant is forever barred to the extent of the disallowance unless the claimant files an action against the trustee or against any person to whom the trust property has been distributed within 60 days after the mailing of the notice of disallowance by the trustee to the claimant. The notice informing the

claimant of the disallowance shall contain a warning to the claimant concerning the time limitation for commencing an action.

Cross-reference: Code, Estates and Trusts Article, § 14.5-508 (b) (2)-(6).

Rule 10-802 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Proposed new Title 10, Chapter 800 is intended to implement Chapter 100, 2015 Laws of Maryland (HB 666).

In Rule 10-802, section (a) states the principle in Code, Estates and Trusts Article, Title 14.5, the Maryland Trust Act, that the property of a revocable trust may be subject to the claims of creditors after the death of the settlor.

Section (b) applies where an estate proceeding other than a small estate has been commenced to administer the decedent-settlor's estate. Claims against the settlor or trust property in those estates are governed by Rule 6-413, as amended.

Section (c) outlines the notice and claim process against a trust when no estate has been opened or a small estate proceeding has been opened. It follows § 14.5-508(b) (2)-(6).

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 800 - REVOCABLE TRUSTS

ADD New Rule 10-803, as follows:

RULE 10-803. AUGMENTED ESTATE

(a) Generally

A trust that is revocable at the time of death of the settlor is part of the decedent-settlor's augmented estate for the purposes of calculating the estate subject to election by a surviving spouse pursuant to Code, Estates and Trusts Article, Title 3, Subtitle 4.

(b) Duties of Trustee

On receipt of a written request by the decedent-settlor's surviving spouse, the trustee of a revocable trust shall deliver all information necessary to calculate the elective share.

Cross-reference: Code, Estates and Trusts Article, § 3-409.

(c) Value and Sources of Payment

The orphans' court may issue orders that may be necessary to determine or modify the value or sources of payment of an elective share.

Cross-reference: Code, Estates and Trusts Article, §§ 2-102 and 3-413.

Rule 10-803 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Chapter 435, 2019 Laws of Maryland (HB 99) changes the elective share law to an

augmented estate format and includes revocable trusts in the augmented estate. The law requires the trustee of a revocable trust of the decedent-settlor to deliver information to the surviving spouse, on request, and gives the orphans' court the power to issue orders necessary to calculate the elective share and determine sources of payment.

Mr. Laws said that a 2015 statute pertaining to claims against deceased settlors of revocable trusts was brought to the attention of the Subcommittee. The law created a claim process for creditors and bars claims that are not promptly presented in an estate proceeding, if one is opened. If there is no qualifying estate proceeding, the statute allows the trustee to publish notice like a personal representative would. Claims are barred if they are not filed with the trustee in the statutory time period.

Mr. Laws said that the amendments to Rule 6-413 accommodate claims impacting trust assets. New Chapter 800 in Title 10 deals with revocable trusts and the duties of trustees. Rule 10-801 establishes a requirement that the trustee notify the personal representative of the existence of the trust and notify the surviving spouse, as required by the elective share law. Rule 10-802 outlines the claim process if there is no estate and recites the rule of liability from the 2015 statute. Rule 10-803 codifies the duty in the elective share statute to provide

information to the surviving spouse. There being no motion to amend or reject the proposed Rules, they were approved as presented.

Agenda Item 5. Consideration of proposed new Rule 6-423 (Administration after Final Account - Newly Discovered Small Check).

Mr. Laws presented Rule 6-423, Administration after Final Account - Newly Discovered Check, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

ADD new Rule 6-423, as follows:

Rule 6-423. ADMINISTRATION AFTER CLOSING OF ESTATE - NEWLY DISCOVERED SMALL CHECK

(a) When New Appointment Not Necessary

Except as provided in section (d) of this Rule, if a check payable to a decedent or the estate of a decedent for a sum not exceeding \$1,000 is discovered after an estate has been closed and the appointment of the personal representative has terminated pursuant to Rule 6-421, the court, on a verified petition made by an interested person, may enter an order authorizing the interested person to indorse and deposit the check into the interested person's bank account for the limited

purpose of distributing the funds in accordance with the will or, if the decedent died intestate, in accordance with Code, Estates and Trusts Title 3, Subtitle 1.

(b) Petition

A petition pursuant to this Rule shall be filed in the jurisdiction where the decedent's estate was administered and include the estate number, a brief description of the check, the interest of the person filing the petition, the names and addresses of the interested persons, a statement that the conditions in section (d) do not apply to the requested order, and a brief statement of the anticipated distribution of the funds.

(c) Exceptions

Unless a hearing is requested by an interested person, the court may enter an order under this Rule without a hearing.

(d) Conditions

The court may not enter an order under this Rule if:

(1) the estate of the decedent was insolvent when it closed,

(2) the value of the discovered check increases the value of the estate above the value that qualifies under Code, Estates and Trusts § 5-601 for administration of a small estate, or

(3) any additional fees and inheritance taxes due as a result of the newly discovered check are not paid with the filing of the petition.

(e) Distribution

The distribution of funds by an interested person under this Rule shall be

made within 60 days after the court's order authorizing the distribution.

(f) Effect of Order

An order issued under this Rule does not require the court to reopen the estate.

Cross reference: Code, Estates and Trusts Article, § 10-104.

Rule 6-423 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Chapter 239, 2020 Laws of Maryland (HB 543) allows for the distribution of a check discovered after an estate has been closed without reopening it. Proposed new Rule 6-423 outlines the process for interested persons to indorse, deposit, and distribute funds from checks made out to the decedent or his or her estate, valued at \$1,000 or less, which are discovered after an estate has been closed and the appointment of the personal representative has been terminated.

Proponents of the bill testified that when an estate is closed and the decedent's bank account has been closed, there are limited options for dealing with a newly-discovered check, which may come from a refund or class action settlement payment. In the case of smaller checks, the cost of reopening the estate often exceeds the value of the check.

The bill provides that a court may enter an order authorizing an interested person to indorse and deposit the check in

their personal account for the limited purpose of distributing funds in accordance with the will or, if the decedent died intestate, with the Estates and Trusts article. The court is prohibited from entering the order if the estate was insolvent when it was closed, the value of the discovered check increases the value of the estate above the value for a small estate, or additional fees and inheritance taxes due have not been paid.

Rule 6-423 requires the petition to include similar information mandated by Rule 6-422, Administration After Final Account - Newly Discovered Property, but removes the provision about requesting a new personal representative and adds a requirement that the petition state that the exceptions in section (d) of this Rule do not apply.

Mr. Laws said that a new law permits a small check discovered after an estate is closed to be negotiated and deposited without reopening the estate or appointing a personal representative. He explained that there is a technical amendment that was distributed via email to the Committee to add a missing word to the title, which should read "Administration after Final Account - Newly Discovered Check." Mr. Laws moved to approve Rule 6-423 as amended. The motion was seconded and the Committee approved the amendment by majority vote.

Agenda Item 6. Consideration of proposed "housekeeping" amendments to Rule 6-209 (Notice of Appointment), Rule 6-311 (Notice of Appointment), Rule 6-455 (Modified Administration), and Rule 6-501 (Application by Foreign Personal Representative to Set Inheritance Tax).

Mr. Laws presented Rule 6-209, Notice of Appointment; Rule 6-311, Notice of Appointment; Rule 6-455, Modified Administration; and Rule 6-501, Application by Foreign Personal Representative to Set Inheritance Tax, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 200 - SMALL ESTATE

AMEND Rule 6-209 by removing a clause in the form notice in section (a) referring to the statutory deadline for deaths occurring prior to October 1, 1992, as follows:

Rule 6-209. NOTICE OF APPOINTMENT

(a) Notice

When notice of appointment is required to be published by the order of the register, the personal representative shall file the notice in duplicate in the following form:

(FILE IN DUPLICATE)

(name and address of attorney)

SMALL ESTATE

NOTICE OF APPOINTMENT

Estate No. _____

NOTICE TO CREDITORS

NOTICE TO UNKNOWN HEIRS

TO ALL PERSONS INTERESTED IN THE ESTATE OF
_____. Notice is given that

_____ was on _____
(name & address) (date)
appointed personal representative of the
small estate of _____

who died on _____ (date) (with) (without) a
will.

Further information can be obtained by
reviewing the estate file in the office of
the Register of Wills or by contacting the
personal representative or the attorney.

All persons having any objection to the
appointment shall file their objections with
the Register of Wills within 30 days after
the date of publication of this notice. All
persons having an objection to the probate
of the will shall file their objections with
the Register of Wills within six months
after the date of publication of this
Notice.

All persons having claims against the
decedent must serve their claims on the
undersigned personal representative or file
them with the Register of Wills with a copy
to the undersigned on or before the earlier
of the following dates:

(1) Six months from the date of the
decedent's death, ~~except if the decedent
died before October 1, 1992, nine months
from the date of the decedent's death; or~~

(2) Thirty days after the personal representative mails or otherwise delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that the claims will be barred unless the creditor presents the claim within thirty days from the mailing or other delivery of the notice. Any claim not served or filed within that time, or any extension provided by law, is unenforceable thereafter.

Personal Representative(s)

True Test Copy

Name and Address of Register
of Wills for _____

Name of newspaper designated by personal
representative

. . .

Rule 6-209 was accompanied by the following Reporter's
note.

REPORTER'S NOTE

A proposed amendment to Rule 6-209 updates the form for notice of appointment by removing a reference to the statutory deadline for deaths occurring prior to October 1, 1992.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 300 - OPENING ESTATES

AMEND Rule 6-311 by removing a clause in the form notice in section (a) referring to the statutory deadline for deaths occurring prior to October 1, 1992, as follows:

Rule 6-311. NOTICE OF APPOINTMENT

(a) Notice

The petitioner shall file with the register, in duplicate, a notice of appointment in the following form:

(FILE IN DUPLICATE)

(name and address of attorney)

NOTICE OF APPOINTMENT

NOTICE TO CREDITORS

NOTICE TO UNKNOWN HEIRS

Estate No. _____

TO ALL PERSONS INTERESTED IN THE ESTATE OF _____ . Notice is given that

_____ was on _____
(name and address) (date)

appointed personal representative of the estate of _____ who died on _____ (date), (with) (without) a will.

Further information can be obtained by reviewing the estate file in the office of the Register of Wills or by contacting the personal representative or the attorney.

All persons having any objection to the appointment (or to the probate of the decedent's will) shall file their objections with the Register of Wills on or before the _____ day of

_____, _____ (year) .
(6 months from date of appointment),

Any person having a claim against the decedent must present the claim to the undersigned personal representative or file it with the Register of Wills with a copy to the undersigned on or before the earlier of the following dates:

(1) Six months from the date of the decedent's death, ~~except if the decedent died before October 1, 1992, nine months from the date of the decedent's death;~~ or

(2) Two months after the personal representative mails or otherwise delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that the claim will be barred unless the creditor presents the claims within two months from the mailing or other delivery of the notice. A claim not presented or filed on or before that date, or any extension provided by law, is unenforceable thereafter. Claim forms may be obtained from the Register of Wills.

Personal Representative(s)

True Test Copy

Name and Address of
Register of Wills for

Name of newspaper designated by personal
representative:

. . .

Rule 6-311 was accompanied by the following Reporter's
note.

REPORTER'S NOTE

A proposed amendment to Rule 6-311
updates the form for notice of appointment
by removing a reference to the statutory
deadline for deaths occurring prior to
October 1, 1992.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-455 by removing a clause
in the form notice in section (d) referring
to deaths occurring on or after January 1,
1998 in the instructions on Supporting
Schedule A, as follows:

Rule 6-455. MODIFIED ADMINISTRATION

. . .

(d) Final Report

(1) Filing

A verified final report shall be filed no later than 10 months after the date of the personal representative's appointment, unless the personal representative discovers property of the decedent after the time for filing a verified final report in which case the personal representative must file the verified report with respect to the after-discovered property within 90 days of the discovery of the property.

(2) Copies to Interested Persons

Unless an interested person waives notice of the verified final report under modified administration, the personal representative shall serve a copy of the final report on each interested person.

(3) Contents

A final report under modified administration shall be in the following form:

BEFORE THE REGISTER OF WILLS FOR _____,
MARYLAND

ESTATE OF _____ Estate No. _____

Date of Death _____ Date of Appointment
of Personal
Representative

ELECTION OF PERSONAL REPRESENTATIVE FOR
MODIFIED ADMINISTRATION

(Must be filed within 10 months after the date of appointment)

I, Personal Representative of the estate, report the following:

1. The estate continues to qualify for Modified Administration as set forth in the Election for Modified Administration on file with the Register of Wills.

2. Attached are the following Schedules and supporting attachments:

Total Schedule A: Reportable Property \$___

Total Schedule B: Payments and Disbursements \$(___)

Total Schedule C: Distribution of Net Reportable Property
\$___

3. I acknowledge that:

(a) Final distributions shall be made within 12 months after the date of my appointment as personal representative, unless I discover property of the decedent after the time for making final distributions in which case I must make final distribution of the after-discovered property within 90 days of the discovery of the property.

(b) If Modified Administration is revoked, the estate shall proceed under Administrative Probate, and I will file a formal Inventory and Account, as required, until the estate is closed.

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 and that any property valued by me which I have authority as personal representative to appraise has been valued completely and correctly in accordance with law.

Attorney Signature

Personal Representative

Telephone Number

Facsimile Number

E-mail Address

FOR REGISTER OF WILLS USE

Distributions subject to _____ Tax
thereon _____ tax at _____ %

Exempt distributions to _____
(Identity of the recipient)

Exempt distributions to _____
(Identity of the recipient)

Exempt distributions to _____
(Identity of the recipient)

Total Inheritance Tax due _____

Total Inheritance Tax paid _____

Gross Estate _____ Probate Fee & Costs
Collected _____

FINAL REPORT UNDER MODIFIED ADMINISTRATION

SUPPORTING SCHEDULE A

REPORTABLE PROPERTY

ESTATE OF _____ Estate No. _____

<u>Item No.</u>	<u>Description</u>	<u>Basis of Valuation</u>	<u>Value</u>
-----------------	--------------------	---------------------------	--------------

TOTAL REPORTABLE PROPERTY OF THE DECEDENT \$ ____

(Carry forward to Schedule C)

INSTRUCTIONS

ALL REAL AND PERSONAL PROPERTY MUST BE INCLUDED AT DATE OF DEATH VALUE. THIS DOES NOT INCLUDE INCOME EARNED DURING ADMINISTRATION OR CAPITAL GAINS OR LOSSES REALIZED FROM THE SALE OF PROPERTY DURING ADMINISTRATION. ATTACHED APPRAISALS OR COPY OF REAL PROPERTY ASSESSMENTS AS REQUIRED:

1. Real and leasehold property: Fair market value must be established by a qualified appraiser. ~~For decedents dying on or after January 1, 1998, in~~ In lieu of a formal appraisal, real and leasehold property may be valued at the full cash value for property tax assessment purposes as of the most recent date of finality. This does not apply to property tax assessment purposes on the basis of its use value.

2. The personal representative may value: Debts owed to the decedent, including bonds and notes; bank accounts, building, savings and loan association shares, money and corporate stocks listed on a national or regional exchange or over the counter securities.

3. All other interests in tangible or intangible property: Fair market value must be established by a qualified appraiser.

ATTACH ADDITIONAL SCHEDULES AS NEEDED

FINAL REPORT UNDER MODIFIED ADMINISTRATION

SUPPORTING SCHEDULE B

Payments and Disbursements

ESTATE OF _____ Estate No. _____

<u>Item No.</u>	<u>Description</u>	<u>Basis of Valuation</u>	<u>Value</u>
-----------------	--------------------	---------------------------	--------------

(Carry forward to Schedule C)

INSTRUCTIONS

1. Itemize all liens against property of the estate including mortgage balances.

2. Itemize sums paid (or to be paid) within twelve months from the date of appointment for: debts of the decedent, taxes due by the decedent, funeral expenses of the decedent, family allowance, personal representative and attorney compensation, probate fee and other administration expenses of the estate.

ATTACH ADDITIONAL SCHEDULES AS NEEDED

FINAL REPORT UNDER MODIFIED ADMINISTRATION

SUPPORTING SCHEDULE C

Distributions of Net Reportable Property

1. SUMMARY OF REPORTABLE PROPERTY

Total from Schedule A	_____
Total from Schedule B	_____
Total Net Reportable Property	_____

(Schedule A minus Schedule B)

2. SPECIFIC BEQUESTS (If Applicable)

Name of Legatee or Heir	Distributable Share of Reportable Estate	Inheritance Tax Thereon
-------------------------	---	----------------------------

3. DISTRIBUTION OF BALANCE OF ESTATE

Name of Legatee or Heir	Distributable Share of Reportable Estate	Inheritance Tax Thereon
-------------------------	---	----------------------------

Total Reportable Distributions \$ _____

Inheritance Tax \$ _____

ATTACH ADDITIONAL SCHEDULES AS NEEDED

(4) Inventory and Account. The provisions of Rule 6-402 (Inventory) and Rule 6-417 (Account) do not apply.

. . .

Rule 6-455 was accompanied by the following Reporter's note.

REPORTER'S NOTE

A proposed amendment to Rule 6-455 updates the form for a final report under modified administration by removing a reference to deaths occurring on or after January 1, 1998 in the instructions on Supporting Schedule A.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 500 - MISCELLANEOUS PROVISIONS

AMEND Rule 6-501 by removing a clause in the form notice in section (b) referring to the statutory deadline for deaths occurring prior to October 1, 1992, as follows:

Rule 6-501. APPLICATION BY FOREIGN PERSONAL REPRESENTATIVE TO SET INHERITANCE TAX

. . .

(b) Form of Notice of Appointment of Foreign Personal Representative

(name and address of personal
Representative or attorney)

NOTICE TO CREDITORS OF
APPOINTMENT OF FOREIGN
PERSONAL REPRESENTATIVE

NOTICE IS GIVEN that the _____
court of _____ county,

_____ (state) appointed _____ (name and address)

as the _____ (title) of the Estate of

_____ (name of decedent) who died on

_____ (date) domiciled in _____ (state and country).

The Maryland resident agent for service of
process is _____ whose
address is _____.

At the time of death, the decedent owned
real or leasehold property in the following
Maryland counties:

All persons having claims against the
decedent must file their claims with the
Register of Wills for _____
County with a copy to the foreign personal
representative on or before the earlier of
the following dates:

(1) Six months from the date of the
decedent's death, ~~except if the decedent~~

~~died before October 1, 1992, nine months
from the date of the decedent's death; or~~

(2) Two months after the foreign personal representative mails or delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that the claim will be barred unless the creditor presents the claim within two months from the mailing or other delivery of the notice. Claims filed after that date or after a date extended by law will be barred.

Foreign Personal Representative

Name of Newspaper:

Register of Wills

Address

Date of first publication

Cross reference: Code, Estates and Trusts
Article, §§ 5-503(b), 5-504, and 7-103.

. . .

Rule 6-501 was accompanied by the following Reporter's
note.

REPORTER'S NOTE

A proposed amendment to Rule 6-501 updates the form for notice of appointment of foreign personal representative by removing a reference to the statutory deadline for deaths occurring prior to October 1, 1992.

Mr. Laws said that the proposed amendments remove obsolete date references. He noted that the Committee was emailed "Version 1.1" of the proposed amendments prior to the meeting. The updated version corrected formatting and technical problems. Mr. Laws moved to approve Version 1.1 of the proposed Rules. The motion was seconded and the Committee approved the amendment by majority vote.

Agenda Item 1. Consideration of proposed amendments to Rule 4-262 (Discovery in District Court) and Rule 4-263 (Discovery in Circuit Court), proposed new Rule 5-617 (Pretrial Eyewitness Identification Evidence - Criminal Cases), and proposed amendments to Rule 4-325 (Instructions to the Jury).

The Chair said that the proposed amendments and new Rule contained in Agenda Item 1 emanated from the Court of Appeals decision in *Small v. State*, 464 Md. 68 (2019). Specifically, the concurring opinion asked the Committee to look at the use of eyewitness identification testimony. He said that the Committee discussed the matter at the October 18, 2019 meeting and voted to refer the issue to the Evidence Subcommittee for further

study. He explained that the subcommittee looked at literature and studies and consulted with the Criminal Pattern Jury Instructions Committee of the Maryland State Bar Association as well as the Innocence Project at the University of Baltimore School of Law and the national Innocence Project. He thanked Michele Nethercott from the University of Baltimore and Alexis Agathocleous from the national Innocence Project for their assistance.

Mr. Armstrong presented Rule 4-263, Discovery in Circuit Court, and Rule 4-262, Discovery in District Court, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-263 by adding to subsection (d)(7)(B) a requirement that the State's Attorney disclose certain information to the defense regarding pretrial identifications involving participation by law enforcement agency personnel, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

(a) Applicability

This Rule governs discovery and inspection in a circuit court.

Committee note: This Rule also governs discovery in actions transferred from District Court to circuit court upon a jury trial demand made in accordance with Rule 4-301 (b) (1) (A). See Rule 4-301 (c).

. . .

(d) Disclosure by the State's Attorney

Without the necessity of a request, the State's Attorney shall provide to the defense:

(1) Statements

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

(2) Criminal Record

Prior criminal convictions, pending charges, and probationary status of the defendant and of any co-defendant;

(3) State's Witnesses

As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: (A) the name of the witness; (B) except as provided under Code, Criminal Procedure Article, § 11-205 or Rule 16-912 (b), the address and, if known to the State's Attorney, the telephone number of the witness; and (C) all written statements of the witness that relate to the offense charged;

(4) Prior Conduct

All evidence of other crimes, wrongs, or acts committed by the defendant that the State's Attorney intends to offer at a hearing or at trial pursuant to Rule 5-404 (b);

(5) Exculpatory Information

All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged;

(6) Impeachment Information

All material or information in any form, whether or not admissible, that tends to impeach a State's witness, including:

(A) evidence of prior conduct to show the character of the witness for untruthfulness pursuant to Rule 5-608 (b);

(B) a relationship between the State's Attorney and the witness, including the nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness;

(C) prior criminal convictions, pending charges, or probationary status that may be used to impeach the witness, but the State's Attorney is not required to investigate the criminal record of the witness unless the State's Attorney knows or has reason to believe that the witness has a criminal record;

(D) an oral statement of the witness, not otherwise memorialized, that is materially inconsistent with another statement made by the witness or with a statement made by another witness;

(E) a medical or psychiatric condition or addiction of the witness that may impair

the witness's ability to testify truthfully or accurately, but the State's Attorney is not required to inquire into a witness's medical, psychiatric, or addiction history or status unless the State's Attorney has information that reasonably would lead to a belief that an inquiry would result in discovering a condition that may impair the witness's ability to testify truthfully or accurately;

(F) the fact that the witness has taken but did not pass a polygraph examination; and

(G) the failure of the witness to identify the defendant or a co-defendant;

Cross reference: See Brady v. Maryland, 373 U.S. 83 (1963); Kyles v. Whitley, 514 U.S. 419 (1995); Giglio v. U.S., 405 U.S. 150 (1972); U.S. v. Agurs, 427 U.S. 97 (1976); Thomas v. State, 372 Md. 342 (2002); Goldsmith v. State, 337 Md. 112 (1995); and Lyba v. State, 321 Md. 564 (1991).

(7) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(A) specific searches and seizures, eavesdropping, and electronic surveillance including wiretaps; and

(B) pretrial identification of the defendant by a State's witness including, if the pretrial identification involved participation by personnel from a law enforcement agency (i) a copy of or an electronic link to the written policies relating to eyewitness identification required by Code, Public Safety Article, § 3-506, and (ii) documents or other evidence indicating compliance or non-compliance with the requirements of Code, Public Safety Article, § 3-506.1;

Committee note: In addition to disclosure of a pretrial identification of a defendant by a State's witness, in some cases, disclosure of a pretrial identification of a co-defendant by a State's witness also may be required. See *Green v. State*, 456 Md. 97 (2017).

(8) Reports or Statements of Experts

As to each expert consulted by the State's Attorney in connection with the action:

(A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert;

(9) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; and

(10) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at trial.

. . .

Rule 4-263 was accompanied by the following Reporter's note.

REPORTER'S NOTE

The proposed amendment to Rule 4-263 adds certain information about pretrial eyewitness identifications to the list of disclosures that are required to be provided to the defense by the State's Attorney in circuit court.

In 2014, the legislature amended Code, Public Safety Article § 3-506 & added § 3-506.1, expanding the statutory requirements for each law enforcement agency's identification procedures in the State. The Code requires that the agencies either adopt the Maryland Police Training and Standards Commission's Eyewitness Identification Model Policy or adopt a written policy satisfying the requirements set forth in § 3-506.1.

Rule 4-263 (d) (7) (B) requires a State's Attorney to provide all relevant material or information regarding a pretrial identification of the defendant by a State's witness. The proposed amendment to Rule 4-263 incorporates the requirements of Code, Public Safety Article §§ 3-506 & 3-506.1 into the discovery rule, requiring a State's Attorney to provide a copy of the required eyewitness identification policy and evidence relating to compliance or non-compliance with procedural requirements for pretrial eyewitness identifications. The proposed amendment raises awareness of the statutory requirements associated with pretrial identifications involving participation by law enforcement agency personnel and ensures that complete information concerning the identification is disclosed to the defense.

A corresponding amendment is proposed to Rule 4-262 concerning discovery in district court.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND 4-262 by adding to subsection (d) (2) (C) (ii) a requirement that the State's Attorney, upon written request, disclose specific information to the defense regarding pretrial identifications involving participation by law enforcement agency personnel, as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

(a) Applicability

This Rule governs discovery and inspection in the District Court. Discovery is available in the District Court in actions that are punishable by imprisonment.

Committee note: This Rule also governs discovery in actions transferred from District Court to circuit court upon a jury trial demand made in accordance with Rule 4-301(b) (1) (B). See Rule 4-301(c).

. . .

(d) Disclosure by the State's Attorney

(1) Without Request

Without the necessity of a request, the State's Attorney shall provide to the defense all material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged and all material or information in any form, whether or not admissible, that tends to impeach a State's witness.

Cross reference: See Brady v. Maryland, 373 U.S. 83 (1963); Kyles v. Whitley, 514 U.S. 419 (1995); Giglio v. U.S., 405 U.S. 150 (1972); U.S. v. Agurs, 427 U.S. 97 (1976); Thomas v. State, 372 Md. 342 (2002); Goldsmith v. State, 337 Md. 112 (1995); and Lyba v. State, 321 Md. 564 (1991).

(2) On Request

On written request of the defense, the State's Attorney shall provide to the defense:

(A) Statements of Defendant and Co-defendant

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

(B) Written Statements, Identity, and Telephone Numbers of State's Witnesses

As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: (i) the name of the witness; (ii) except as provided under Code, Criminal Procedure Article, § 11-205 or Rule 16-1009(b), the address and, if known to the State's Attorney, the telephone number of the witness, and (iii) the statements of the witness relating to the offense charged that

are in a writing signed or adopted by the witness or are in a police or investigative report;

(C) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(i) specific searches and seizures, eavesdropping, or electronic surveillance including wiretaps; and

(ii) pretrial identification of the defendant by a State's witness including, if the pretrial identification involved participation by personnel from a law enforcement agency (i) a copy of or an electronic link to the written policies relating to eyewitness identification required by Code, Public Safety Article, § 3-506, and (ii) documents or other evidence indicating compliance or non-compliance with the requirements of Code, Public Safety Article, § 3-506.1;

Committee note: In addition to disclosure of a pretrial identification of a defendant by a State's witness, in some cases, disclosure of a pretrial identification of a co-defendant by a State's witness also may be required. See *Green v. State*, 456 Md. 97 (2017).

(D) Reports or Statements of Experts

As to each State's witness the State's Attorney intends to call to testify as an expert witness other than at a preliminary hearing:

(i) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

(ii) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(iii) the substance of any oral report and conclusion by the expert;

. . .

Rule 4-262 was accompanied by the following Reporter's note.

REPORTER'S NOTE

The proposed amendment to Rule 4-262 adds certain information about pretrial eyewitness identifications to the list of disclosures that are required to be provided to the defense by the State's Attorney upon written request in district court.

In 2014, the legislature amended Code, Public Safety Article § 3-506 & added § 3-506.1, expanding the statutory requirements for each law enforcement agency's identification procedures in the State. The Code requires that the agencies either adopt the Maryland Police Training and Standards Commission's Eyewitness Identification Model Policy or adopt a written policy satisfying the requirements set forth in § 3-506.1.

Rule 4-262 (d) (2) (C) (ii) requires a State's Attorney to provide, on written request, all relevant material or information regarding a pretrial identification of the defendant by a State's witness. The proposed amendment to Rule 4-

262 incorporates the requirements of Code, Public Safety Article §§ 3-506 & 3-506.1 into the discovery rule, requiring a State's Attorney to provide a copy of the eyewitness identification policy and evidence relating to compliance or non-compliance with procedural requirements for pretrial eyewitness identifications. The proposed amendment raises awareness of the statutory requirements associated with pretrial identifications involving participation by law enforcement agency personnel and ensures that complete information concerning the identification is disclosed to the defense when requested.

A corresponding amendment is proposed to Rule 4-263 concerning discovery in circuit court.

Mr. Armstrong explained that Code, Public Safety Article, § 3-506 codifies that law enforcement agencies must adopt written policies related to eyewitness identification and make those policies available for public inspection, and § 3-506.1 details what must be in those policies. He said that the proposed amendments to Rule 4-263 add the requirement that the prosecutor provide a copy of or link to the written eyewitness identification policy of the law enforcement agency and any documents related to compliance or noncompliance with the policy. The information must be disclosed regardless of whether the defendant makes a request. Rule 4-262 is amended to make

disclosures related to eyewitness testimony mandatory on the defendant's request.

The Chair asked for comment on the proposed amendments. Mr. Shellenberger said that he did not object and added that he polled the Maryland State's Attorneys' Association and learned that prosecutors already make these disclosures. There being no motion to amend or reject the proposed Rules, they were approved as presented.

Mr. Armstrong presented Rule 5-617, Pretrial Eyewitness Identification Evidence - Criminal Cases, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 600 - WITNESSES

Add new Rule 5-617, as follows:

Rule 5-617. PRETRIAL EYEWITNESS
IDENTIFICATION EVIDENCE - CRIMINAL CASES

(a) Applicability

This Rule applies to evidence of an eyewitness identification obtained pretrial with the participation by personnel from a law enforcement agency that is offered over objection in a criminal case. Upon request

of a party, this Rule or parts of it may be applied in other cases if relevant and it is appropriate to do so.

(b) Code Requirements

In determining whether eyewitness identification evidence is suggestive or reliable for purposes of admissibility, the court shall consider whether there was compliance with the requirements of Code, Public Safety Article, §§ 3-506 and 3-506.1.

Source: This Rule is new.

Rule 5-617 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Jurisdictions throughout the country have acknowledged emerging concerns and developing science associated with eyewitness identifications, requiring consideration of both systemic and estimator variables. See *State v. Henderson*, 27 A.3d 872 (N.J. 2011); see also *State v. Harris*, 191 A.3d 119 (Conn. 2018); *Commonwealth v. Gomes*, 22 N.E.3d 897 (Mass. 2015); *State v. Lawson*, 291 P. 3d 673 (Or. 2012). The Court recently addressed the appropriate criteria for assessing whether admission of the State's eyewitness identification evidence in a criminal matter violates due process of law due to the unreliability of the evidence. In *Small v. State*, 464 Md. 68 (2019), the Court confirmed observance of the criteria to assess eyewitness identification evidence set forth in *Manson v. Brathwaite*, 432 U.S. 98 (1977), *Neil v. Biggers*, 409 U.S. 188 (1972), and *Jones v. State*, 310 Md. 569 (1987). A Concurring Opinion, however, expressed concerns about the accuracy and reliability of the current criteria, suggesting that the Rules

Committee "craft and propose rules of procedure that bring scientific rigor to the assessment of an eyewitness identification that a defendant has challenged as unduly suggestive and, ultimately, unreliable." 464 Md. at 117.

A new Rule is proposed to be added to Title 5, considering the suggestiveness and reliability of eyewitness identifications in terms of the admissibility of the evidence. Section (a) of the proposed Rule addresses its applicability.

Section (b) of the proposed Rule requires the trial court to consider compliance with Code requirements when assessing the admissibility of eyewitness identification evidence. In 2014, the legislature amended Code, Public Safety Article § 3-506 and added § 3-506.1, codifying specific requirements for each law enforcement agency's identification procedures in the State. The Code requires that the agencies either adopt the Maryland Police Training and Standards Commission's Eyewitness Identification Model Policy or adopt a written policy satisfying the requirements set forth in § 3-506.1. The legislature did not include a remedy for violation of the requirements within the statute, in effect leaving decisions about an appropriate remedy to individual trial judges. Proposed section (b) requires the trial court to consider the Code sections when determining if the evidence is suggestive or reliable for admissibility purposes.

Mr. Armstrong said that the proposed Rule requires the court to consider compliance with the requirements of Code, Public Safety Article, §§ 3-506 and 3-506.1 in determining

whether eyewitness identification evidence is suggestive or reliable. He noted that the code sections do not carry a sanction for failure to comply, which leaves any sanction to the trial court's discretion. The Chair explained that the amendments to Rule 4-262 and Rule 4-263 deal with discovery, and the next issue is admissibility. Rule 5-617 leaves the question of admissibility to the court. There being no motion to amend or reject the proposed Rules, they were approved as presented.

Mr. Armstrong presented Rule 4-325, Instructions to the Jury, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-325 to add new section (e) requiring the court, upon request, to instruct a jury as to consideration of certain evidence if pretrial eyewitness identification evidence is admitted, to make conforming amendments to subsequent sections, and to update the sources of the Rule as follows:

Rule 4-325. INSTRUCTIONS TO THE JURY

(a) When Given

The court shall give instructions to the jury at the conclusion of all the evidence and before closing arguments and may supplement them at a later time when appropriate. In its discretion the court may also give opening and interim instructions.

(b) Written Requests

The parties may file written requests for instructions at or before the close of the evidence and shall do so at any time fixed by the court.

(c) How Given

The court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding. The court may give its instructions orally or, with the consent of the parties, in writing instead of orally. The court need not grant a requested instruction if the matter is fairly covered by instructions actually given.

(d) Reference to Evidence

In instructing the jury, the court may refer to or summarize the evidence in order to present clearly the issues to be decided. In that event, the court shall instruct the jury that it is the sole judge of the facts, the weight of the evidence, and the credibility of the witnesses.

(e) Eyewitness Identification

If pretrial eyewitness identification evidence obtained with the participation of personnel from a law enforcement agency has been admitted, the court, upon request, shall instruct the jury, as relevant, that, in considering the reliability of the identification, the jury shall consider evidence of:

(1) whether there was compliance with the requirements of Code, Public Safety Article, §§ 3-506 and 3-506.1;

(2) the opportunity of the witness to view the individual identified during the event, including such circumstances as the lighting at the scene and the distance between the witness and the individual identified;

(3) the witness's degree of attention to the individual identified at the time of the event, including the effect of any distractions;

(4) whether the witness knew or had previous contact with the individual observed and whether the race of the witness is the same as the race of the individual observed;

(5) the witness's ability to observe the event, including any physical or cognitive disabilities of the witness that may reasonably affect the likelihood that the witness would perceive, remember, and relate the event correctly;

(6) the nature of the event being observed and the likelihood that the witness would perceive, remember, and relate it correctly, including whether the event was an ordinary one in the mind of the witness during the time it was observed; and

(7) evidence of any other factor that reasonably may bear on the reliability of the identification.

~~(e)~~ (f) Objection

No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the

objection. Upon request of any party, the court shall receive objections out of the hearing of the jury. An appellate court, on its own initiative or on the suggestion of a party, may however take cognizance of any plain error in the instructions, material to the rights of the defendant, despite a failure to object.

~~(f)~~ (g) Argument

Nothing in this Rule precludes any party from arguing that the law applicable to the case is different from the law described in the instructions of the court stated not to be binding.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 757 d.

Section (b) is derived from former Rule 757 a.

Section (c) is derived from former Rule 757 b.

Section (d) is derived from former Rule 757 c.

Section (e) is new.

Section ~~(e)~~ (f) is derived from former Rule 757 f and h.

Section ~~(f)~~ (g) is derived from former Rule 757 g.

Rule 4-325 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Proposed amendments to Rule 4-325 add new section (e) requiring trial courts, upon request, to instruct the jury, as relevant, about different factors to consider when evaluating the reliability of pretrial eyewitness identification evidence obtained

with the participation of personnel from a law enforcement agency. Legal and scientific developments have demonstrated the potential for wrongful convictions involving eyewitness testimony. The proposed addition of section (e) highlights important considerations for the trier of fact when evaluating eyewitness identification evidence.

Proposed subsection (e)(1) addresses compliance with the requirements of Code, Public Safety Article, §§ 3-506 and 3-506.1. The Code section includes several system variables that may impact eyewitness identifications.

Subsections (e)(2) through (e)(6) of the proposed amendment identify several estimator variables, beyond the control of the criminal justice system, that may impact an eyewitness identification. Subsection (e)(7) of the proposed amendment serves as a catchall provision for consideration of any other factors that may reasonably impact the reliability of the identification.

Proposed conforming amendments to the remainder of the Rule update the subsequent sections and the listed sources.

Mr. Armstrong told the Committee that the Criminal Rules Subcommittee and Evidence Subcommittee jointly considered the eyewitness identification Rules. He explained that there were several options before the subcommittees for Rule 4-325. The subcommittees could leave the Rule as it was, which was not seriously contemplated. The second option was to add the provisions in proposed subsections (e)(1) and (e)(7), which

require the court to instruct the jury to consider compliance with the Code sections and "evidence of any other factor that reasonably may bear on the reliability of the identification." The third option was to add subsections (e)(1) through (e)(7), including the "estimator variables" contained in (e)(2) through (e)(6). The subcommittees voted on a motion to recommend only the adoption of subsections (e)(1) and (e)(7), but the motion failed. The subcommittees approved a motion to send all seven subsections to the full Committee for consideration. Mr. Armstrong said that the subcommittees had a philosophical discussion about whether to include detailed jury instructions in the Maryland Rules at all and he noted that members were unaware of another instance of that occurring. He said that the MSBA Criminal Pattern Jury Instructions Committee also formed a subcommittee, headed by Judge Dennis M. Sweeney, to discuss changing the eyewitness identification instruction to reflect current science and case law. A draft of the revised instructions was included in the meeting materials and one section covers the same substantive issues as Rule 5-617 (e)(2) through (e)(6). He added that the subcommittee is still working on an instruction for cross-racial identifications. Judge Sweeney said that the project began after the *Small* decision and the subcommittee met four or five times to prepare a draft for the full Criminal Pattern Jury Instructions Committee. The

draft provided to the Rules Committee has been tentatively approved with the caveat that the cross-racial identification issue has not been addressed yet.

The Chair told the Committee that part of the discussion at the subcommittee level was the concern that including subsections (e) (2) through (e) (6) would give rise to more requests for expert testimony on the estimator variables. If there are no instructions from the court, he said that it is more likely there will be expert testimony from both parties. If there is a jury instruction, it could provide more guidance to the jury and the judge has discretion to determine if expert testimony is necessary. Mr. Armstrong added that there was some discussion of a Committee note that would refer to the Maryland Pattern Jury Instructions.

Mr. Shellenberger thanked Mr. Armstrong for his balanced presentation of the subcommittees' discussion. He questioned changing Rule 4-325 at all to add one substantive law subject and require the judge to provide certain instructions when no other subject is treated that way. He endorsed Judge Sweeney's draft jury instructions and proposed that the issue should remain in jury instructions only, not the Rules. He also noted that the amendments were driven by a concurring opinion in *Small*, not a view espoused by the majority. The Chair pointed out that *Small* was a case about admissibility, not weight to be

given to an eyewitness identification. He observed that many other states have found the governing Supreme Court cases out of date and inaccurate. Judge Price questioned why the MSBA is working on jury instructions if the proposed Rule requires the judge to instruct the jury on the same issue. The Chair explained that the subcommittees did not have a draft from the group working on pattern jury instructions at the time the Rule was drafted. He said that subsections (e)(2) through (e)(6) were in rules adopted in other states. Ms. Bernhardt asked if other states have substantive issues like this elsewhere in their rules. The Chair responded that he was not sure and noted that there was broad consensus for adopting subsections (e)(1) and (e)(7). Judge Sweeney said that the draft jury instructions are a template for circuit court judges to instruct jurors to consider these issues. He reiterated that *Small* was about admissibility but once evidence is admitted, what should a jury be told? Judge Ballou-Watts moved to adopt subsections (e)(1) and (e)(7) only. The motion was seconded. Mr. Laws suggested that the Rule apply to all eyewitness identifications, not just those involving law enforcement. The Chair said that Title 4 governs criminal cases but suggested a parallel provision in Title 2 for civil cases. Mr. Laws said that he was not contemplating applicability in a civil case but commented that the draft pattern instructions appear to be broader than the

Rule. He said he supported Judge Ballou-Watts' motion. The Chair asked Judge Ballou-Watts if she wanted to incorporate Mr. Laws' suggestion or go forward with her motion and she requested a vote on her motion only. The amendments were approved by a majority vote.

Mr. Armstrong raised the possibility of a Committee note referring to the Maryland Pattern Jury Instructions. Del. Dumais said that a cross reference makes sense but added that she liked Mr. Laws' suggestion of separating out law enforcement participation in identifications and other identifications. The Chair asked if any other states apply the eyewitness identification rule more broadly. Ms. Nethercott said that she was not certain, but her impression is most rules deal with law enforcement. The Chair asked for a motion. Del. Dumais moved to amend the Rule to add a cross reference to the Maryland Pattern Jury Instructions, in anticipation of their successful completion. The motion was seconded and the Committee approved the amendment by majority vote.

Agenda Item 2. Consideration of proposed amendments to Rule 5-611 (Mode and Order of Interrogation and Presentation: Control by Court; Scope of Cross-Examination; Leading Questions) and Rule 5-615 (Exclusion of Witnesses).

Mr. Armstrong presented Rule 5-611, Mode and Order of Interrogation and Presentation: Control by Court; Scope of

Cross-Examination; Leading Questions, and Rule 5-615, Exclusion of Witnesses, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 600 - WITNESSES

AMEND Rule 5-611 (a) to include a cross-reference to the Court Dog and Child Witness Program, as follows:

Rule 5-611. MODE AND ORDER OF INTERROGATION AND PRESENTATION: CONTROL BY COURT; SCOPE OF CROSS-EXAMINATION; LEADING QUESTIONS

(a) Control by Court

The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

Cross reference: For the Court Dog and Child Witness Program, see Code, Courts Article, § 9-501.

. . .

Rule 5-611 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Chapters 161/162, 2020 Laws of Maryland (HB 311/SB 101), effective October 1, 2020, create a Court Dog and Child Witness Program in the circuit court of each participating county. Pursuant to the statute, the program aims to provide a facility or therapy dog to child witnesses in any circuit court proceeding or other court process, including meetings and interviews. A cross reference is proposed to highlight the program in relation to the court's control of the mode and interrogation of witnesses.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 600 - WITNESSES

AMEND Rule 5-615 (c) to include a cross-reference to the Court Dog and Child Witness Program, as follows:

Rule 5-615. EXCLUSION OF WITNESSES

. . .

(c) Permissive Non-Exclusion

The court may permit a child witness's parents or another person having a supportive relationship with the child to

remain in court during the child's testimony.

Cross reference: For the Court Dog and Child Witness Program, see Code, Courts Article, § 9-501.

Rule 6-515 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Chapters 161/162, 2020 Laws of Maryland (HB 311/SB 101), effective October 1, 2020, create a Court Dog and Child Witness Program in the circuit court of each participating county. Pursuant to the statute, the program aims to provide a facility or therapy dog to child witnesses in any circuit court proceeding or other court process, including meetings and interviews. A cross reference is proposed to highlight the program in relation to permissive non-exclusion of witnesses during a child's testimony.

Mr. Armstrong told the Committee that the proposed amendments add a cross-reference to the Court Dog and Child Witness Program to increase awareness of the program's availability. There being no motion to amend or reject the proposed Rules, they were approved as presented.

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