STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its Two Hundred and Nineteenth Report to the Supreme Court of Maryland, recommending proposed new Rule 9-204.3 and amendments to current Rules 1-202, 2-202, 2-422, 2-433, 2-501, 2-504, 2-507, 2-541, 3-202, 3-731, 4-504, 4-329, 7-112, 9-208, 9-202, 9-211, 10-105, 10-106, 14-503, 16-302, 16-307, 16-914, 18-407, 18-412, 18-421, 18-422, 18-423, 18-424, 18-426, 18-431, 18-433, 18-437, 18-441, 18-422, 19-103, 19-218, 19-301.7, 19-304.2, 19-304.4, 19-305.5, 19-505, 19-605, 19-751, and 19-752.

The Committee's Two Hundred and Nineteenth Report and the proposed Rules changes are set forth below.

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before September 25, 2023 any written comments they may wish to make to rules@mdcourts.gov or:

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THE SUPREME COURT OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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August 24, 2023

The Honorable Matthew J. Fader,
Chief Justice
The Honorable Shirley M. Watts
The Honorable Michele D. Hotten
The Honorable Brynja M. Booth
The Honorable Jonathan Biran
The Honorable Steven B. Gould
The Honorable Angela M. Eaves,
Justices

The Supreme Court of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its Two Hundred and Nineteenth Report, and recommends that the Court adopt the new Rule and amendments to existing Rules transmitted with this Report.

There are eight categories of proposed Rules changes, as follows:

- CATEGORY 1: Discovery;
- CATEGORY 2: Peace Orders;
- CATEGORY 3: Magistrates;
- CATEGORY 4: Guardianships;
- CATEGORY 5: Title 18 Rules;
- CATEGORY 6: Title 19 Rules (Md. Attorneys Rules of Professional Conduct);
- CATEGORY 7: Other Title 19 Rules (Bar Admission, Special Authorization, Reinstatement); and
- CATEGORY 8: Miscellaneous.

CATEGORY ONE (Rules 2-422, 2-433, 2-504, and 2-501)

Rule 2-422, which deals with the discovery of documents, electronically stored information, and property from a party, is amended to add a new subsection to section (b) that limits the number of requests that can be made under the Rule to 30, unless otherwise agreed by the parties or ordered by the court. That is consistent with a provision in Md. U.S. Dist. Ct. Rule 104. Currently, there is no limit on the number of requests that can be made under Rule 2-422, and the Committee was advised of situations in which more than 150 requests were made. A stylistic change is made in section (c) of the Rule.

Rule 2-433 deals with sanctions for discovery violations. Section (b), which is regarded as a "safe harbor" Rule, precludes, absent "exceptional circumstances," the imposition of sanctions for failing to provide electronically stored information that is no longer available as a result of the routine good faith operations of an electronic information system.

The Committee was advised that section (b) is no longer "functional," that it has not been used since its adoption in 2008, and that the parallel Federal Rule of Civil Procedure was amended in 2015. Current section (b) is rewritten and a Committee note is added to explain some limitations on the duty to preserve material. Style and typographical errors in sections (d) and (f) are corrected.

Rule 2-504, which deals with scheduling orders, is amended to add language to subsection (b)(1)(D) clarifying what actions may not occur after the discovery completion date. New subsection (b)(1)(E) requires a scheduling order to contain a date not less than 35 days before the date set for completion of discovery, after which certain discovery requests may not be served. A new Committee note is added to explain that that section does not alter a party's obligation to supplement discovery responses. An amendment to Rule 2-501 (a) is a conforming one.

CATEGORY TWO (Rules 3-202, 3-731, 2-202, and 7-112)

Rule 3-202 deals with the capacity to file an action in the District Court. A new subsection (b)(2) is added to permit either parent or a guardian of a minor child to sue for a peace order on behalf of the child. A conforming amendment is made to subsection (b)(1).

Rule 3-731 is amended to require that a petition for such a peace order filed by a non-custodial parent be served on the custodial parent. Note the explanatory Reporter's note. Stylistic changes are made to Rule 2-202.

Rule 7-112 is amended to ensure that a *de novo* appeal of a peace order petition originally filed by a non-custodial parent or guardian is not dismissed because the individual would not have the capacity to file on behalf of the minor in the circuit court.

CATEGORY THREE (Rules 9-208 and 2-541)

These two Rules deal with magistrates. Rule 2-541 is the more general Rule; Rule 9-208 deals with family law actions. The changes to those Rules concerning service were suggested by the County Administrative Judges to reconcile the service provisions with Rule 20-205 (c).

As the Reporter's note to Rule 2-541 explains, the amendments to that Rule are intended to clarify the process for serving proposed orders and exceptions. Proposed amendments to section (e) make clear that it is the clerk, not the magistrate, who is responsible for serving the magistrate's recommendations and proposed orders and it is with the clerk to whom an intention to file exceptions shall be filed. Failure to file notice of that intention will constitute a waiver. If a timely notice is filed, the court may not enter a judgment until the time for filing exceptions has expired. Other sections of the Rule are reorganized for clarity.

The revisions to Rule 9-208 parallel the changes to Rule 2-541 and are explained in the Reporter's note to that Rule.

CATEGORY FOUR (Rules 10-105, 16-914, and 10-106)

These Rules deal with guardianships. The amendments to Rule 10-105 clarify that an "interested party" is a party to the action and has access to case records, but the court may restrict that access for good cause following notice and the opportunity for a hearing. The basis for that change is set forth in the Reporter's Note to the Rule.

Rule 16-914 is amended to add to a Committee Note that parties to the action have access to the case records unless the court orders otherwise. The Committee note already provides that

the guardian, as a party, has that access and may share case records with a third person in order to perform the guardian's duties.

Rule 10-106, which deals with attorneys for minors or disabled persons, is amended to permit attorneys other than those under contract with the Department of Human Services or serving *pro bono*, to accept and be paid the same fee as a contractual attorney. The need for this amendment is explained in the Reporter's Note to the Rule. Stylistic amendments are also made to a Committee Note.

CATEGORY FIVE (Title 18 Rules)

Category Five comprises amendments to Rules 18-407, 18-412, 18-421, 18-422, 18-423, 18-424, 18-426, 18-431, 18-433, 18-437, 18-441, and 18-442. They all relate to Judicial Disability proceedings.

Two amendments are made to Rule 18-407, both clarifying the information that the Judicial Disabilities Commission may supply to other officials or agencies. *See* subsection (b)(4) and the Committee Note to that subsection. An amendment to Rule 18-412 (d), which deals with the Judicial Inquiry Board, permits the Board, in the conduct of ordinary business, to include a member whose term on the Board has expired until a replacement for that member has been appointed.

Rule 18-421 (b), which deals with complaints filed against a judge, clarifies the standard that Investigative Counsel is to apply in determining whether the allegations made against the judge suffice to constitute a cognizable basis for a complaint.

Rule 18-422, which deals with investigations made by Investigative Counsel, permits judges to request prompt notice of the opening of a file pertaining to them. An amendment to subsection (a)(4)(E) provides that service of that notice is complete upon mailing, in accordance with Rule 1-321.

Rule 18-423 deals with proceedings before the Inquiry Board and the Commission. Amendments to subsections (b)(2)(C) and (f)(3)(B) permit the Board to refer or remand a matter to Inquiry Board for the purpose of convening a peer review panel.

Rule 18-424 deals with "further investigation." An amendment to section (c) permits the Chair of the Inquiry Board or the Chair of the Commission, upon an application by

Investigative Counsel, to extend the time for completing a further investigation.

Rule 18-426 deals with conditional diversion agreements. Section (b) requires Investigative Counsel or some other person to monitor compliance with the agreement. A conforming amendment to section (e) recognizes that the monitor may be someone other than Investigative Counsel.

Rule 18-431 deals with the filing of charges. A new section (h) requires that all pretrial motions and motions to dismiss must be resolved by the Commission prior to a hearing on the charges.

Rule 18-433 deals with discovery. A proposed Committee Note to section (a) clarifies that a judge's failure to cooperate in discovery may warrant an amendment to the charges in accordance with Rule 18-431 (g).

Rule 18-437 deals with judicial disability proceedings in the Supreme Court. An amendment to section (b) clarifies that a judge may not file motions in this Court in lieu of filing exceptions. If no exceptions are filed, the Court may treat the Commission's findings of facts and conclusions of law as established.

Rule 18-441 deals with cases of alleged or apparent disability or impairment. Amendments to section (f) are intended to make the Rule applicable to disciplinary matters at the investigatory stage.

Rule 18-442 deals with interim suspensions and administrative leave. Identical amendments are made with respect to both of those situations (1) allowing the Court to act on its own initiative, and (2) permitting it to act when sufficient information is received that demonstrates that the continued service of the judge poses an immediate and substantial threat of serious harm to the public, to any person, to the judge, or to the erosion of public confidence.

CATEGORY SIX (Rules 19-301.7, 19-304.4, 19-304.2, and 19-305.5)

Rule 19-301.7 is a conflict of interest Rule for attorneys. Comment [5] warns of conflicts that may arise in the midst of a representation for various reasons. The amendments clarify that the problem is of **apparent** conflicts and allow the attorney to avoid withdrawal from the matter only if each conflicted client

provides a signed waiver after having been provided informed consent confirmed in writing.

Rule 19-304.4 requires attorneys to respect the rights of third persons. The proposed amendment in a new section (c), requires that, in communicating with third persons, an attorney representing a client may not seek information relating to the matter that the attorney knows or reasonably should know is protected from disclosure by statute or established evidentiary privilege unless the privilege has been waived. Attached to that provision is a new Committee note and a new Comment [4]. The Reporter's note provides some historical context.

Rule 19-304.2 deals with communications with persons represented by an attorney. The amendment clarifies that consent of an organization's attorney is not required for communication with a former employee and updates a reference in Comment [6].

Rule 19-305.5 deals with multi-jurisdictional practice of law and permits an attorney admitted in another State to provide legal services in Maryland to the attorney's employer or that are authorized under Federal law. The amendment would allow such an attorney to establish an office or continuous presence in Maryland to provide those services and services that exclusively involve the law of another jurisdiction in which the attorney is licensed to practice. The American Bar Association ("ABA") currently has an active Rule 5.5 Working Group considering possible amendments to the Model Rule. The Rules Committee anticipates that additional amendments will be considered after the ABA House of Delegates addresses revisions to Model Rule 5.5. See the Reporter's note to the Rule for more information.

CATEGORY SEVEN (Rules 19-103, 19-218, 19-505, 19-605, 19-751, and 19-752)

Rule 19-103 deals with the manner in which character committees are reimbursed for their expenses. The current Rule requires the State Board of Law Examiners to remit to the committees a sum to defray "some of" the investigation expenses. The amendment requires that the Board reimburse the committees for their "actual" expenses incurred in conducting investigations and a reasonable sum for administrative support to the extent the committee chooses to obtain such administrative support.

Rule 19-218 permits out-of-State attorneys to participate in legal services programs in Maryland. The amendment modifies the definition of "legal services program" to include a "program offering free legal services" and not just a clinic offering pro bono legal services.

Rule 19-505 requires the State Court Administrator to post on the Judiciary's website a list of the grantees and other entities that serve low-income individuals. The amendment adds that information regarding pro bono opportunities in court-based legal services programs also be posted.

Rule 19-605 (b)(2) exempts attorneys on inactive/retired status representing clients without compensation from having to contribute to the Client Protection Fund or the Disciplinary Fund. The amendment extends that exemption to practice in a clinic or program offering free legal services and operating in a courthouse facility.

Rule 19-751 deals with reinstatement of an attorney after a suspension of six months or less. The amendment requires, as a condition to reinstatement, that the attorney pay all outstanding assessments owed to the Client Protection Fund or the Disciplinary Fund. The same condition is added to Rule 19-752, which deals with attorneys who have been disbarred, suspended indefinitely or for a fixed period longer than six months, transferred to disability inactive status, or had resigned.

CATEGORY EIGHT (Rules 1-202, 4-504, 4-329, 9-211, 9-202, 2-507, 9-204.3, 16-302, 16-307, and 14-503)

Rule 1-202 is amended to correct a capitalization error.

Rule 4-504 is amended to update the language in a cross-reference.

Rule 4-329 is amended to conform to the language in a 2023 statute and to correct a misspelling.

Rule 9-211 is amended to delete the requirement that a post-divorce motion to restore a former name be served on any party, unless ordered by the court.

Rule 9-202 is amended to delete references to a limited divorce, which will be prospectively abolished effective October 1, 2023 by 2023 Md. Laws, Chapters 645 and 646 and to add the

requirement in cases under the Rule that a party provide an e-mail address if not represented by an attorney.

Rule 2-507 is amended to delete a reference to an action for limited divorce.

Rule 9-204.3 is a new Rule to implement 2023 Md. Laws, Chapters 760 and 761 that seek to prevent the abduction of children. Conforming amendments are made to Rules 16-302 (b) and 16-307.

Rule 14-503 deals with actions to foreclose the right of redemption in tax sale cases. If the property is located in a municipal corporation, the amendment requires that a copy of the complaint be mailed to the registered agent of that municipal corporation.

For the further guidance of the Court and the public, following the proposed new Rule and the proposed amendments to each existing Rule is a Reporter's note describing in further detail the reasons for the proposals. We caution that the Reporter's notes are not part of the Rules, have not been debated or approved by the Committee, and are not to be regarded as any kind of official comment or interpretation. They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully Submitted,

/ s /

Alan M. Wilner
Chair

AMW:sdm
cc: Gregory Hilton, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-422 by creating new subsection (b)(1) with the language of current section (b), by creating new subsection (b)(2) limiting the number of requests by a party, and by making a stylistic change, as follows:

Rule 2-422. DISCOVERY OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND PROPERTY – FROM PARTY

(a) Scope

~~Any~~ Subject to section (b) of this Rule, any party may serve one or more requests to any other party (1) as to items that are in the possession, custody, or control of the party upon whom the request is served, to produce and permit the party making the request, or someone acting on the party's behalf, to inspect, copy, test or sample designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) or to inspect and copy, test, or sample any designated

tangible things which constitute or contain matters within the scope of Rule 2-402 (a); or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the property, within the scope of Rule 2-402 (a).

Cross reference: For inspection of property of a nonparty in an action pending in this State and for discovery under the Maryland Uniform Interstate Depositions and Discovery Act that is not in conjunction with a deposition, see Rule 2-422.1.

(b) Request

(1) Content

A request shall set forth the items to be inspected, either by individual item or by category; describe each item and category with reasonable particularity; and specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form in which electronically stored information is to be produced.

(2) Number

Unless otherwise ordered by the court or agreed upon by the parties, a party may not serve upon any other party, at one time or cumulatively, more than 30 requests pursuant to this Rule, including all parts and sub-parts.

(c) Response

The party to whom a request is directed shall serve a written response within 30 days after service of the request or within 15 days after the date on which that party's initial pleading or motion is required, whichever is later. The response shall state, with respect to each item or category, that (1) inspection and related activities will be permitted as requested, (2) the request is refused, or (3) the request for production in a particular form is refused. The grounds for each refusal shall be fully stated. If the refusal relates to part of an item or category, the part shall be specified. If a refusal relates to the form in which electronically stored information is requested to be produced (or if no form was specified in the request), the responding party shall state the form in which it would produce the information.

Cross reference: See Rule 2-402 (b)(1) for a list of factors used by the court to determine the reasonableness of discovery requests and (b)(2) concerning the assessment of the costs of discovery.

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REPORTER'S NOTE

The Rules Committee was contacted by a practitioner regarding a proposed change to Rule 2-422 governing the discovery of documents, electronically stored information, and property from a party. The Rule currently permits service of one or more requests to produce items in the possession, custody, or control of a party or to permit entry on the land or other property in the possession or control of the party. The

Rule, however, contains no limit on the number of permitted requests. The attorney informed the Committee that, because of the unlimited scope, the Rule may be subject to abuse. She noted her involvement in cases where the number of requests to a party have exceeded 150. She advised that, in the United States District Court for the District of Maryland, Rule 104 limits the number of requests for production to no more than 30.

Proposed amendments to Rule 2-422 limit the number of requests for production by a party unless otherwise ordered by the court or agreed upon by the parties. New subsection (b)(1), regarding the content of a request for production, is created with the current language of section (b). New subsection (b)(2) sets forth the limit on requests for production, permitting no more than 30 requests.

A stylistic change is made in section (c).

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-433 by replacing current section (b) with new section (b), by adding a Committee note following section (b), and by making stylistic changes, as follows:

Rule 2-433. SANCTIONS

(a) For Certain Failures of Discovery

Upon a motion filed under Rule 2-432 (a), the court, if it finds a failure of discovery, may enter such orders in regard to the failure as are just, including one or more of the following:

(1) An order that the matters sought to be discovered, or any other designated facts shall be taken to be established for the purpose of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or

(3) An order striking out pleadings or parts thereof, or staying further proceeding until the discovery is provided, or dismissing the action or any part thereof, or entering a

judgment by default that includes a determination as to liability and all relief sought by the moving party against the failing party if the court is satisfied that it has personal jurisdiction over that party. If, in order to enable the court to enter default judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the court may rely on affidavits, conduct hearings or order references as appropriate, and, if requested, shall preserve to the plaintiff the right of trial by jury. Instead of any of those orders or in addition thereto, the court, after opportunity for hearing, shall require the failing party or the attorney advising the failure to act or both of them to pay the reasonable costs and expenses, including attorneys' fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of costs and expenses unjust.

~~(b) For Loss of Electronically Stored Information~~

~~Absent exceptional circumstances, a court may not impose sanctions under these Rules on a party for failing to provide electronically stored information that is no longer available as a result of the routine, good-faith operations of an electronic information system.~~

(b) Failure to Preserve Electronically Stored Information

If electronically stored information that should have been preserved in the reasonable anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it and the information cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation, may (A) presume that the lost information was unfavorable to the party, (B) in a jury trial, instruct the jury that it may or must presume that the information was unfavorable to the party, or (C) dismiss the action or enter a default judgment.

Committee note: Section (b) of this Rule applies only to electronically stored information. Its application is limited to parties and it does not apply to non-party subpoenas. Under this section, the duty to preserve information arises when litigation is reasonably anticipated or commenced. See Rule 2-101 (a). While section (b) of this Rule does not define the scope or limits of the duty to preserve, when the duty arises, the duty under this section is limited to "reasonable steps." No sanction may be imposed if the court determines that secondary evidence reasonably can restore or replace the information that was not preserved. Subsection (b)(1) of this Rule applies where conduct was not intentional. Subsection (b)(2) of this Rule applies to intentional conduct. Section (b) is modeled after Fed. R. Civ. P. 37 (e), as amended in 2015.

(c) For Failure to Comply With Order Compelling Discovery

If a person fails to obey an order compelling discovery, the court, upon motion of a party and reasonable notice to other parties and all persons affected, may enter such orders in regard to the failure as are just, including one or more of the orders set forth in section (a) of this Rule. If justice cannot otherwise be achieved, the court may enter an order in compliance with Rule 15-206 treating the failure to obey the order as a contempt.

(d) Award of Costs and Expenses, Including Attorneys' Fees

If a motion filed under Rule 2-403, 2-432, or 2-434 is granted, the court, after opportunity for hearing, shall require (1) the party or deponent whose conduct necessitated the motion, (2) the party or the attorney advising the conduct, or (3) both of them to pay to the moving party the reasonable costs and expenses incurred in obtaining the order, including attorneys' fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court, after opportunity for hearing, shall require ~~the~~ (1) the moving party, (2) the attorney advising the motion, or (3) both of them to pay to the party or deponent who opposed the motion the reasonable costs and expenses incurred in opposing the motion, including attorneys' fees, unless the court finds that the making of the

motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable costs and expenses incurred in relation to the motion among the parties and persons in a just manner.

(e) Statement Regarding Costs and Expenses, Including Attorneys' Fees

If a motion or a response to a motion contains a request for an award of costs and expenses, including attorneys' fees, the request shall (1) include, or (2) be separately supported by, a verified statement in conformance with Rule 1-341 (b). With the approval of the court, the party requesting the award may defer the filing of the supporting statement until 15 days after the court determines the party's entitlement to costs and expenses, including attorneys' fees.

(f) Response to Request

Within 15 days after the filing of a statement in support of a request for an award of costs, expenses, or attorneys' fees, a party against whom the award ~~in~~ is sought may file a response.

(g) Guidelines

In determining an award of attorneys' fees and related expenses in excess of $500 under this Rule, the court may

consider the Guidelines Regarding Compensable and Non-compensable Attorneys' Fees and Related Expenses contained in an Appendix to these Rules.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 422 c 1 and 2.
Section (b) is new and is derived from the ~~2006 version of Fed. R. Civ. P. 37 (f)~~ 2015 version of Fed. R. Civ. P. 37 (e).
Section (c) is derived from former Rule 422 b.
Section (d) is derived from the 1980 version of Fed. R. Civ. P. 37 (a) (4) and former Rule 422 a 5, 6 and 7.
Section (e) is new.
Section (f) is new.
Section (g) is new.

REPORTER'S NOTE

Proposed amendments to Rule 2-433 were presented to the Rules Committee by an attorney to address concerns regarding Maryland's "safe harbor" Rule. Current section (b) of Rule 2-433 prohibits a court, absent exceptional circumstances, from sanctioning a party for failing to provide electronically stored information when the information is unavailable as the result of the routine, good faith operations of an electronic information system. The attorney advised the Committee that Rule 2-433 (b) no longer is functioning. He explained that the current "safe harbor" provision offers little protection, has not been used since its adoption in 2008, and lacks clarity. Amendments to Rule 2-433 can clarify the culpability required to support sanctions when electronically stored information is lost. The attorney informed the Committee that the "safe harbor" provision of the parallel federal rule was amended in 2015 and suggested similar changes to Rule 2-433.

The deletion of current section (b) of Rule 2-433 is proposed. A new section (b), derived from the 2015 amendments to Federal Rule of Civil Procedure 37 (e), addresses the failure to preserve electronically stored information. The new section sets forth appropriate sanctions when information that should have been preserved in reasonable anticipation or conduct of litigation and cannot be restored or replaced through other discovery is lost because a party failed to take reasonable

preservation steps. Subsection (b)(1) permits the court to order measures to cure the prejudice when the loss of information prejudices another party. Subsection (b)(2) sets forth specific sanctions that may be ordered, including presumptions, jury instructions, dismissals, or default judgments, upon a finding that a party acted to deprive another party of the information intentionally.

A proposed Committee note following section (b) reiterates that the section applies only to electronically stored information requested from parties. The Committee note highlights the duty to preserve information, emphasizes that sanctions are not imposed if the lost information can be restored or replaced with secondary evidence, and clarifies the different sanctions for intentional and unintentional conduct.

Stylistic changes are made in sections (d) and (f).

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-504 by clarifying the actions that may not occur after completion of discovery in subsection (b)(1)(D), by adding new subsection (b)(1)(E), by adding a Committee note following new subsection (b)(1)(E), and by re-lettering subsequent subsections, as follows:

Rule 2-504. SCHEDULING ORDER

(a) Order Required

(1) Unless otherwise ordered by the County Administrative Judge for one or more specified categories of actions, the court shall enter a scheduling order in every civil action, whether or not the court orders a scheduling conference pursuant to Rule 2-504.1.

(2) The County Administrative Judge shall prescribe the general format of scheduling orders to be entered pursuant to this Rule. A copy of the prescribed format shall be furnished to the Chief Judge of the Court of Appeals.

(3) Unless the court orders a scheduling conference pursuant to Rule 2-504.1, the scheduling order shall be entered as soon as practicable, but no later than 30 days after an answer is

filed by any defendant. If the court orders a scheduling conference, the scheduling order shall be entered promptly after conclusion of the conference.

(b) Contents of Scheduling Order

(1) Required

A scheduling order shall contain:

(A) an assignment of the action to an appropriate scheduling category of a differentiated case management system established pursuant to Rule 16-302;

(B) one or more dates by which each party shall identify each person whom the party expects to call as an expert witness at trial, including all information specified in Rule 2-402 (g)(1);

(C) one or more dates by which each party shall file the notice required by Rule 2-504.3 (b) concerning computer-generated evidence;

(D) a date by which all discovery must be completed, after which no deposition or other discovery may be had, except by leave of court on a showing of good cause or by written consent of all parties;

(E) a date, not less than 35 days before the date for completion of discovery pursuant to subsection (b)(1)(D) of this Rule, after which no interrogatories, requests for admission,

requests for production or inspection, or motions for physical or mental examination may be served;

Committee note: The dates set forth pursuant to subsections (b)(1)(D) and (E) of this Rule are not intended to alter a party's obligation to supplement promptly discovery responses as required by Rule 2-401 (e).

~~(E)~~ (F) a date by which all dispositive motions must be filed, which shall be no earlier than 15 days after the date by which all discovery must be completed;

Cross reference: See Rule 2-501 (a), which provides that after the date by which all dispositive motions are to be filed, a motion for summary judgment may be filed only with the permission of the court.

~~(F)~~ (G) a date by which any additional parties must be joined;

~~(G)~~ (H) a date by which amendments to the pleadings are allowed as of right; and

~~(H)~~ (I) any other matter resolved at a scheduling conference held pursuant to Rule 2-504.1.

(2) Permitted

A scheduling order also may contain:

(A) any limitations on discovery otherwise permitted under these rules, including reasonable limitations on the number of interrogatories, depositions, and other forms of discovery;

(B) the resolution of any disputes existing between the parties relating to discovery;

(C) a specific referral to or direction to pursue an available and appropriate form of alternative dispute resolution, including a requirement that individuals with authority to settle be present or readily available for consultation during the alternative dispute resolution proceeding, provided that the referral or direction conforms to the limitations of Rule 2-504.1 (e);

(D) an order designating or providing for the designation of a neutral expert to be called as the court's witness;

(E) in an action involving child custody or child access, an order appointing child's counsel in accordance with Rule 9-205.1;

(F) a further scheduling conference or pretrial conference date;

(G) provisions for discovery of electronically stored information;

(H) a process by which the parties may assert claims of privilege or of protection after production;

(I) procedures and requirements the court finds necessary when any proceedings in the action will be conducted by remote electronic participation pursuant to Title 2, Chapter 800 of these Rules; and

(J) any other matter pertinent to the management of the action.

(c) Modification of Order

The scheduling order controls the subsequent course of the action but shall be modified by the court to prevent injustice.

Cross reference: See Rule 5-706 for authority of the court to appoint expert witnesses.

Source: This Rule is in part new and in part derived as follows:
Subsection (b)(2)(G) is new and is derived from the 2006 version of Fed. R. Civ. P. 16(b)(5).
Subsection (b)(2)(H) is new and is derived from the 2006 version of Fed. R. Civ. P. 16(b)(6).

REPORTER'S NOTE

A practitioner contacted the Rules Committee regarding issues with Rule 2-504. The attorney noted that current Rule 2-504 provides that scheduling orders state a date for the close of discovery. However, the close of discovery is undefined, creating arguments from attorneys in circuit court about whether the close of discovery refers to a last date to send discovery requests or a last date to respond to requests. The practitioner noted that the District of Columbia requires scheduling orders to state an end date for sending both requests and responses. See D.C. Super. Ct. R. Civ. P. 16. The practitioner suggested that that Maryland Rule be amended to include similar clarifying language.

Subsection (b)(1) of Rule 2-504 lists the required components of a scheduling order. A proposed amendment to subsection (b)(1)(D) clarifies that no depositions or other discovery may be had, except by leave of court on a showing of good cause or by written consent of all parties, after the discovery completion date in the scheduling order. New subsection (b)(1)(E) requires that a scheduling order include a date after which no discovery requests may be served. The date must be not less than 35 days before the date for completion of discovery. A Committee note after the new subsection highlights that the dates in the scheduling order do not alter a party's obligation to supplement discovery responses. The subsequent subsections are re-lettered accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-501 by updating a reference in section (a) and making a stylistic change, as follows:

Rule 2-501. MOTION FOR SUMMARY JUDGMENT

(a) Motion

Any party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. The motion shall be supported by affidavit if it is (1) filed before the day on which the adverse party's initial pleading or motion is filed or (2) based on facts not contained in the record. A motion for summary judgment may not be filed: (A) after any evidence is received at trial on the merits~~,~~ or (B) unless permission of the court is granted, after the deadline for dispositive motions specified in the scheduling order entered pursuant to Rule 2-504~~(b)(1)(E)~~(b)(1)(F).

...

REPORTER'S NOTE

A conforming amendment is proposed to Rule 2-501 to update a reference in section (a) to Rule 2-504. Amendments are proposed to Rule 2-504 also, resulting in re-lettered subsections.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 200 – PARTIES

AMEND Rule 3-202 by creating new subsection (b)(1) with the language of current section (b), with stylistic changes, and by adding new subsection (b)(2) concerning a peace order filed on behalf of a minor, as follows:

Rule 3-202. CAPACITY

(a) Generally

Applicable substantive law governs the capacity to sue or be sued of an individual, a corporation, a person acting in a representative capacity, an association, or any other entity.

(b) Suits by Individuals Under Disability

(1) Generally

An individual under disability to sue may sue by a guardian or other like fiduciary or, if none, by next friend, subject to any order of court for the protection of the individual under disability. ~~When~~ Except as provided in subsection (b)(2) of this Rule, when a minor is in the sole custody of one of ~~it's~~ the minor's parents, that parent has the exclusive right to sue on behalf of the minor for a period of one year following the accrual of the cause of action~~, and if~~.

If the custodial parent fails to institute suit within the ~~one year~~ one-year period, any person interested in the minor shall have the right to institute suit on behalf of the minor as next friend upon first mailing notice to the last known address of the custodial parent.

(2) Peace Order Filed on Behalf of a Minor

Notwithstanding the provisions in subsection (b)(1) of this Rule, a parent, whether or not the custodial parent, or the minor's guardian may petition the court for a peace order on behalf of a minor child within the time permitted by Code, Courts Article, § 3-1503.

(c) Settlement of Suits on Behalf of Minors

(1) Generally

Subject to subsection (c)(2) of this Rule, a next friend who files an action for the benefit of a minor may settle the claim on behalf of the minor.

(2) Approval of Court

(A) If the next friend is the only living parent of the minor, the settlement need not be approved by a court.

(B) If the next friend is not the only living parent of the minor, the settlement must be approved (i) by each living parent of the minor, or (ii) after a reasonable attempt at notice to each living parent and an opportunity for a hearing, by a court.

(C) If there are no living parents of the minor, the settlement must be approved by a court.

(D) A motion for court approval shall be filed in the court where the action is pending.

Cross reference: For settlement of suits on behalf of minors, see Code, Courts Article, § 6-405. For settlement of a claim not in suit asserted by a parent or person in loco parentis under a liability insurance policy, see Code, Insurance Article, § 19-113.

(d) Suits Against Individuals Under Disability

In a suit against an individual under disability, the guardian or other like fiduciary, if any, shall defend the action. The court shall order any guardian or other fiduciary in its jurisdiction who fails to comply with this section to defend the individual as required. If there is no such guardian or other fiduciary, the court shall appoint an attorney to represent and defend the individual.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived in part from former M.D.R. 205 c and d and is in part new.
Section (c) is new.
Section (d) is derived from former M.D.R. 205 e.

REPORTER'S NOTE

The Rules Committee was recently alerted to a potential issue concerning peace and protective orders for minor child victims. In certain circumstances, the alleged abuse may not qualify as "child abuse" and the child may not qualify as a "person eligible for relief" under the protective order statute.

See Code, Family Law Article, § 4-501. In such situations, a peace order would need to be sought instead of a protective order. For example, a child may report to the non-custodial parent that a new significant other of the custodial parent threatened the child. However, the peace order statutes do not contain any express authority for another individual to file a petition on behalf of a minor. As a result, Rule 3-202 concerning capacity governs who may file a suit on behalf of a minor in the District Court. The current Rule requires a non-custodial parent to wait one year before filing if the custodial parent does not file. However, pursuant to Code, Courts Article, § 3-1503, a peace order petition must be filed within 30 days after the relevant act occurred.

To address this issue, the Domestic Violence and Peace Order Subcommittee of the Judicial Council's Domestic Law Committee drafted proposed amendments to Rule 3-202. The Rules Committee reviewed and updated the proposed amendments.

Proposed amendments to Rule 3-202 create subsection (b)(1) with the language of current section (b) to address generally the filing of suits by an individual under disability. Several stylistic amendments are made to the subsection.

Proposed new subsection (b)(2) addresses the filing of a peace order request on behalf of a minor. The subsection notes that notwithstanding the provisions of subsection (b)(1), a parent, whether or not the custodial parent, or a guardian may petition for a peace order on behalf of a minor.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 700 – SPECIAL PROCEEDINGS

AMEND Rule 3-731 by adding new section (c) concerning service of peace orders, by re-lettering former section (c) as new section (d), and by making stylistic changes, as follows:

Rule 3-731. PEACE ORDERS

(a) Generally

Proceedings for a peace order are governed by Code, Courts Article, Title 3, Subtitle 15.

(b) Form of Petition

A petition for relief under the statute shall be substantially in the form approved by the State Court Administrator and the Chief Justice of the Supreme Court, posted on the Judiciary website, and available in the offices of the clerks of the District Court.

(c) Service

(1) Generally

Service of an interim, temporary, or final peace order shall be made in accordance with Code, Courts Article, § 3-1503.1, § 3-1504, or § 3-1505, as applicable.

(2) Service on Custodial Parent

In addition to the service required by subsection (c)(1) of this Rule, if a petition is filed by a non-custodial parent on behalf of a minor pursuant to Rule 3-202 (c), service of a temporary or final peace order shall be made in the same manner on the custodial parent. If a petition is filed by a guardian on behalf of a minor pursuant to Rule 3-202 (c), service of a temporary or final peace order shall be made on each parent in the same manner required by subsection (c)(1).

(d) Modification; Rescission; Extension

Upon the filing of a motion, a judge may modify, rescind, or extend a peace order. Modification, rescission, and extension of peace orders are governed by Code, Courts ~~and Judicial Proceedings~~ Article, § 3-1506(a). If a motion to extend a final peace order is filed before the original expiration date of the peace order, and the hearing is not held by that date, the peace order shall be automatically extended until the hearing is held. The motion shall be presented to a judge forthwith.

Committee note: Although Code, Courts ~~and Judicial Proceedings~~ Article, § 3-1506(a) automatically extends a peace order under certain circumstances, judges are encouraged to issue an order even when the automatic extension is applicable.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 3-731 address concerns about the ability of a non-custodial parent or a guardian to file a petition for a peace order on behalf of a minor. For further discussion, see the Reporter's note to Rule 3-202. Rule 3-731 is amended to ensure that a custodial parent is informed if a non-custodial parent files a peace order petition on behalf of the minor child and that each parent is informed if a guardian files a peace order petition on behalf of the minor.

Proposed amendments to Rule 3-731 add new section (c) addressing service of peace orders. Subsection (c)(1) concerns service generally and cites to the relevant statutory sections. Code, Courts Article, § 3-1503.1 requires that an interim peace order be served on the respondent by a law enforcement officer. Unless the respondent was previously served with an interim peace order, § 3-1504 requires that a temporary peace order be served by a law enforcement officer. § 3-1505 requires service of a final peace order to be in open court or by first-class mail.

The Rules Committee debated the benefits and drawbacks of different methods of service on a parent when the petition is filed by either a non-custodial parent or a guardian. Although personal service by a law enforcement officer may require more resources and potentially delay proceedings if service is difficult to obtain, the Committee determined that these concerns were outweighed by the importance of ensuring that the custodial parent receives timely actual notice of the proceeding concerning the minor. Accordingly, subsection (c)(2) provides that if a petition is filed by a non-custodial parent on behalf of a minor, a custodial parent should be served with a temporary or final peace order in the same manner as described in subsection (c)(1). Similarly, if a petition is filed by a guardian on behalf of a minor, each parent is required to be served in the same manner.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 200 – PARTIES

AMEND Rule 2-202 by making stylistic changes in section (b), as follows:

Rule 2-202. CAPACITY

(a) Generally

Applicable substantive law governs the capacity to sue or be sued of an individual, a corporation, a person acting in a representative capacity, an association, or any other entity.

(b) Suits by Individuals Under Disability

An individual under disability to sue may sue by a guardian or other like fiduciary or, if none, by next friend, subject to any order of court for the protection of the individual under disability. When a minor is in the sole custody of one of ~~it's~~ the minor's parents, that parent has the exclusive right to sue on behalf of the minor for a period of one year following the accrual of the cause of action~~, and if~~. If the custodial parent fails to institute suit within the ~~one year~~ one-year period, any person interested in the minor shall have the right to institute suit on behalf of the minor as next

friend upon first mailing notice to the last known address of the custodial parent.

(c) Settlement of Suits on Behalf of Minors

(1) Generally

Subject to subsection (c)(2) of this Rule, a next friend who files an action for the benefit of a minor may settle the claim on behalf of the minor.

(2) Approval of Court

(A) If the next friend is the only living parent of the minor, the settlement need not be approved by a court.

(B) If the next friend is not the only living parent of the minor, the settlement must be approved (i) by each living parent of the minor, or (ii) after a reasonable attempt at notice to each living parent and an opportunity for a hearing, by a court.

(C) If there are no living parents of the minor, the settlement must be approved by a court.

(D) A motion for court approval shall be filed in the court where the action is pending.

Cross reference: For settlement of suits on behalf of minors, see Code, Courts Article, § 6-405. For settlement of a claim not in suit asserted by a parent or person in loco parentis under a liability insurance policy, see Code, Insurance Article, § 19-113.

(d) Suits Against Individuals Under Disability

In a suit against an individual under disability, the guardian or other like fiduciary, if any, shall defend the action. The court shall order any guardian or other fiduciary in its jurisdiction who fails to comply with this section to defend the individual as required. If there is no such guardian or other fiduciary, the court shall appoint an attorney to represent and defend the individual.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rule 205 c and d.
Section (c) is new.
Section (d) is derived from former Rule 205 e 1 and 2.

REPORTER'S NOTE

Stylistic amendments are proposed in section (b) of Rule 2-202.

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 – APPEALS FROM THE DISTRICT COURT TO THE CIRCUIT COURT

AMEND Rule 7-112 by adding language to subsection (d)(1), as follows:

Rule 7-112. APPEALS HEARD DE NOVO

. . .

(d) Procedure in Circuit Court

(1) The form and sufficiency of pleadings and the capacity requirements in an appeal to be heard de novo are governed by the rules applicable in the District Court. A charging document may be amended pursuant to Rule 4-204.

(2) If the action in the District Court was tried under Rule 3-701, there shall be no pretrial discovery under Chapter 400 of Title 2, the circuit court shall conduct the trial de novo in an informal manner, and Title 5 of these rules does not apply to the proceedings.

(3) Except as otherwise provided in this section, the appeal shall proceed in accordance with the rules governing cases instituted in the circuit court.

Cross reference: See Rule 2-327 concerning the waiver of a jury trial on appeal from certain judgments entered in the District Court in civil actions.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 3-202 address concerns about the capacity requirements for filing a peace order petition on behalf of a minor. For more information, see the Reporter's note to Rule 3-202.

Peace order requests are filed in the District Court or in Juvenile Court, under certain circumstances. To ensure that a *de novo* appeal of a peace order petition originally filed by a non-custodial parent or guardian on behalf of a minor is not dismissed because the individual would not have the capacity to file suit in the circuit court on behalf of the minor, a proposed amendment to Rule 7-112 (d)(1) clarifies that the capacity requirements of a *de novo* appeal are governed by the applicable Rules of the District Court.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT, AND CHILD CUSTODY

AMEND Rule 9-208 by adding and deleting certain language in subsection (e)(1) to clarify the service of a magistrate's recommendations and proposed order; by adding a Committee note after subsection (e)(1); by updating an internal reference in section (f); by deleting current section (h); by re-lettering current section (i) as section (h); by updating a cross reference after re-lettered section (h); by adding new section (i) using the language of current section (h), with a stylistic change; and by making stylistic changes, as follows:

Rule 9-208. REFERRAL OF MATTERS TO STANDING MAGISTRATES

(a) Referral

(1) As of Course

If a court has a full-time or part-time standing magistrate for domestic relations matters and a hearing has been requested or is required by law, the following matters arising under this Chapter shall be referred to the standing magistrate as of course, unless, in a specific case, the court directs that the matter be heard by a judge:

(A) uncontested divorce, annulment, or alimony;

(B) alimony pendente lite;

(C) child support pendente lite;

(D) support of dependents;

(E) preliminary or pendente lite possession or use of the family home or family-use personal property;

(F) subject to Rule 9-205, pendente lite custody of or visitation with children or modification of an existing order or judgment as to custody or visitation;

(G) subject to Rule 9-205 as to child access disputes, constructive civil contempt by reason of noncompliance with an order or judgment relating to custody of or visitation with a minor child, the payment of alimony or support, or the possession or use of the family home or family-use personal property, following service of a show cause order upon the person alleged to be in contempt;

(H) modification of an existing order or judgment as to the payment of alimony or support or as to the possession or use of the family home or family-use personal property;

(I) counsel fees and assessment of court costs in any matter referred to a magistrate under this Rule;

(J) stay of an earnings withholding order; and

(K) such other matters arising under this Chapter and set forth in the court's case management plan filed pursuant to Rule 16-302 (b).

Cross reference: See Rule 16-807.

Committee note: Examples of matters that a court may include in its case management plan for referral to a standing magistrate under subsection (a)(1)(K) of this Rule include scheduling conferences, settlement conferences, uncontested matters in addition to the uncontested matters listed in subsection (a)(1)(A) of this Rule, and the application of methods of alternative dispute resolution.

(2) By Order on Agreement of the Parties

By agreement of the parties, any other matter or issue arising under this Chapter may be referred to the magistrate by order of the court.

(b) Powers

Subject to the provisions of an order referring a matter or issue to a magistrate, the magistrate has the power to regulate all proceedings in the hearing, including the power to:

(1) direct the issuance of a subpoena to compel the attendance of witnesses and the production of documents or other tangible things;

(2) administer oaths to witnesses;

(3) rule on the admissibility of evidence;

(4) examine witnesses;

(5) convene, continue, and adjourn the hearing, as required;

(6) recommend contempt proceedings or other sanctions to the court; and

(7) recommend findings of fact and conclusions of law.

(c) Hearing

(1) Notice

A written notice of the time and place of the hearing shall be sent to all parties.

(2) Attendance of Witnesses

A party may procure by subpoena the attendance of witnesses and the production of documents or other tangible things at the hearing.

(3) Record

All proceedings before a magistrate shall be recorded either stenographically or electronically, unless the making of the record is waived in writing by all parties. A waiver of the making of a record is also a waiver of the right to file exceptions that would require review of the record for their determination.

(d) Contempt Proceedings; Referral for De Novo Hearing

If, at any time during a hearing on a party's alleged constructive civil contempt, the magistrate concludes that there are reasonable grounds to believe that the party is in contempt and that incarceration may be an appropriate sanction, the magistrate shall (1) set a de novo hearing before a judge of the

circuit court, (2) cause the alleged contemnor to be served with a summons to that hearing, and (3) terminate the magistrate's hearing without making a recommendation. If the alleged contemnor is not represented by an attorney, the date of the hearing before the judge shall be at least 20 days after the date of the magistrate's hearing and, before the magistrate terminates the magistrate's hearing, the magistrate shall advise the alleged contemnor on the record of the contents of the notice set forth in Rule 15-206 (c)(2).

(e) Findings and Recommendations

(1) Generally

Except as otherwise provided in section (d) of this Rule, the magistrate shall prepare written recommendations, which shall include a brief statement of the magistrate's findings and shall be accompanied by a proposed order. The magistrate shall ~~notify each party~~ provide notice of the recommendations and contents of the proposed order to each party, either (A) on the record at the conclusion of the hearing or ~~by written notice served pursuant to Rule 1-321~~ (B) within ten days after the conclusion of the hearing in a matter referred pursuant to subsection (a)(1) of this Rule or within 30 days after the conclusion of the hearing in a matter referred pursuant to subsection (a)(2) of this Rule, by filing the written recommendations and proposed order with the clerk, who

promptly shall serve the recommendations and proposed order on each party as provided by Rule 20-205 in MDEC counties or Rule 1-321 in Baltimore City until it becomes an MDEC county. If the parties were notified by the magistrate on the record, the magistrate shall file the written recommendations and proposed order with the clerk promptly after the hearing. The clerk shall make a docket entry notation of the date and method of notification. ~~In a matter referred pursuant to subsection (a)(1) of this Rule, the written notice shall be given within ten days after the conclusion of the hearing. In a matter referred pursuant to subsection (a)(2) of this Rule, the written notice shall be given within 30 days after the conclusion of the hearing. Promptly after notifying the parties, the magistrate shall file the recommendations and proposed order with the court.~~

Committee note: Rule 20-205 (c) requires that the clerk in a MDEC county serve certain individuals, including persons entitled to service who are not registered users of MDEC, in the manner set forth in Rule 1-321.

(2) Supplementary Report

The magistrate may issue a supplementary report and recommendations on the magistrate's own initiative before the court enters an order or judgment. A party may file exceptions to new matters contained in the supplementary report and recommendations in accordance with section (f) of this Rule.

(f) Exceptions

Within ten days after recommendations are placed on the record or served pursuant to ~~section (e)~~ subsection (e)(1)(B) of this Rule, a party may file exceptions with the clerk. Within that period or within ten days after service of the first exceptions, whichever is later, any other party may file exceptions. Exceptions shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

(g) Requirements for Excepting Party

At the time the exceptions are filed, the excepting party shall do one of the following: (1) order a transcript of so much of the testimony as is necessary to rule on the exceptions, make an agreement for payment to ensure preparation of the transcript, and file a certificate of compliance stating that the transcript has been ordered and the agreement has been made; (2) file a certification that no transcript is necessary to rule on the exceptions; (3) file an agreed statement of facts in lieu of the transcript; or (4) file an affidavit of indigency and motion requesting that the court accept an electronic recording of the proceedings as the transcript. Within ten days after the entry of an order denying a motion under subsection (g)(4) of this ~~section~~ Rule, the excepting party shall comply with

subsection (g)(1) of this Rule. The transcript shall be filed within 30 days after compliance with subsection (g)(1) of this Rule or within such longer time, not exceeding 60 days after the exceptions are filed, as the magistrate may allow. For good cause shown, the court may shorten or extend the time for the filing of the transcript. The excepting party shall serve a copy of the transcript on the other party. The court may dismiss the exceptions of a party who has not complied with this section.

Cross reference: For the shortening or extension of time requirements, see Rule 1-204.

~~(h) Entry of Orders~~

~~(1) In General~~

~~Except as provided in subsections (2) and (3) of this section,~~

~~(A) the court shall not direct the entry of an order or judgment based upon the magistrate's recommendations until the expiration of the time for filing exceptions, and, if exceptions are timely filed, until the court rules on the exceptions; and~~

~~(B) if exceptions are not timely filed, the court may direct the entry of the order or judgment as recommended by the magistrate.~~

~~(2) Immediate Orders~~

~~This subsection does not apply to the entry of orders in contempt proceedings. If a magistrate finds that extraordinary circumstances exist and recommends that an order be entered immediately, the court shall review the file and any exhibits and the magistrate's findings and recommendations and shall afford the parties an opportunity for oral argument. The court may accept, reject, or modify the magistrate's recommendations and issue an immediate order. An order entered under this subsection remains subject to a later determination by the court on exceptions.~~

~~(3) Contempt Orders~~

~~(A) On Recommendation by the Magistrate~~

~~On the recommendation by the magistrate that an individual be found in contempt, the court may hold a hearing and direct the entry of an order at any time. The order may not include a sanction of incarceration.~~

~~(B) Following a De Novo Hearing~~

~~Upon a referral from the magistrate pursuant to section (d) of this Rule, the court shall hold a de novo hearing and enter any appropriate order.~~

~~(i)~~ (h) Hearing on Exceptions

(1) Generally

The court may decide exceptions without a hearing, unless a request for a hearing is filed with the exceptions or

by an opposing party within ten days after service of the exceptions. The exceptions shall be decided on the evidence presented to the magistrate unless: (A) the excepting party sets forth with particularity the additional evidence to be offered and the reasons why the evidence was not offered before the magistrate, and (B) the court determines that the additional evidence should be considered. If additional evidence is to be considered, the court may remand the matter to the magistrate to hear and consider the additional evidence or conduct a de novo hearing.

(2) When Hearing to Be Held

A hearing on exceptions, if timely requested, shall be held within 60 days after the filing of the exceptions unless the parties otherwise agree in writing. If a transcript cannot be completed in time for the scheduled hearing and the parties cannot agree to an extension of time or to a statement of facts, the court may use the electronic recording in lieu of the transcript at the hearing or continue the hearing until the transcript is completed.

Cross reference: See~~,~~ Code, Family Law Article, § ~~10-131~~ 10-133~~,~~ prescribing certain time limits when a stay of an earnings withholding order is requested.

(i) Entry of Orders

(1) In General

Except as provided in subsections (i)(2) and (i)(3) of this Rule:

(A) the court shall not direct the entry of an order or judgment based upon the magistrate's recommendations until the expiration of the time for filing exceptions and, if exceptions are timely filed, until the court rules on the exceptions; and

(B) if exceptions are not timely filed, the court may direct the entry of the order or judgment as recommended by the magistrate.

(2) Immediate Orders

This subsection does not apply to the entry of orders in contempt proceedings. If a magistrate finds that extraordinary circumstances exist and recommends that an order be entered immediately, the court shall review the file, any exhibits, and the magistrate's findings and recommendations and shall afford the parties an opportunity for oral argument. After the opportunity for oral argument has been provided, the court may accept, reject, or modify the magistrate's recommendations and issue an immediate order. An order entered under this subsection remains subject to a later determination by the court on exceptions.

(3) Contempt Orders

(A) On Recommendation by the Magistrate

On the recommendation by the magistrate that an individual be found in contempt, the court may hold a hearing and direct the entry of an order at any time. The order may not include a sanction of incarceration.

(B) Following a De Novo Hearing

Upon a referral from the magistrate pursuant to section (d) of this Rule, the court shall hold a de novo hearing and enter any appropriate order.

Source: This Rule is derived in part from Rule 2-541 and former Rule S74A and is in part new.

REPORTER'S NOTE

Rule 9-208 addresses the referral of matters to magistrates in family law actions. Several amendments are proposed to Rule 9-208 to address stylistic and substantive concerns with the Rule.

Section (e) addresses the findings and recommendations of a magistrate, including service of those recommendations. The Rules Committee received a request from the County Administrative Judges to amend Rule 9-208 (e)(1) and Rule 2-541 (e)(3) to reconcile the service provisions with Rule 20-205 (c) concerning the electronic service of magistrates' recommendations and reports. Rule 9-208 (e)(1) currently states, "The magistrate shall notify each party of the recommendations, either on the record at the conclusion of the hearing or by written notice served pursuant to Rule 1-321." The current language contemplates that magistrates are responsible for service instead of clerks. However, in MDEC jurisdictions, Rule 20-205 (c) explicitly states, "The clerk is responsible for serving writs, notices, official communications, court orders, and other dispositions, in the manner set forth in Rule 1-321..." Proposed amendments to subsection (e)(1) clarify that the clerk, not the magistrate, is responsible for serving the recommendations and proposed order as provided by Rule 20-

205 in MDEC counties or Rule 1-321 in Baltimore City. New language requires the clerk to note on the docket the date and method of notification of the recommendations.

Additional language in subsection (e)(1) clarifies when written recommendations and a proposed order shall be filed after a hearing and when service of the written documents must occur. A proposed Committee note following the subsection highlights that Rule 20-205 (c) requires service in the manner set forth in Rule 1-321 for certain individuals, even in a MDEC county.

A proposed amendment in section (f) updates the current reference to section (e) to new subsection (e)(1)(B).

Additional stylistic changes are proposed to Rule 9-208. Current section (h) concerning entry of orders is deleted, current section (i) is re-lettered as section (h), and the content of current section (h), with a stylistic change, is added as new section (i). A cross reference after new section (h) is updated also.

Stylistic changes are also made throughout section (g).

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-541 by adding taglines to subsections (b)(1) and (b)(2); by clarifying the tagline of section (e); by replacing the current tagline of subsection (e)(1); by adding and deleting certain language in subsection (e)(1) to clarify the service of a magistrate's recommendations and proposed order; by adding a Committee note after subsection (e)(1); by creating new subsection (e)(2) with language in current subsection (e)(1), with some additions and deletions; by creating new subsection (e)(3) with language in current subsection (e)(1), with some additions and deletions; by renumbering current subsection (e)(2) as (e)(4), adding language to the tagline, and making a stylistic change; by renumbering current subsection (e)(3) as (e)(5), adding language to clarify the tagline, deleting the current language of the subsection, and adding language to clarify the service of a magistrate's report; by adding a Committee note at the end of section (e); by deleting current section (f); by re-lettering current sections (g) and (h) as (f) and (g), respectively; and by adding new section (h) using the language of current section (f), with stylistic changes, as follows:

Rule 2-541. MAGISTRATES

(a) Appointment--Compensation

The appointment and compensation of standing and special magistrates shall be governed by Rule 16-807.

(b) Referral of Cases

(1) Domestic Relations Matters

Referral of domestic relations matters to a magistrate shall be in accordance with Rule 9-208 and shall proceed only in accordance with that Rule.

(2) Other Matters

On motion of any party or on its own initiative, the court, by order, may refer to a magistrate any other matter or issue not triable of right before a jury.

(c) Powers

Subject to the provisions of any order of reference, a magistrate has the power to regulate all proceedings in the hearing, including the powers to:

(1) Direct the issuance of a subpoena to compel the attendance of witnesses and the production of documents or other tangible things;

(2) Administer oaths to witnesses;

(3) Rule upon the admissibility of evidence;

(4) Examine witnesses;

(5) Convene, continue, and adjourn the hearing, as required;

(6) Recommend contempt proceedings or other sanctions to the court; and

(7) Recommend findings of fact and conclusions of law.

(d) Hearing

(1) Notice

The magistrate shall fix the time and place for the hearing and shall send written notice to all parties.

(2) Attendance of Witnesses

A party may procure by subpoena the attendance of witnesses and the production of documents or other tangible things at the hearing.

(3) Record

All proceedings before a magistrate shall be recorded either stenographically or by an electronic recording device, unless the making of a record is waived in writing by all parties. A waiver of the making of a record is also a waiver of the right to file any exceptions that would require review of the record for their determination.

(e) Recommendations and Report

(1) ~~When Filed~~ Notification of Recommendations

The magistrate shall notify each party of the ~~proposed recommendation~~ recommendations and contents of the proposed

order, either ~~orally~~ (A) on the record at the conclusion of the hearing or (B) thereafter ~~by written notice served pursuant to Rule 1-321~~ in writing filed with the clerk, who shall serve the recommendations and proposed order on each party as provided by Rule 20-205 in MDEC counties or Rule 1-321 in Baltimore City until it becomes an MDEC county. The clerk shall make a docket entry notation of the date and method of the notification.

Committee note: Rule 20-205 (c) requires that the clerk in a MDEC county serve certain individuals, including persons entitled to service who are not registered users of MDEC, in the manner set forth in Rule 1-321.

(2) Notice of Intent to File Exceptions

Within five days from ~~an oral notice or from service of a written~~ notice of the recommendations pursuant to subsection (e)(1) of this Rule, a party intending to file exceptions shall file a notice of intent to do so ~~and within that time shall deliver a copy to the magistrate~~ with the clerk. The clerk promptly shall notify the magistrate of the filing and make a docket entry of the date and method of the notification. The failure to file a timely notice of intent to file exceptions is a waiver of the right to file exceptions.

(3) Filing of Report

~~If~~ Only the recommendations in the form of a proposed order or judgment need be filed unless the court has directed the magistrate to file a report or if a notice of intent to file

exceptions is filed. If the court directed that a report be filed, the magistrate shall file a written report with the ~~recommendation~~ recommendations. ~~Otherwise, only the recommendation need be filed. The~~ If a notice of intent to file exceptions is filed, the report shall be filed within 30 days after the notice of intent to file exceptions is filed or within such other time as the court directs. ~~The failure to file and deliver a timely notice is a waiver of the right to file exceptions.~~

~~(2)~~(4) Contents of Report

Unless otherwise ordered, the report shall include findings of fact and conclusions of law and ~~a recommendation~~ recommendations in the form of a proposed order or judgment, and shall be accompanied by the original exhibits. A transcript of the proceedings before the magistrate need not be prepared prior to the report unless the magistrate directs, but, if prepared, shall be filed with the report.

~~(3)~~(5) Service of Report

~~The magistrate shall serve a copy of the recommendation and any written report on each party pursuant to Rule 1-321.~~ Unless service has been made in open court pursuant to subsection (e)(1) of this Rule, the clerk shall serve a copy of any written report, together with the recommendations in the form of a proposed order or judgment, on each party as provided

by Rule 20-205 in MDEC counties or Rule 1-321 in Baltimore City until it becomes an MDEC county.

Committee note: Rule 20-205 (c) requires that the clerk in a MDEC county serve certain individuals, including persons entitled to service who are not registered users of MDEC, in the manner set forth in Rule 1-321.

~~(f) Entry of Order~~

~~(1) The court shall not direct the entry of an order or judgment based upon the magistrate's recommendations until the expiration of the time for filing exceptions, and, if exceptions are timely filed, until the court rules on the exceptions.~~

~~(2) If exceptions are not timely filed, the court may direct the entry of the order or judgment as recommended by the magistrate.~~

~~(g)~~ (f) Exceptions

(1) How Taken

Within ten days after the filing of the magistrate's written report, a party may file exceptions with the clerk. Within that period or within three days after service of the first exceptions, whichever is later, any other party may file exceptions. Exceptions shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

(2) Transcript

Unless a transcript has already been filed, a party who has filed exceptions shall cause to be prepared and transmitted to the court a transcript of so much of the testimony as is necessary to rule on the exceptions. The transcript shall be ordered at the time the exceptions are filed, and the transcript shall be filed within 30 days thereafter or within such longer time, not exceeding 60 days after the exceptions are filed, as the magistrate may allow. The court may further extend the time for the filing of the transcript for good cause shown. The excepting party shall serve a copy of the transcript on the other party. Instead of a transcript, the parties may agree to a statement of facts or the court by order may accept an electronic recording of the proceedings as the transcript. The court may dismiss the exceptions of a party who has not complied with this section.

~~(h)~~ (g) Hearing on Exceptions

The court may decide exceptions without a hearing, unless a hearing is requested with the exceptions or by an opposing party within five days after service of the exceptions. The exceptions shall be decided on the evidence presented to the magistrate unless: (1) the excepting party sets forth with particularity the additional evidence to be offered and the reasons why the evidence was not offered before the magistrate, and (2) the court determines that the additional evidence should

be considered. If additional evidence is to be considered, the court may remand the matter to the magistrate to hear the additional evidence and to make appropriate findings or conclusions, or the court may hear and consider the additional evidence or conduct a de novo hearing.

(h) Entry of Order or Judgment

(1) When Notice of Intent to File Exceptions Filed

If a notice of intent to file exceptions was timely filed, the court shall not enter an order or judgment until the expiration of the time for filing exceptions, and, if exceptions are timely filed, until the court rules on the exceptions.

(2) When No Timely Notice of Intent to File Exceptions or Exceptions Filed

If no notice of intent to file exceptions was timely filed, or if no exceptions were timely filed after the filing of a notice of intent to file exceptions, the court may enter an appropriate order or judgment.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived in part from former Rule 596 c.
Section (c) is derived in part from former Rule 596 d.
Subsections (6) and (7) are new but are consistent with former Rule 596 f 1 and g 2.
Section (d) is in part new and in part derived from former Rule 596 e.
Section (e) is in part new and in part derived from former Rule 596 f.
~~Section (f) is new.~~

Section ~~(g)~~ (f) is derived from former Rule 596 h 1, 2, 3, 4 and 7 except that subsection 3 (b) of section h of the former Rule is replaced.
Section ~~(h)~~ (g) is derived from former Rule 596 h 5 and 6.
Section (h) is new.

REPORTER'S NOTE

Rule 2-541 contains provisions regarding magistrates in circuit court. Proposed amendments to Rule 2-541 aim to improve the organization of the Rule and address certain substantive concerns.

Taglines are added to subsections (b)(1) and (b)(2) to clarify the content of each subsection. Language is also added to the current tagline of section (e) to clarify the topic of the section.

Proposed amendments to subsection (e)(1) clarify that the clerk, not the magistrate, is responsible for serving the recommendations and proposed order as provided by Rule 20-205 in MDEC counties or Rule 1-321 in Baltimore City. For further discussion, see the Reporter's note to Rule 9-208.

A proposed Committee note following subsection (e)(1) highlights that Rule 20-205 (c) requires service in the manner set forth in Rule 1-321 for certain individuals, even in a MDEC county.

New subsections (e)(2) and (e)(3) are created with the current language of subsection (e)(1), with certain statements re-organized or updated stylistically. Additional language is also added to delete the requirement that the party deliver a copy of a notice of intent to file exceptions to the magistrate. Instead, subsection (e)(2) now requires the notice to be filed with the clerk, who will promptly notify the magistrate and make a docket entry with the date and method of the notification.

Current subsection (e)(2) is renumbered as subsection (e)(4) and the tagline is updated for clarity. A stylistic change is proposed in the subsection. Current subsection (e)(3) is renumbered as subsection (e)(5). The tagline is updated and the language of the subsection is replaced to provide that the clerk, not the magistrate, shall complete service of the report.

A proposed Committee note following the subsection again highlights the service provisions of Rule 20-205 (c).

Current section (f) concerning entry of an order is deleted and, with some additions and stylistic changes, is moved to new section (h). Current sections (g) and (h) are re-lettered as sections (f) and (g), respectively.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-105 by adding language to the name of the Rule, by creating new subsections (a)(1) and (a)(2) with the language of current sections (a) and (b), by making stylistic changes in subsection (a)(1), and by adding new section (b) and a subsequent cross reference related to access to case records, as follows:

Rule 10-105. INTERESTED PERSONS - WAIVER OF NOTICE AND ACCESS TO CASE RECORDS

(a) Waiver of Notice

(1) Method of Waiver

An interested person other than a minor or disabled person may waive the right to any or all notices other than original notice by filing a signed waiver. A minor or disabled person may waive the right to any or all notices other than original notice by a waiver signed and filed by ~~his or her~~ the attorney for the minor or disabled person, which shall not be effective until approved by the court.

~~(b)~~ (2) Revocation

A waiver of notice may be revoked at any time by the filing of a revocation, which shall be effective from the date filed.

(b) Access to Case Records

(1) Party Access

Subject to subsection (b)(2) of this Rule, an interested person is a party to the action and has access to case records in the action.

(2) Restriction on Access

The court may restrict an interested person's access to case records for good cause, after notice and opportunity for a hearing.

Cross reference: See Rule 16-914 (e).

Source: This Rule is derived from former Rule R70 f and Rule 6-126 and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 10-105 clarify that an interested person is a "party" to the action. The Rules Committee was informed that interested persons in guardianship cases are not always provided the same remote access to case records as the petitioner or the respondent, despite having standing in the action.

In guardianship actions, an interested person has standing to participate in the proceeding, including by opposing the petition, by obtaining discovery, or by requesting the testimony of the certifying physician or psychologist. *See In re Lee*, 132 Md. App. 696 (2000). Other case types that involve "interested persons" do not always have similar participation in the action.

Due to the unique nature of guardianship proceedings, proposed amendments seek to clarify that interested persons are parties, ensuring that interested persons can appropriately access the file otherwise shielded from the public by Rule 16-914 (e).

Proposed amendments to Rule 10-105 update the name of the Rule to reflect its broader application. Stylistic amendments add a new tagline to section (a) and create new subsections (a)(1) and (a)(2) with the current language of the Rule. Stylistic changes are made in subsection (a)(1) also.

Proposed amendments to Rule 10-105 add new section (b) to address an interested person's access to case records. New subsection (b)(1) states clearly that an interested person is a party to the action. New subsection (b)(2) sets forth appropriate court action to limit an interested person's access to case records. The language requires good cause, as well as notice and an opportunity for a hearing, before access is restricted. For example, a guardianship proceeding may reveal that an adult child of an alleged disabled person has been misusing or stealing the funds of the alleged disabled person. Because the child is an interested person in the case by statute, the interested person cannot be removed from the case. However, future access to the financial records and accounts by the child may prove detrimental to the interests of the alleged disabled person. Accordingly, proposed amendments to Rule 10-105 enable a court to restrict an interested person's access to the file to protect sensitive information in case records.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-914 by deleting and adding language to the Committee note following section (e), as follows:

Rule 16-914. CASE RECORDS – REQUIRED DENIAL OF INSPECTION – CERTAIN CATEGORIES

Except as otherwise provided by law, court order, or the Rules in this Chapter, the custodian shall deny inspection of:

...

(e) Except for docket entries and orders entered under Rule 10-108, papers and submissions filed in guardianship actions or proceedings under Title 10, Chapter 200, 300, 400, or 700 of the Maryland Rules.

Committee note: Most filings in guardianship actions are likely to be permeated with financial, medical, or psychological information regarding the minor or disabled person that ordinarily would be sealed or shielded under other Rules. Rather than require custodians to pore through those documents to redact that kind of information, this Rule shields the documents themselves subject to Rule 16-934, which permits the court, on a motion and for good cause, to permit inspection of case records that otherwise are not subject to inspection. There may be circumstances in which that should be allowed. Parties to the action have access to the case records unless the court orders otherwise. See Rule 10-105 (b). The guardian, ~~of course, will have~~ as a party, has access to the case records and may need to share some of them with third persons in order to

perform ~~his or her~~ the duties~~, and this~~ of the guardian. This Rule is not intended to impede the guardian from doing so. Public access to the docket entries and to orders entered under Rule 10-108 will allow others to be informed of the guardianship and to seek additional access pursuant to Rule 16-934.

...

REPORTER'S NOTE

Rule 16-914 sets forth certain categories of case records for which the custodian shall deny access. Section (e) provides for the shielding of case records in guardianship actions, except for docket entries and orders entered under Rule 10-108. A Committee note after the section provides additional information, clarifying that the guardian will have access to case records and may need to share records with third parties to perform the guardian's duties.

Proposed amendments to the Committee note after section (e) add a sentence clarifying that parties have access to the case records and a citation to Rule 10-105 (b). Stylistic changes are also made in the Committee note.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-106 by adding a reference to Code, Estates and Trusts Article, § 13-211 to subsection (b)(2) and to the cross reference following subsection (c)(1); by adding language to subsection (c)(2) citing a fee agreement pursuant to Code, Estates and Trusts Article, § 13-211(b)(3)(ii); and by making stylistic changes, as follows:

Rule 10-106. ATTORNEY FOR MINOR OR DISABLED PERSON

(a) Authority and Duty to Appoint

(1) Minor Persons

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

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

(2) Alleged Disabled Persons

Upon the filing of a petition for guardianship of the person, the property, or both, of an alleged disabled person who

is not represented by an attorney of the alleged disabled person's own choice, the court shall promptly appoint an attorney for the alleged disabled person.

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

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

(b) Eligibility for Appointment

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

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

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

Committee note: Methods of complying with subsection (b)(1)(B) include maintaining appropriate insurance, providing an attestation of financial circumstances, or filing a bond.

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

(2) Exercise of Discretion

Except in an action in which the selection of a court-appointed attorney is governed by Code, Estates and Trusts Article, § 13-211(b)(3) or § 13-705(d)(2), the court should fairly distribute appointments among eligible attorneys, taking into account the attorney's relevant experience and availability and the complexity of the case.

(c) Fees

(1) Generally

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

Cross reference: See Code, Estates and Trusts Article, §§ 13-211(b)(2) and 13-705 (d)(1), requiring the State to pay a reasonable attorneys' fee where the alleged disabled person is indigent. There is no similar statutory requirement with respect to attorneys appointed for a minor.

(2) Determination of Fee

Unless the attorney has agreed to serve on a pro bono basis, ~~or~~ is serving under a contract with the Department of Human Services, or has agreed to accept the same fee as an attorney under contract pursuant to Code, Estates and Trusts Article, § 13-211(b)(3)(ii), the court, in determining the reasonableness of the attorney's fee, shall apply the factors

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

(3) Disabled Person - Security for Payment of Fee

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

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

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

(d) Termination or Continuation of Appointment

(1) Generally

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

(2) Other Reason for Termination

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

(3) Representation if Public Guardian Appointed

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

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

(4) Appointment After Establishment of Guardianship

Nothing in this section precludes a court from appointing, reappointing, or continuing the appointment of an attorney for a minor or disabled person after a guardianship has been established if the court finds that such appointment or continuation is in the best interest of the minor or disabled

person. An order of appointment after a guardianship has been established shall state the scope of the representation and may include specific duties the attorney is directed to perform.

(e) Reports and Statements

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

Committee note: An attorney for a minor or alleged disabled person, whether employed privately or appointed by the court, is an advocate for ~~his or her~~ the attorney's client, not an independent investigator, and needs to be mindful of the attorney-client privilege and an attorney's responsibilities under Rule 19-301.14 (1.14). It is a conflict of interest for the attorney to be both an advocate and an investigator appointed pursuant to Rule 10-106.2. See section 1.2 of the Maryland Guidelines for Attorneys Representing Minors and Alleged Disabled Persons in Guardianship Proceedings.

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

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

REPORTER'S NOTE

Pursuant to Chapters 628/629, 2022 Laws of Maryland (HB 990/SB 694), effective October 1, 2023, Code, Estates and Trusts Article, § 13-211 has been amended to provide that the State is required to pay a reasonable attorney's fee to an attorney representing an indigent alleged disabled person in a case involving guardianship of the property. In cases where the State must pay the attorney's fees, the court is required to appoint an attorney who contracted with the Department of Human Services or who agrees to accept the same fee as an attorney under contract with the Department. Before the addition of this

language to Code, Estates and Trusts Article, § 13-211 concerning petitions for guardianship of the property, similar provisions regarding payment of attorney's fees by the State were included in § 13-705 concerning petitions for guardianship of the person only.

The Rules already provide for the appointment of an attorney for the disabled person in cases involving guardianship of the person, property, or both. Rule 10-106 (c)(1) provides that attorney's fees for representation of the alleged disabled person are to be paid by the State to the extent the guardianship estate is insufficient. Proposed amendments to Rule 10-106 update references in the Rule to account for amended Code, Estates and Trusts Article, § 13-211.

Rule 10-106 (b)(2) requires a court to fairly distribute appointment among eligible attorneys "[e]xcept in an action in which the selection of a court-appointed attorney is governed by Code, Estates and Trusts Article, § 13-705(d)(2)." § 13-705(d)(2) concerns guardianships of the person. Proposed amendments add § 13-211(b)(3), containing the parallel provisions for guardianship of the property cases, to Rule 10-106 (b)(2). Similarly, a reference to § 13-211(b)(2) is added to the cross reference after subsection (c)(1) because new statutory language requires the State to pay a reasonable attorney's fee where the alleged disabled person is indigent in cases involving guardianship of the property.

Rule 10-106 (c)(2) states considerations for the court in determining the reasonableness of attorney's fees, "[u]nless the attorney has agreed to serve on a pro bono basis or is serving under a contract with the Department of Human Services." Code, Estates and Trusts Article, § 13-211 creates an additional situation where the court does not need to determine the reasonableness of the attorney's fees. § 13-211(b)(3)(ii) permits a previously appointed attorney to maintain the attorney's appearance in a case when an alleged disabled person is indigent if the attorney agrees to accept the same fee as an attorney under contract with the Department of Human Services and if the court does not find a conflict of interest. Accordingly, a reference to § 13-211(b)(3)(ii) is added to Rule 10-106 (c)(2). Conforming stylistic changes are made to the subsection.

Stylistic changes are proposed in the Committee note following section (e).

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 1 – GENERAL PROVISIONS

AMEND Rule 18-407 by adding "possible" to the tagline and text of subsection (b)(4) pertaining to criminal activity, by adding a Committee note following subsection (b)(4) pertaining to potential misconduct discovered during an investigation by the Commission, by adding a cross reference following subsection (b)(4) regarding an attorney's duty to report, and by making stylistic changes, as follows:

Rule 18-407. CONFIDENTIALITY

(a) Generally

Except as otherwise expressly provided by these Rules, proceedings and information relating to a complaint or charges shall be open to the public or confidential and not open to the public, as follows:

(1) Judge's Address and Identifying Information

The judge's current home address and personal identifying information not otherwise public shall remain confidential at all stages of proceedings under these Rules.

Any other address of record shall be open to the public if the charges and proceedings are open to the public.

(2) Complaints; Investigations; Disposition Without Charges

Except as otherwise required by Rules 18-425, 18-426, and 18-427, all proceedings under Rules 18-421, 18-428, and 18-441 shall be confidential.

(3) Upon Resignation, Voluntary Retirement, Filing of a Response, or Expiration of the Time for Filing a Response

Charges alleging sanctionable conduct and all subsequent proceedings before the Commission on those charges shall be open to the public upon the first to occur of (A) the resignation or voluntary retirement of the judge, (B) the filing of a response by the judge to the charges, or (C) expiration of the time for filing a response. Charges alleging disability or impairment and all proceedings before the Commission on them shall be confidential.

(4) Work Product, Proceedings, and Deliberations

Except to the extent admitted into evidence before the Commission, the following matters shall be confidential: (A) Investigative Counsel's work product and, subject to Rules 18-422 (b)(3)(A), 18-424 (d)(3) and 18-433 (c), reports prepared by Investigative Counsel not submitted to the Commission; (B) proceedings before the Board, including any peer review proceeding; (C) any materials reviewed by the Board during its

proceedings that were not submitted to the Commission; (D) deliberations of the Board and Commission; and (E) records of the Board's and Commission's deliberations.

(5) Proceedings in the Supreme Court

Unless otherwise ordered by the Supreme Court, the record of Commission proceedings filed with that Court and any proceedings before that Court on charges of sanctionable conduct shall be open to the public. The record of Commission proceedings filed with that Court and any proceedings before that Court on charges of disability or impairment shall be confidential. An order of retirement by the Court shall be public.

(b) Permitted Release of Information by Commission

(1) Written Waiver

The Commission may release confidential information upon receipt of a written waiver by the subject judge, except that those matters listed in subsection (a)(4) of this Rule shall remain confidential notwithstanding a waiver by the judge.

(2) Explanatory Statement

The Commission may issue a brief explanatory statement necessary to correct any inaccurate or misleading information from any source about the Commission's process or procedures.

(3) To Chief Justice of the Supreme Court

(A) Upon request by the Chief Justice of the Supreme Court, the Commission shall disclose to the Chief Justice:

(i) whether a complaint is pending against the judge who is the subject of the request; and

(ii) the disposition of each complaint that has been filed against the judge within the preceding five years.

(B) The Chief Justice may disclose this information to the incumbent justices of the Supreme Court in connection with the exercise of any administrative matter over which the Court has jurisdiction. Each justice who receives information pursuant to subsection (b)(3) of this Rule shall maintain the applicable level of confidentiality of the information otherwise required by the Rules in this Chapter.

(4) Information Involving Possible Criminal Activity, Health, Safety, and Certain Ethical Concerns

The Commission may provide (A) information involving possible criminal activity, including information requested by subpoena from a grand jury, to applicable law enforcement and prosecuting officials, (B) information regarding health and safety concerns to applicable health agencies and law enforcement officials, and to any individual who is the subject of or may be affected by any such health or safety concern, and (C) if the judge resigns or voluntarily retires prior to the disposition of the matter involving the subject judge,

information to Bar Counsel pertaining to conduct that may constitute a violation of the Maryland Attorneys' Rules of Professional Conduct that raises a substantial question as to the judge's honesty, trustworthiness, or fitness as an attorney in other respects.

Committee note: Nothing in this Rule prohibits the Commission from reporting to Bar Counsel potential professional misconduct on the part of attorneys that is discovered during the course of an investigation conducted by the Commission. Subject to the assertion of a lawful privilege, filing objections, or motions for protective order or to quash, the Commission shall provide responsive information pursuant to a subpoena from a grand jury to the appropriate law enforcement and prosecutorial officials.

Cross reference: See Rule 19-308.3 (8.3), concerning an attorney's duty to report violations of the Maryland Attorney's Rules of Professional conduct.

(5) Finding of Disability or Impairment

The Commission may disclose any final disposition imposed against a judge related to charges of disability or impairment to the applicable administrative judge or Chief Justice or Judge of the disabled or impaired judge's court or, if the disabled or impaired judge is a recalled senior judge, to the Supreme Court.

(6) Nominations; Appointments; Approvals

(A) Permitted Disclosures

Upon a written application made by a judicial nominating commission, a Bar Admission authority, the President of the United States, the Governor of a state, territory,

district, or possession of the United States, or a committee of the General Assembly of Maryland or of the United States Senate which asserts that the applicant is considering the nomination, appointment, confirmation, or approval of a judge or former judge, the Commission shall disclose to the applicant:

(i) Information about any completed proceedings that did not result either in dismissal of the complaint or in a conditional diversion agreement that has been satisfied; and

(ii) Whether a complaint against the judge is pending.

Committee note: A reprimand issued by the Commission is disclosed under subsection (b)(6)(A)(i) of this Rule. An unsatisfied conditional diversion agreement is disclosed under subsection (b)(6)(A)(ii) of this Rule as a pending complaint against the judge.

(B) Restrictions

Unless the judge waives the restrictions set forth in this subsection, when the Commission furnishes information to an applicant under this section, the Commission shall furnish only one copy of the material, which shall be furnished under seal. As a condition to receiving the material, the applicant shall agree that (i) the applicant will not copy the material or permit it to be copied; (ii) when inspection of the material has been completed, the applicant will seal and return the material to the Commission; and (iii) the applicant will not disclose the contents of the material or any information contained in it to anyone other than another member of the applicant.

(C) Copy to Judge

The Commission shall send the judge a copy of all documents disclosed under this subsection.

Cross reference: For the powers of the Commission in an investigation or proceeding under Md. Const., Art. IV, § 4B, see Code, Courts Article, §§ 13-401 through 13-403.

(c) Statistical or Annual Report

The Commission may include in a publicly available statistical or annual report the number of complaints received, investigations undertaken, and dispositions made within each category of disposition during a fiscal or calendar year, provided that, if a disposition has not been made public, the identity of the judge involved is not disclosed or readily discernible.

Source: This Rule is in part derived from former Rule 18-409 (2018) and is in part new.

REPORTER'S NOTE

The Rules Committee proposes revising subsection (b)(4) of this Rule so that it applies to "possible criminal activity" and not merely "criminal activity." The Commission on Judicial Disabilities is concerned that, without the addition of the word "possible" to this subsection, this provision could be interpreted strictly to apply only in instances where a trier of fact has determined that a judge is guilty of a crime, and not be applied generally to a judge's behavior which may be criminal in nature.

A new Committee note and cross reference are proposed following section (b) to clarify that the Commission may refer

an attorney's conduct to Bar Counsel and that the Commission will cooperate with grand jury subpoenas.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 2 – STRUCTURE

AMEND Rule 18-412 by adding new subsection (d)(3) pertaining to continuing service of a Judicial Inquiry Board member after expiration of the member's term and by making stylistic changes, as follows:

Rule 18-412. JUDICIAL INQUIRY BOARD

(a) Appointment; Composition; Qualifications; Terms

(1) Appointment; Composition

(A) The Supreme Court shall appoint a Judicial Inquiry Board consisting of two judges, two attorneys, and three public members who are not attorneys or judges. No individual may serve on the Commission and the Board concurrently.

(B) The composition of the Board shall reflect the racial, gender, and geographical diversity of the population of Maryland.

(2) Qualifications

(A) All members shall be residents of the State of Maryland~~;~~.

(B) The judicial members shall be current active judges of the State of Maryland~~;~~.

(C) The attorney members shall be (i) admitted to practice law in Maryland~~;~~, (ii) engaged in the practice of law in Maryland for a minimum of seven years~~;~~, and (iii) not be a judge of any court~~;~~.

(D) The public members shall not be (i) active or retired judges~~;~~, (ii) admitted to practice law in Maryland~~;~~, or (iii) persons who have a financial relationship with or receive compensation from a judge or person admitted to practice law in Maryland~~;~~.

(3) Terms

(A) Subject to subsection (d)(2) of this Rule, the term of each member is four years, commencing on July 1. A member may not serve for more than two full terms or more than a total of ten years if appointed to fill a vacancy.

(B) Membership automatically terminates on the date that (i) a member ceases to be a resident of Maryland; (ii) any judicial member ceases to be an active judge; (iii) an attorney member becomes a judge or is disbarred or suspended; or (iv) a public member becomes a judge, is admitted to practice law in Maryland, or has a financial relationship with or receives compensation from a judge or person admitted to practice law in Maryland.

(b) Compensation

A member of the Board may not receive compensation for serving in that capacity but is entitled to reimbursement for expenses reasonably incurred in the performance of official duties in accordance with standard State travel regulations.

(c) Chair and Vice Chair

The Supreme Court shall designate a judicial member of the Board to serve as Chair of the Board and the other judicial member to serve as Vice Chair. The Vice Chair shall perform the duties of the Chair whenever the Chair is disqualified or otherwise unable to act.

(d) Recusal, Removal, or Replacement

(1) A member of the Board may not participate as a member in any discussion or recommendation in which (A) the member is a complainant, (B) the member's disability, impairment, or sanctionable conduct is in issue, (C) the member's partiality reasonably might be questioned, (D) the member has personal knowledge of disputed material evidentiary facts involved in the discussion or recommendation, or (E) the recusal of a judicial member otherwise would be required by the Maryland Code of Judicial Conduct.

(2) The Supreme Court may remove or replace members of the Board at any time, and may temporarily replace a member of the

Board with a former member of the Board or Commission for purposes of maintaining a quorum.

(3) Following the expiration of a member's term other than pursuant to subsection (a)(3)(B) of this Rule, the Board may conduct business in the ordinary course with that member continuing to serve, until such time as a replacement is appointed.

(e) Quorum

The presence of a majority of the members of the Board constitutes a quorum for the transaction of business, so long as at least one judge, one attorney, and one public member are present. A member of the Board may be physically present or present by telephone, video, or other electronic conferencing. Other than adjournment of a meeting for lack of a quorum, no action may be taken by the Board without the concurrence of a majority of the members of the Board.

(f) Records

Subject to a retention schedule approved by the Chief Justice of the Supreme Court, the Board shall keep a record of all documents filed with the Board and all proceedings conducted by the Board concerning a judge.

Source: This Rule is derived from former Rule 18-403 (2018).

REPORTER'S NOTE

The Rules Committee proposes adding new subsection (d)(3) to this Rule to add continuity of service provisions for Board members. The Rules in Chapter 400 already provide continuity of service for Commission members, and this revision would treat both organizations consistently in this area.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 3 – ADMINISTRATIVE PROCEDURE

AMEND Rule 18-421 by clarifying the language in section (b) pertaining to allegations that do not constitute a basis for a cognizable complaint, by deleting a portion of the Committee note following section (b) and adding language to the end of the Committee note pertaining to the basis for Investigative Counsel's conclusion regarding a complaint, and by making stylistic changes, as follows:

Rule 18-421. COMPLAINTS; PROCEDURE ON RECEIPT

(a) Referral to Investigative Counsel

The Commission shall refer all complaints and other written allegations of disability, impairment, or misconduct against a judge to Investigative Counsel.

(b) Allegations that Fail to Allege Disability, Impairment, or Sanctionable Conduct

If Investigative Counsel concludes that the allegations presented, ~~liberally construed,~~ even if proved, would fail to ~~allege facts which, if true, would constitute a disability, impairment, or sanctionable conduct, and therefore do not~~

constitute a cognizable basis for a complaint, as defined in Rule 18-402 (h), Investigative Counsel shall notify the ~~Complainant~~ complainant and the Commission, in writing, that the allegations presented were considered and found not to ~~be a~~ ~~cognizable~~ constitute a meritorious complaint that should be pursued and the reasons for that conclusion.

Committee note: Section (b) of this Rule does not preclude Investigative Counsel from communicating with the complainant or making an inquiry under section (f) of this Rule in order to clarify general or ambiguous allegations that may suggest a disability, impairment, or sanctionable conduct. ~~Outright dismissal is justified when the allegations, on their face, complain only of conduct that clearly does not constitute, a disability, impairment, or sanctionable conduct or are not under oath.~~ Investigative Counsel's conclusion under this section may be based on a finding that the allegations presented are facially frivolous or otherwise factually unfounded, or, even if true, fail to establish a disability, impairment, or sanctionable conduct on the part of the judge, or is duplicative of an existing complaint against the judge being pursued by Investigative Counsel.

(c) Written Allegation of Disability, Impairment, or Sanctionable Conduct Not Under Oath

(1) Except as provided by section (f) of this Rule, the Commission may not act upon a written allegation of disability, impairment, or misconduct, unless it is a complaint. If a written allegation, liberally construed, alleges facts indicating that a judge may have a disability or impairment or may have committed sanctionable conduct but is not under oath or supported by an affidavit, Investigative Counsel, if possible, shall (A) inform the complainant that the Commission acts only

upon complaints under oath or supported by an affidavit, (B) provide the complainant with an appropriate form of affidavit, and (C) inform the complainant that unless a complaint under oath or supported by an affidavit is filed within 30 days after the date of the notice, the matter may be dismissed.

(2) If, after Investigative Counsel has given the notice provided for in subsection (c)(1) of this Rule or has been unable to do so, the complainant fails to file a timely complaint under oath or supported by an affidavit, Investigative Counsel may dismiss the matter and notify the complainant and the Commission, in writing, that a written allegation of disability, impairment, or misconduct was filed and dismissed and the reasons for the dismissal.

(d) Stale Complaints

(1) Subject to subsection (d)(3) of this Rule, if a complaint alleges acts or omissions that all occurred more than three years prior to the date the complaint was filed, Investigative Counsel, after notice to the judge, if the judge has requested notice pursuant to Rule 18-422 (a)(4)(A), may make a recommendation to the Board whether, in light of the staleness, there is good cause to investigate the complaint.

(2) If the Board concludes that there is no good cause for any further investigation, it shall direct that the complaint be dismissed. If the Board concludes otherwise, it shall direct

Investigative Counsel to proceed in accordance with section (e) of this Rule. In making that determination, the Board shall weigh any prejudice to the judge against the seriousness of the conduct alleged in the complaint.

(3) Subsections (d)(1) and (d)(2) of this Rule do not apply to complaints that allege criminal conduct which, upon conviction, would subject the judge to imprisonment for more than eighteen months.

Committee note: In contrast to dismissal of a complaint under Rule 18-423 (f)(3), which requires action by the Commission, Investigative Counsel may dismiss an allegation of disability, impairment, or sanctionable conduct under this Rule when, for the reasons noted, the allegation fails to constitute a complaint. Subject to sections (c) and (f) of this Rule, if there is no cognizable complaint, there is no basis for conducting an investigation.

(e) Opening File on Receipt of Complaint

Subject to section (f) of this Rule, Investigative Counsel shall docket each properly filed complaint by opening a numbered file on the complaint and promptly in writing (1) acknowledging receipt of the complaint and (2) explaining to the complainant the procedure for investigating and processing the complaint.

(f) Inquiry

Upon receiving information from any source indicating that a judge may have a disability or impairment or may have committed sanctionable conduct, Investigative Counsel may make

an inquiry. An inquiry may include obtaining additional information from a complainant and any potential witnesses, reviewing public records, obtaining transcripts of court proceedings, and communicating informally with the judge. Following the inquiry, Investigative Counsel shall (1) conclude the inquiry and dismiss any complaint in conformity with section (b) of this Rule or (2) open a file, proceed as if a complaint had been properly filed, and undertake an investigation in accordance with Rule 18-422.

Source: This Rule is derived from former Rule 18-404 (a) through (d) (2018).

REPORTER'S NOTE

The Rules Committee proposes amending section (b) of this Rule to clarify the criteria for determining that a complaint against a judge does not constitute a cognizable claim. The Committee note following section (b) is also revised to clarify that Investigative Counsel may decline to investigate a claim determined to be facially frivolous, otherwise factually unfounded, or duplicative.

A stylistic change is made in subsection (d)(1).

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 3 – ADMINISTRATIVE PROCEDURE

AMEND Rule 18-422 by adding to subsection (a)(4)(E) a statement that service is complete upon mailing, by replacing gendered pronouns with non-gender specific language in the Committee note following subsection (b)(3)(C), and by making a stylistic change in subsection (b)(2)(B), as follows:

Rule 18-422. INVESTIGATION BY INVESTIGATIVE COUNSEL

(a) Conduct of Investigation

(1) Duty to Conduct; Notice to Board and Commission

If a complaint is not dismissed in accordance with Rule 18-421, Investigative Counsel shall conduct an investigation to determine whether there are reasonable grounds to believe that the judge may have a disability or impairment or may have committed sanctionable conduct. Investigative Counsel shall inform the Board and the Commission promptly that the investigation is being undertaken.

(2) Investigative Subpoena

The issuance of an investigative subpoena is governed by Rule 18-409.1 (a).

Cross reference: See Code, Courts Article, §§ 13-401--403.

(3) Grant of Immunity

Upon application by Investigative Counsel and for good cause, the Commission may grant immunity to any person from prosecution, or from any penalty or forfeiture, for or on account of any transaction, matter, or thing concerning which that person testifies or produces evidence, documentary or otherwise.

Cross reference: See Md. Const., Art. IV § 4B (a)(1)(ii) and Code, Courts Article, § 13-403.

Committee note: The need for a grant of immunity in order to compel the production of evidence may arise at any stage. Placing a reference to it here is not intended to preclude an application to the Commission in a later stage of the proceeding.

(4) Notice to Judge

(A) Upon Opening of File

Judges may request the Commission to inform them in writing promptly upon the opening of a file pertaining to them pursuant to Rule 18-421 (e) or (f). The request shall be in writing. If such a request is received, Investigative Counsel shall comply with that request unless the Board authorizes a delay in providing the notice upon a finding that there is a reasonable possibility that immediate notice may jeopardize an investigation by Investigative Counsel or cause harm to any

person. The notice shall be accompanied by a copy of the complaint.

(B) Upon Service of Investigative Subpoena

Upon service of an investigative subpoena pursuant to Rule 18-409.1, Investigative Counsel shall (i) serve a copy of the subpoena upon the judge under investigation as required under Rule 18-409.1 (a)(3) and (ii) unless notice was given to the judge pursuant to subsection (a)(4)(A) of this Rule, include that notice with a copy of the subpoena.

(C) Prior to Conclusion of the Investigation

Subject to subsection (a)(4)(F) of this Rule, unless notice has been given to the judge pursuant to subsection (a)(4)(A) or (B) of this Rule, it shall be given before conclusion of the investigation.

(D) Content

Investigative Counsel's notification to the judge shall be in writing and shall state: (i) that Investigative Counsel has undertaken an investigation into whether the judge has a disability or impairment or has committed sanctionable conduct; (ii) whether the investigation was undertaken on Investigative Counsel's initiative or on a complaint; (iii) if the investigation was undertaken on a complaint, the name of the person who filed the complaint and the contents of the complaint; (iv) the nature of the alleged disability,

impairment, or sanctionable conduct under investigation; and (v) the judge's rights under subsection (a)(5) of this Rule.

(E) Service

The notice shall be given by first class mail ~~or~~ and by certified mail requesting "Restricted Delivery--show to whom, date, address of delivery" and shall be addressed to the judge at the judge's address of record. Service shall be complete upon mailing in accordance with Rule 1-321.

(F) Exception

Notice shall not be given under this Rule if Investigative Counsel determines, prior to the conclusion of the investigation, that the recommendation of Investigative Counsel will be dismissal of the complaint without a letter of cautionary advice and the judge had not been given notice of the opening of the file pursuant to subsection (a)(4)(A) or (B) of this Rule.

Committee note: If, pursuant to subsection (a)(4)(A) or (B) of this Rule, the judge had received notice of the opening of a file, the judge also must be given notice that the complaint was dismissed or that any inquiry by Investigative Counsel pursuant to Rule 18-421 (f) was terminated.

(5) Opportunity of Judge to Respond

Upon the issuance of notice pursuant to subsection (a)(4) of this Rule, Investigative Counsel shall afford the judge a reasonable opportunity prior to concluding the investigation to present such information as the judge chooses

and shall give due consideration to the judge's response before concluding the investigation.

(6) Time for Completion

Investigative Counsel shall complete an investigation within 90 days after the investigation is commenced. Upon application by Investigative Counsel within the 90-day period and for good cause, the Board, with the approval of the Chair of the Commission, may extend the time for completing the investigation for a reasonable period. An order extending the time for good cause shall be in writing and shall articulate the basis of the good cause. The Commission may dismiss any complaint and terminate the investigation for failure to comply with the time requirements of this section.

(b) Report and Recommendation by Investigative Counsel

(1) Duty to Make

Upon completion of an investigation, Investigative Counsel shall make a report of the results of the investigation in the form that the Commission requires.

(2) Contents

(A) The report shall be in three distinct parts.

(B) Part 1 shall contain a statement of relevant factual information obtained by Investigative Counsel and shall include, in the body of the report or as attachments to it, (i) recorded witness statements and summaries of unrecorded witness

statements, and (ii) any response or other information provided by the judge pursuant to subsection (a)(5) of this Rule.

(C) Part 2 shall contain Investigative Counsel's analysis or evaluation of the material in Part 1 and legal conclusions drawn therefrom, which are in the nature of Investigative Counsel's work product.

(D) Part 3 shall contain Investigative Counsel's recommendations, including a statement that the investigation indicates probable sanctionable conduct, probable impairment, probable disability, any of them, or none of them, together with one of the following recommendations, as appropriate:

(i) dismissal of any complaint, without a letter of cautionary advice;

(ii) dismissal of any complaint, with a letter of cautionary advice;

(iii) a conditional diversion agreement;

(iv) a reprimand;

(v) the filing of charges; or

(vi) retirement of the judge based upon a finding of disability.

(3) Recipients of Report

(A) In addition to complying with subsection (b)(3)(B) or (C) of this Rule, Investigative Counsel shall serve a copy of Parts 1 and 3 of the report on the judge if the subject judge is

a judge to whom notification of the investigation is required under subsection (a)(4)(A), (B), or (C) of this Rule.

(B) If the recommendation is dismissal of the complaint without a letter of cautionary advice, Parts 1 and 3 of the report and recommendation shall be made to the Commission. Upon receipt of the recommendation, the Commission shall proceed in accordance with Rule 18-425.

(C) Otherwise, the report and recommendation shall be made to the Board.

Committee note: A complaint may be dismissed outright and without a letter of cautionary advice for various reasons, at different stages, and by different entities. Investigative Counsel may dismiss a claim on ~~his or her~~ Investigative Counsel's own initiative, without opening a file, pursuant to Rule 18-421 (b). In that instance, no notice need be given to the judge. If Investigative Counsel opens a file pursuant to Rule 18-421 (e) or (f) and performs an investigation under this Rule, Investigative Counsel may recommend dismissal without a letter of cautionary advice because, as a factual matter, there is insufficient evidence of a disability, impairment, or sanctionable conduct or because the complaint is stale. In that situation, if the Commission, or, in the case of a stale complaint, the Board adopts the recommendation, there is no need for notice to the judge unless the judge has requested such notice. If a matter other than a stale complaint proceeds to the Board, the judge must receive notice, even if the ultimate decision is to dismiss the complaint.

(c) Records

Subject to a retention schedule approved by the Chief Justice of the Supreme Court, Investigative Counsel shall keep a record of the investigation.

Source: This Rule is in part derived from former Rule 18-404 (e) and (f) (2018) and is in part new.

REPORTER'S NOTE

The Rules Committee proposes amending subsection (a)(4)(E) of this Rule to clarify that service of a notice required by section (a) is complete upon mailing. This provision mirrors the service requirements in Rule 18-404 and ensures that the service requirements in this Chapter are consistent.

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter "the EJC Report"). One recommendation contained in the EJC Report was for the Rules Committee to remove gendered pronouns from the Rules. In the Committee note after subsection (b)(3)(C), gendered pronouns "his or her" are replaced with "Investigative Counsel's."

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 3 – ADMINISTRATIVE PROCEDURE

AMEND Rule 18-423 by adding new subsection (b)(2)(C) permitting the Commission to make certain referrals for peer review, by adding to subsection (f)(3)(B) a provision permitting the Commission to remand a matter for peer review, by updating a reference in subsection (f)(3)(E), and by making stylistic changes, as follows:

Rule 18-423. PROCEEDINGS BEFORE BOARD; REVIEW BY COMMISSION

(a) Review of Investigative Counsel's Report

The Board shall review the reports and recommendations made to the Board by Investigative Counsel and any matters referred to it by the Commission pursuant to these Rules.

Cross reference: See Rule 18-425 (a).

(b) Informal Meeting with Judge; Peer Review

(1) Generally

The Board may meet informally with the judge.

(2) Peer Review

(A) As part of or in furtherance of that meeting, the Chair of the Board, with the consent of the judge, may convene a

peer review panel consisting of not more than two judges who serve or have served on the same level of court upon which the judge sits to confer with the judge about the complaint and suggest options for the judge to consider. The judges may be incumbent judges or senior judges.

(B) The discussion may occur in person or by telephone or other electronic conferencing but shall remain informal and confidential. The peer review panel (i) shall have no authority to make any findings or recommendations, other than to the judge; (ii) shall make no report to Investigative Counsel, the Board, or the Commission; and (iii) may not testify regarding the conference with the judge before the Commission or in any court proceeding.

(C) The Commission may refer the matter to the Board to convene a peer review panel pursuant to subsection (b)(2) of this Rule.

Committee note: The peer review panel is not intended as either an arbitrator or a mediator but, as judicial colleagues, simply to provide an honest and neutral appraisal for the judge to consider.

(c) Further Investigation

The Board may direct Investigative Counsel to make a further investigation pursuant to Rule 18-424.

(d) Board's Report to Commission

(1) Contents

(A) After considering Investigative Counsel's report and recommendation, the Board shall submit a report to the Commission. The Board shall include in its report the recommendation made to the Board by Investigative Counsel. Subject to subsection (d)(2) of this Rule, the report shall include one of the following recommendations:

(i) dismissal of any complaint, without a letter of cautionary advice pursuant to Rule 18-425 (a) and termination of any investigation;

(ii) dismissal of any complaint, with a letter of cautionary advice pursuant to Rules 18-425 (b) or 18-436;

(iii) a conditional diversion agreement pursuant to Rules 18-426 or 18-436;

(iv) a reprimand pursuant to Rules 18-427 or 18-436;

(v) retirement of the judge pursuant to Rule 18-428; or

(vi) upon a determination of probable cause that the judge has a disability or impairment or has committed sanctionable conduct, the filing of charges pursuant to Rule 18-431.

(B) The information transmitted by the Board to the Commission shall be limited to a proffer of evidence that the Board has determined would likely be admitted at a plenary hearing before the Commission. The Chair of the Board may

consult with the Chair of the Commission in determining the information to be transmitted to the Commission.

(2) Time for Submission of Report

(A) Generally

Unless the time is extended by the Chair of the Commission for good cause, the Board shall submit the report within 45 days after the date the Board received Investigative Counsel's report and recommendation.

(B) Extension

Upon a written request by the Chair of the Board, the Chair of the Commission may grant a reasonable extension of time for submission of the report. An order extending the time shall be in writing and shall articulate the nature of the good cause.

(C) Failure to Submit Timely Report

If the Board fails to submit a report within the time allowed, the Chair of the Commission shall direct Investigative Counsel to create and submit a report that conforms to the requirements of subsections (d)(1) and (2) of this Rule, subject to Rule 18-422 (b)(2), and refer the matter to the Commission, which may proceed, using the report as submitted by Investigative Counsel in accordance with this provision.

(D) Copy to Investigative Counsel and Judge

Upon receiving the report and recommendation, the Commission promptly shall transmit a copy of it, including any

appendices or memoranda attached to it, to Investigative Counsel and to the judge.

(e) Filing of Response

Investigative Counsel and the judge may file with the Commission a written response to the Board's report and recommendation. Unless the Chair of the Commission, Investigative Counsel, and the judge agree to an extension, any response shall be filed within 15 days after the date the Commission transmitted copies of the report and recommendation to Investigative Counsel and the judge if the recommendation is a dismissal, with or without a letter of cautionary advice, and within 30 days after that date in all other cases.

(f) Action by Commission on Board Report and Recommendation

(1) Review

The Commission shall review the report and recommendation and any timely filed responses.

(2) Appearance by Judge

Upon written request by the judge, with a copy to Investigative Counsel, the Commission may permit the judge to appear before the Commission on reasonable terms and conditions established by the Commission.

Committee note: This review and any appearance by the judge is not an evidentiary hearing. That is provided for in Rule 18-434 after charges have been filed. It is only for the Commission to determine whether to direct that charges be filed against the

judge or some other action set forth in subsection (f)(3) should be taken.

(3) Disposition

Upon its review of the report and recommendation and any timely filed responses and consideration of any evidence or statement by the judge pursuant to subsection (f)(2) of this Rule, the Commission shall:

(A) direct Investigative Counsel to conduct a further investigation pursuant to Rule 18-424;

(B) remand the matter to the Board: (i) for further consideration and direct the Board to file a supplemental report within a specified period of time; or (ii) for the Board to convene a peer review panel pursuant to section (b) of this Rule if a peer review was not previously conducted;

(C) dismiss the complaint pursuant to Rule 18-425, with or without a letter of cautionary advice;

(D) enter a disposition pursuant to Rule 18-426, 18-427, or 18-428;

(E) enter an appropriate disposition to which the judge has filed a written consent in accordance with the Rules in this Chapter, including a disposition under ~~18-435~~ 18-436; or

(F) direct Investigative Counsel to file charges pursuant to Rule 18-431.

Source: This Rule is derived in part from former Rule 18-404 (h) through (l) (2018) and is in part new.

REPORTER'S NOTE

The Rules Committee proposes amending Rule 18-423 to permit the Commission to direct the Board to convene a peer review panel. Currently, only the Board may order a peer review panel to be convened. The Commission believes, based on the success of this program with the Board, that it would be beneficial to extend this ability to the Commission.

Towards this end, new subsection (b)(2)(C) is proposed to be amended to clarify that the Commission may direct the Board to convene a peer review panel.

Subsection (f)(3)(B) is also amended to permit the Commission to direct the Board to convene a peer review panel. Stylistic changes are also proposed to this subsection.

A reference in subsection (f)(3)(B) is also updated.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 3 – ADMINISTRATIVE PROCEDURE

AMEND Rule 18-424 by clarifying the procedure for requesting an extension of time in section (c), as follows:

Rule 18-424. FURTHER INVESTIGATION

(a) Notice to Judge

Upon a directive for a further investigation by the Board pursuant to Rule 18-423 (c) or by the Commission pursuant to Rule 18-423 (f)(3), Investigative Counsel promptly shall (1) provide the notice and opportunity to respond required by Rule 18-422 (a)(4) and (5) if such notice and opportunity have not already been provided, and (2) notify the judge at the judge's address of record that the Board or Commission has directed a further investigation.

(b) Investigative Subpoenas

The issuance of an investigative subpoena is governed by Rule 18-409.1 (a).

Cross reference: See Code, Courts Article, §§ 13-401--403.

(c) Time for Completion of Investigation

Investigative Counsel shall complete a further investigation within the time specified by the Board or Commission. Upon application by Investigative Counsel to the Board or Commission, whichever entity authorized the further investigation, made within that period and served by first class mail upon the judge or the judge's attorney of record, the Chair of the Board or Commission, for good cause, may extend the time for completing the further investigation for a specified reasonable time. An order extending the time for good cause shall be in writing and shall articulate the basis of the good cause. The Commission may dismiss the complaint and terminate the investigation for failure to complete the investigation within the time allowed.

(d) Report and Recommendation

(1) Duty to Make

Within the time for completing the further investigation, Investigative Counsel shall make a report of the results of the investigation to the Board or Commission, whichever authorized the further investigation, in the form the Commission requires.

(2) Contents

Unless the material already has been provided, Investigative Counsel shall include in the report or attach to it any response or other information provided by the judge

pursuant to section (a) of this Rule or Rule 18-422 (a)(5). The report shall be in the form required by Rule 18-422 (b)(2) and include a statement that the investigation indicates probable disability, probable impairment, probable sanctionable conduct, any of them, or none of them, together with one of the following recommendations:

(A) dismissal of any complaint, without a letter of cautionary advice;

(B) dismissal of any complaint, with a letter of cautionary advice;

(C) a conditional diversion agreement;

(D) a reprimand;

(E) the filing of charges; or

(F) retirement of the judge based upon a finding of disability.

(3) Recipients

If the further investigation was directed by the Board, Investigative Counsel shall send a copy of the entire report to the Board and a copy of Parts 1 and 3 to the judge. If the further investigation was directed by the Commission, a copy of Parts 1 and 3 shall be sent to the Commission and the judge.

Source: This Rule is in part new and in part derived from former Rule 18-405 (2018).

REPORTER'S NOTE

The Rules Committee proposes amending section (c) of this Rule so that the procedures that pertain to Investigative Counsel obtaining an extension of time to conduct an additional investigation apply to both the Board and the Commission, rather than just the Commission as the Rule is currently drafted. This will conform the Rule to the current practice, as both the Board and the Commission have the authority to direct Investigative Counsel to conduct an additional investigation.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 3 – ADMINISTRATIVE PROCEDURE

AMEND Rule 18-426 by replacing "Court of Appeals" with "Supreme Court" in subsection (a)(2), by requiring notice from the monitor in section (e) that the judge has satisfied conditions of the agreement, and by making a stylistic change, as follows:

Rule 18-426. CONDITIONAL DIVERSION AGREEMENT

(a) When Appropriate

The Commission and the judge may enter into a conditional diversion agreement if, after an investigation by Investigative Counsel:

(1) the Commission concludes (A) that any alleged sanctionable conduct was not so serious, offensive, or repeated as to justify the filing of charges or, if charges already had been filed, the imposition of any immediate discipline, and (B) that the appropriate disposition is for the judge to undergo specific treatment, participate in one or more specified educational or therapeutic programs, issue an apology to the

complainant, or take other specific corrective or remedial action; and

(2) the judge, in the agreement, (A) agrees to the specified conditions, (B) waives the right to a hearing before the Commission and subsequent proceedings before the ~~Court of Appeals~~ Supreme Court, (C) agrees that the conditional diversion agreement may be revoked for noncompliance in accordance with the provisions of section (b) of this Rule, and (D) agrees that the agreement may be admitted in any subsequent disciplinary proceeding against the judge to the extent that it is relevant to the allegations at issue or the sanction that may be imposed.

Committee ~~Note~~ note: A conditional diversion agreement may be the most appropriate response to the situation set forth in subsection (a)(1) where any sanctionable conduct was predominantly the product of the judge's impairment, as it can provide a meaningful opportunity for remedial assistance to the judge who, by consenting to the agreement, recognizes it is needed, as well as protection of the public. The judge is free, of course, to reject an offer of a conditional diversion agreement, in which event the Commission may deal with any sanctionable conduct in other ways.

(b) Compliance

The Commission shall direct Investigative Counsel or some other person to monitor compliance with the conditions of the agreement and may direct the judge to document compliance. The monitor shall give written notice to the judge of the nature of any alleged failure to comply with a condition of the agreement. If, after affording the judge at least 15 days to respond to the

notice, the Commission finds that the judge has failed to satisfy a material condition of the agreement, the Commission may revoke the agreement and proceed with any other disposition authorized by these Rules. If, upon request of the judge, a monitor other than Investigative Counsel is appointed, all reasonable expenses of the monitor shall be assessed against the judge.

(c) Not a Form of Discipline

A conditional diversion agreement under this section does not constitute discipline or a finding that sanctionable conduct was committed.

(d) Notice to Complainant; Confidentiality

The Commission shall notify the complainant that the complaint has resulted in an agreement with the judge for corrective or remedial action. Except as permitted in Rule 18-407, the terms of the agreement shall remain confidential and not be disclosed to the complainant or any other person unless the judge consents, in writing, to the disclosure.

(e) Termination of Proceedings

Until the conditions of the agreement have been fully satisfied, the complaint remains open. Upon notification by ~~Investigative Counsel~~ the monitor that the judge has satisfied all conditions of the agreement, the Commission shall terminate the proceedings.

Source: This Rule is derived from former Rule 18-406 (c) (2018).

REPORTER'S NOTE

At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals to the Supreme Court of Maryland. The name change took effect on December 14, 2022. In order to conform this Rule with this constitutional amendment, "Court of Appeals" is replaced with "Supreme Court" in subsection (a)(2).

The Rules Committee proposes amending section (e) of this Rule so that the monitor of a conditional diversion agreement and not Investigative Counsel is responsible for notifying the Commission of the judge's satisfaction of the conditions of a conditional diversion agreement. This revision would streamline the existing process and permit an independent third-party monitor to directly report to the Commission in the event that Investigative Counsel is not directly responsible for monitoring compliance with a particular conditional diversion agreement.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5 – FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

AMEND Rule 18-431 by adding new section (h) pertaining to resolution of pretrial motions and motions to dismiss, as follows:

Rule 18-431. FILING OF CHARGES

(a) Direction by Commission

After considering the report and recommendation of the Board or Investigative Counsel submitted pursuant to Rule 18-423 and any timely filed response, and upon a finding by the Commission of probable cause to believe that a judge has a disability or impairment or has committed sanctionable conduct, the Commission may direct Investigative Counsel to initiate proceedings against the judge by filing with the Commission charges that the judge has a disability or impairment or has committed sanctionable conduct.

(b) Content of Charges

The charges shall (1) state the nature of the alleged disability, impairment, or sanctionable conduct, including each Rule of the Maryland Code of Judicial Conduct allegedly violated

by the judge, (2) allege the specific facts upon which the charges are based, and (3) state that the judge has the right to file a written response to the charges within 30 days after service of the charges.

(c) Service; Notice

The charges shall be served upon the judge pursuant to Rule 18-404. A return of service of the charges shall be filed with the Commission. Upon service, the Commission shall notify any complainant that charges have been filed against the judge.
Cross reference: See Md. Const., Art. IV, § 4B(a).

(d) Response

Within 30 days after service of the charges, the judge may file with the Commission an original and 11 copies of a written response or file a response electronically pursuant to Rule 18-404.

(e) Notice of Hearing

(1) Generally

Upon the filing of a response or, if no response is filed upon expiration of the time for filing one, the Commission shall schedule a hearing and notify the judge of the date, time, and place of the hearing. Unless the judge has agreed to an earlier hearing date, the hearing shall not be held earlier than 60 days after the notice was sent.

(2) Sanctionable Conduct

If the hearing is on a charge of sanctionable conduct, the Commission also shall notify the complainant and post a notice on the Judiciary website that is limited to (1) the name of the judge, (2) the date, time, and place of the hearing, (3) the charges that have been filed, and (4) any response from the judge. If the charges also contain allegations of disability or impairment, any information related to those allegations shall be governed by the provisions of subsection (e)(3) and shall not be posted on the Judiciary website or otherwise made public.

(3) Disability or Impairment

If the hearing is on a charge of disability or impairment, the Commission shall notify the complainant that charges have been filed and a hearing date has been set, but all other information, including the charges, any response from the judge, and all proceedings before the Commission, shall be confidential.

Cross reference: See Rule 18-407 (a)(3) concerning the time for posting on the Judiciary website.

(f) Extension of Time

The Commission may extend the time for filing a response and for the commencement of a hearing.

(g) Amendment

At any time before the hearing, the Commission on request may allow amendments to the charges or the response. If an amendment to the charges is made less than 30 days before the scheduled hearing, the judge, upon request, shall be given a reasonable time to respond to the amendment and to prepare and present any defense.

(h) Open Motions

All pretrial motions and motions to dismiss shall be resolved by the Commission prior to the hearing.

Source: This Rule is derived in part from former Rule 18-407 (a) through (h) (2018) and is in part new.

REPORTER'S NOTE

The Rules Committee proposes amending this Rule by adding new section (h), which requires that all open pretrial motions and motions to dismiss be resolved by the Commission prior to the commencement of the hearing before the Commission.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5 – FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

AMEND Rule 18-433 by adding a Committee note following subsection (a)(3) pertaining to charges based on failure to cooperate in discovery and by making stylistic changes, as follows:

Rule 18-433. DISCOVERY

(a) Generally

(1) Except as otherwise provided in this Rule, discovery is governed by the relevant Rules in Title 2, Chapter 400.

(2) The Chair of the Commission, rather than a court, may limit the scope of discovery, enter protective orders permitted by Rule 2-403, and resolve other discovery issues.

Cross reference: For the issuance of subpoenas pertaining to discovery proceedings, see Rule 18-409.1 (b).

(3) Investigative Counsel and the judge have the obligation to respond to the other's discovery requests addressed to them.

Committee note: A judge's failure to cooperate in discovery may warrant an amendment to the charges in accordance with Rule 18-431 (g).

(4) Investigative Counsel, the Commission, and the judge have a continuing duty to supplement information required to be disclosed under this Rule.

(5) The Commission shall preclude a party from calling a witness, other than a rebuttal witness, or otherwise presenting evidence upon a finding, after the opportunity for a hearing if one is requested, that (1) the witness or evidence was subject to disclosure under this Rule, (2) the party, without substantial justification, failed to disclose the witness or evidence in a timely manner, and (3) the failure was prejudicial to the other party. For purposes of this Rule, the parties are Investigative Counsel and the judge against whom charges have been filed.

(b) Open File

Upon request by the judge or the judge's attorney, at any time after service of charges upon the judge, (1) the Executive Counsel of the Commission shall allow the judge or attorney to inspect and copy the entire Commission record~~,~~ and (2) Investigative Counsel shall (A) allow the judge or attorney to inspect and copy all evidence accumulated during the investigation and all material, information, and statements as defined in Rule 2-402 (f), (B) provide summaries or reports of all oral statements for which contemporaneously recorded

substantially verbatim recitals do not exist, and (C) certify to the judge in writing that, except for material that constitutes attorney work product or that is subject to a lawful privilege or protective order issued by the Commission, the material disclosed constitutes the complete record of Investigative Counsel as of the date of inspection.

(c) Exculpatory Evidence

Whether as part of the disclosures pursuant to section (b) of this Rule or otherwise, no later than 30 days prior to the scheduled hearing, Investigative Counsel shall disclose to the judge all statements or other evidence of which Investigative Counsel is aware that (1) directly negates any allegation in the charges, (2) would be admissible to impeach a witness intended to be called by Investigative Counsel, or (3) would be admissible to mitigate a permissible sanction. This obligation includes exculpatory information that is included in Investigative Counsel's Report to the Board.

(d) Witnesses

No later than 30 days prior to the scheduled hearing, Investigative Counsel shall provide to the judge the names and addresses of all persons, other than a rebuttal witness, Investigative Counsel intends to call at the hearing. No later than 25 days prior to the scheduled hearing, the judge shall

provide to Investigative Counsel the names and addresses of all persons, other than a rebuttal witness, the judge intends to call at the hearing.

Source: This Rule is in part derived from former Rule 18-407 (g) (2018) and is in part new.

REPORTER'S NOTE

The Rules Committee proposes amending this Rule by adding a Committee note following subsection (a)(3) to clarify that a judge's failure to participate in discovery may subject the judge to additional discipline under the Rules in this Chapter.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5 – FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

AMEND Rule 18-437 by adding provisions in section (b) prohibiting certain filings in the Supreme Court in lieu of exceptions and stating the effect of a failure to file exceptions, by replacing gendered pronouns with non-gender specific language in subsection (f)(2), and by making a stylistic change in subsection (f)(2), as follows:

Rule 18-437. PROCEEDINGS IN SUPREME COURT

(a) Expedited Consideration

Upon receiving the hearing record file pursuant to Rule 18-435, the Clerk of the Supreme Court shall docket the case for expedited consideration.

(b) Exceptions

The judge may except to the findings, conclusions, or recommendation of the Commission by filing exceptions with the Supreme Court within 30 days after service of the notice of filing of the record and in accordance with Rule 20-405. The exceptions shall set forth with particularity all errors allegedly committed by the Commission and the disposition

sought. A copy of the exceptions shall be served on the Commission in accordance with Rules 1-321 and 1-323. A judge may not file motions or requests for relief in lieu of filing exceptions. Motions shall be resolved by the Commission in accordance with Rule 18-431 (h). If no exceptions are filed, the Supreme Court may treat the findings of fact and conclusions of law as established and proceed to disposition.

(c) Response

The Commission shall file a response within 30 days after service of the exceptions in accordance with Rule 20-405. The Commission shall be represented in the Supreme Court by its Executive Counsel or such other attorney as the Commission may appoint. A copy of the response shall be served on the judge in accordance with Rules 1-321 and 1-323.

(d) Memoranda

If exceptions are timely filed, upon the filing of a response or, if no response is filed, upon the expiration of the time for filing it, the Court may set a schedule for filing memoranda in support of or in opposition to the exceptions and any response and shall set a date for a hearing.

(e) Hearing

The hearing on exceptions shall be conducted in accordance with Rule 8-522. If no exceptions are timely filed

or if the judge files with the Court a written waiver of the judge's right to a hearing, the Court may decide the matter without a hearing.

(f) Disposition

(1) The Supreme Court may (A) impose the disposition recommended by the Commission or any other disposition permitted by law, including an order directing the judge to undergo specified evaluations, participate meaningfully in specified therapeutic, educational, or behavior modification programs, and to make a written apology to specified persons or groups of persons harmed by the judge's misconduct; (B) dismiss the proceeding; or (C) remand for further proceedings as specified in the order of remand.

(2) If the disposition includes a suspension of the ~~judge from his or her~~ judge's judicial duties, the order imposing the suspension shall state the duration of the suspension, which may be indefinite or for a fixed period, and whether the suspension (A) is to be with or without compensation, (B) is to be served on consecutive dates, (C) prohibits the judge from conducting any official business during the period of suspension and ~~may establish~~ establishes any parameters or conditions governing the judge's presence in any courthouse location, and (D) is subject to any conditions precedent to reinstatement.

Committee note: A judge who has been suspended from the performance of judicial duties does not cease to be a judge by reason of the suspension and remains subject to the Code of Judicial Conduct. Any violation of the Code of Judicial Conduct during the period of suspension may subject the judge to additional charges.

Cross reference: For rights and privileges of the judge after disposition, see Md. Const., Art. IV, § 4B (b).

(g) Order

The decision shall be evidenced by an order of the Supreme Court, which shall be certified under the seal of the Court by the Clerk. An opinion shall accompany the order or be filed at a later date. Unless the case is remanded to the Commission, the record shall be retained by the Clerk of the Supreme Court.

(h) Compliance with Conditions

If, pursuant to subsection (f)(1) of this Rule, the Court directs the judge to take certain actions, whether as a condition to reinstatement following a suspension or otherwise, the procedures for monitoring compliance with those directives shall be as set forth in Rule 18-438.

(i) Confidentiality

All proceedings in the Supreme Court related to charges of disability or impairment shall be confidential and remain under seal unless otherwise ordered by the Supreme Court.

(j) Public Inspection

Subject to section (h) or any other shielding of confidential material by the Supreme Court, the Court shall permit public inspection of the record filed with it.

Source: This Rule is derived in part from former Rule 18-408 (2018) and is in part new.

REPORTER'S NOTE

The Rules Committee proposes amending section (b) of Rule 18-437 to clarify that motions to dismiss or requests for relief in lieu of filing exceptions are not permitted to be filed with the Supreme Court. This closely follows the procedures in Attorney Grievance matters. In addition, the Supreme Court may deem a judge's failure to file exceptions as a waiver of the opportunity to take exceptions to the findings and proceed with disposition accordingly.

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter "the EJC Report"). One recommendation contained in the EJC Report was for the Rules Committee to remove gendered pronouns from the Rules. In subsection (f)(2), gendered pronouns "his or her" are replaced with "judge's."

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 6 – SPECIAL PROCEEDINGS

AMEND Rule 18-441 by clarifying in subsection (f)(1) that certain assertions may be made as a defense or mitigation to an investigation as well as to a charge, by stating in subsection (f)(1)(A) that the Board or the Commission may authorize Investigative Counsel to obtain certain records, and by stating in subsection (f)(2) that the Board or the Commission may order an examination, and by making a stylistic change, as follows:

Rule 18-441. CASES OF ALLEGED OR APPARENT DISABILITY OR IMPAIRMENT

(a) In General

Except as otherwise provided in this Rule, proceedings involving an alleged disability or impairment of a judge shall be in accordance with the other Rules in this Chapter.

(b) Initiation

A proceeding involving alleged or apparent disability or impairment may be initiated:

(1) by a complaint alleging that the judge is disabled or impaired, or by an inquiry into such a status commenced by Investigative Counsel pursuant to Rule 18-421 (f);

(2) by a claim of disability or impairment made by the judge in response to a complaint alleging sanctionable conduct;

(3) upon direction of the Commission pursuant to Rule 18-431;

(4) pursuant to a voluntary commitment or an order of involuntary commitment of the judge to a mental health facility; or

(5) pursuant to the appointment of a guardian of the person or property of the judge based on a finding that the judge is a disabled person as defined in Code, Estates and Trusts Article, § 13-101.

(c) Confidentiality

All proceedings involving a judge's alleged or apparent disability or impairment shall be confidential.

(d) Inability to Defend

Upon a credible allegation by the judge or other evidence that the judge, by reason of physical or mental disability or impairment, is unable to assist in a defense to a complaint of sanctionable conduct, disability, or impairment, the Commission may appoint (1) an attorney for the judge if the judge is not

otherwise represented by an attorney, (2) a guardian ad litem, or (3) both.

(e) Interim Measure

If a disability or impairment proceeding is initiated pursuant to section (b) of this Rule, the Commission immediately shall notify the Supreme Court which, after an opportunity for a hearing, may place the judge on temporary administrative leave pending further order of the Court and further proceedings pursuant to the Rules in this Chapter.

(f) Waiver of Medical Privilege; Medical or Psychological Examination

(1) The assertion by a judge of the existence of a mental or physical condition or an addiction, as a defense to or in mitigation of an investigation or a charge of sanctionable conduct, or the nonexistence of a mental or physical condition or an addiction, as a defense to an investigation or a charge that the judge has a disability or impairment, constitutes a waiver of the judge's medical privilege and permits:

(A) the Board or the Commission to authorize Investigative Counsel to obtain, by subpoena or other legitimate means, medical and psychological records of the judge relevant to issues presented in the case; and

(B) upon a motion by Investigative Counsel, the Board or the Commission to order the judge to submit to a physical or

mental examination by a licensed physician or psychologist designated by Investigative Counsel and direct the physician or psychologist to render a written report to Investigative Counsel. If the judge has asserted the existence of a mental or physical condition or an addiction as a defense to or in mitigation of an investigation or a charge of sanctionable conduct, the cost of the examination and report shall be paid by the judge. Otherwise, it shall be paid by the Commission.

(2) Failure or refusal of the judge to submit to a medical or psychological examination ordered by the Board or the Commission shall preclude the judge from presenting evidence of the results of medical examinations done on the judge's behalf, and the Commission may consider such a failure or refusal as evidence that the judge has or does not have a disability or impairment.

Source: This Rule is new. It is derived, in part, from ABA Model Rules for Judicial Disciplinary Enforcement, Rule 27.

REPORTER'S NOTE

The Rules Committee proposes amending section (f) of this Rule so that the provisions of this Rule apply to judicial discipline matters at the investigatory phase and not just discipline matters in which charges have been formerly filed against a judge. The proposed amendments also permit the Board, not only the Commission, to take certain actions.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 6 – SPECIAL PROCEEDINGS

AMEND Rule 18-442 by permitting the Supreme Court to place a judge on interim suspension or administrative leave on its own initiative and by adding new subsections (b)(3) and (c)(3) pertaining to grounds for placing a judge on interim suspension or administrative leave, respectively, as follows:

Rule 18-442. INTERIM SUSPENSION; ADMINISTRATIVE LEAVE

(a) Definition

In this Rule, "serious crime" means a crime (A) that constitutes a felony, (B) that reflects adversely on the judge's honesty, trustworthiness, or fitness as a judge, or (C) as determined by its statutory or common law elements, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or conspiracy to commit such a crime.

(b) Interim Suspension

The Supreme Court may immediately place a judge on interim suspension pending further order of the Court <u>on its own</u>

initiative, or upon written notice by the Commission that (1) the judge has been indicted for a serious crime, ~~or~~ (2) as a result of a disciplinary proceeding or a finding of impairment, the judge was ordered by the Court to take certain remedial action or to refrain from certain action or conduct and, after a hearing or the opportunity for a hearing, the Commission found that the judge willfully violated that order, or (3) sufficient information has been received that demonstrates that the continued service of the judge poses an immediate and substantial threat of serious harm to the public, to any person, to the judge, or to the erosion of public confidence in the independence, integrity, or impartiality of the judiciary, or in the orderly administration of justice. An order of interim suspension under this section does not preclude other proceedings or sanctions against the judge.

Committee note: An interim suspension under section (b) of this Rule may be with or without compensation, in whole or in part as directed by the Supreme Court.

(c) Administrative Leave

The Supreme Court may place a judge on interim administrative leave with compensation pending further order of the Court on its own initiative, or upon written notice by the Commission that (1) after the filing of charges against the judge and a hearing or the opportunity for a hearing, the Commission has found that (A) the judge has a disability or is

impaired and, at least temporarily, is unable to perform properly the duties of judicial office, or (B) the judge has committed sanctionable conduct warranting a suspension or removal from office, ~~or~~ (2) the judge has been charged by indictment or criminal information with criminal misconduct for which incarceration is a permissible penalty and poses a substantial threat of serious harm to the public, to any person, or to the administration of justice, or (3) sufficient information has been received that demonstrates that the continued service of the judge poses an immediate and substantial threat of serious harm to the public, to any person, to the judge, or to the erosion of public confidence in the independence, integrity, or impartiality of the judiciary, or in the orderly administration of justice.

(d) Reconsideration

A judge placed on interim suspension or administrative leave may move for reconsideration.

Source: This Rule is new.

REPORTER'S NOTE

The Rules Committee proposes amending sections (b) and (c) of this Rule to clarify that the Supreme Court may, on its own initiative, order that a judge be placed on interim leave or interim suspension. In addition, new subsections (b)(3) and (c)(3) are proposed to permit the placement of a judge on interim administrative leave or suspension in cases where the

judge poses an enhanced risk of harm to the public or damage to public confidence in the judiciary.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.7 by adding a provision to comment [5] pertaining to conflicts of interest arising from unforeseeable developments in the midst of a representation, as follows:

Rule 19-301.7. CONFLICT OF INTEREST—GENERAL RULE (1.7)

(a) Except as provided in section (b) of this Rule, an attorney shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the attorney's responsibilities to another client, a former client or a third person or by a personal interest of the attorney.

(b) Notwithstanding the existence of a conflict of interest under section (a) of this Rule, an attorney may represent a client if:

(1) the attorney reasonably believes that the attorney will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the attorney in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

COMMENT

General Principles--[1] Loyalty and independent judgment are essential elements in the attorney's relationship to a client. Conflicts of interest can arise from the attorney's responsibilities to another client, a former client or a third person or from the attorney's own interests. For specific Rules regarding certain conflicts of interest, see Rule 19-301.8 (1.8). For former client conflicts of interest, see Rule 19-301.9 (1.9). For conflicts of interest involving prospective clients, see Rule 19-301.18 (1.18). For definitions of "informed consent" and "confirmed in writing," see Rule 19-301.0 (g) and (b) (1.0).

[2] Resolution of a conflict of interest problem under this Rule requires the attorney to: (1) clearly identify the client or clients; (2) determine whether a conflict of interest exists; (3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and (4) if so, consult with the clients affected under section (a) of this Rule and obtain their informed consent, confirmed in writing. The clients affected under section (a) of this Rule include both of the clients referred to in subsection (a)(1) of this Rule and the one or more clients whose representation might be materially limited under subsection (a)(2) of this Rule.

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the attorney obtains the informed consent of each client under the conditions of section (b) of this Rule. To determine whether a conflict of interest exists, an attorney should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 19-305.1 (5.1). Ignorance caused by a failure to institute such procedures will not excuse an attorney's violation of this Rule. As to whether a client-attorney relationship exists or, having once been established, is continuing, see Comment to Rule 19-301.3 (1.3) and Scope.

[4] If a conflict arises after representation has been undertaken, the attorney ordinarily must withdraw from the representation, unless the attorney has obtained the informed consent of the client under the conditions of section (b) of this Rule. See Rule 19-301.16 (1.16). Where more than one client is involved, whether the attorney may continue to represent any of the clients is determined both by the attorney's ability to comply with duties owed to the former client and by the attorney's ability to represent adequately the remaining client or clients, given the attorney's duties to the former client. See Rule 19-301.9 (1.9). See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create apparent conflicts in the midst of a representation, as when a company sued by the attorney on behalf of one client is bought by another client represented by the attorney in an unrelated matter. Depending on the circumstances, the attorney may have the option to withdraw from one of the representations in order to avoid ~~the conflict~~ a conflict under section (a) of this Rule, but the attorney may avoid withdrawal from the affected matter, if and only if each conflicted client provides a signed waiver of conflict after having been provided informed consent confirmed in writing. The attorney must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 19-301.16 (1.16). The attorney must continue to protect the confidences of the client from whose representation the attorney has withdrawn. See Rule 19-301.9 (c) (1.9).

Identifying Conflicts of Interest: Directly Adverse--[6] Loyalty to a current client prohibits undertaking representation

directly adverse to that client without that client's informed consent. Thus, absent consent, an attorney may not act as an advocate in one matter against a person the attorney represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-attorney relationship is likely to impair the attorney's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the attorney will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the attorney's interest in retaining the current client. Similarly, a directly adverse conflict may arise when an attorney is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if an attorney is asked to represent the seller of a business in negotiations with a buyer represented by the attorney, not in the same transaction but in another, unrelated matter, the attorney could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation--[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that an attorney's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the attorney's other responsibilities or interests. For example, an attorney asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the attorney's ability to recommend or advocate all possible positions that each might take because of the attorney's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the

attorney's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Attorney's Responsibilities to Former Clients and Other Third Persons--[9] In addition to conflicts with other current clients, an attorney's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 19-301.9 (1.9) or by the attorney's responsibilities to other persons, such as fiduciary duties arising from an attorney's service as a trustee, executor or corporate director.

Personal Interest Conflicts--[10] The attorney's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of an attorney's own conduct in a transaction is in serious question, it may be difficult or impossible for the attorney to give a client detached advice. Similarly, when an attorney has discussions concerning possible employment with an opponent of the attorney's client, or with a law firm representing the opponent, such discussions could materially limit the attorney's representation of the client. In addition, an attorney may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the attorney has an undisclosed financial interest. See Rule 19-301.8 (1.8) for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 19-301.10 (1.10) (personal interest conflicts under Rule 19-301.7 (1.7) ordinarily are not imputed to other attorneys in a law firm).

[11] When attorneys representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the attorney's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the attorneys before the attorney agrees to undertake the representation. Thus, an attorney related to another attorney, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that attorney is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the attorneys are associated. See Rule 19-301.10 (1.10).

[12] A sexual relationship with a client, whether or not in violation of criminal law, will create an impermissible conflict between the interests of the client and those of the attorney if (1) the representation of the client would be materially limited by the sexual relationship and (2) it is unreasonable for the attorney to believe the attorney can provide competent and diligent representation. Under those circumstances, informed consent by the client is ineffective. See also Rule 19-308.4 (8.4).

Interest of Person Paying for an Attorney's Service--[13] An attorney may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the attorney's duty of loyalty or independent judgment to the client. See Rule 19-301.8 (f) (1.8). If acceptance of the payment from any other source presents a significant risk that the attorney's representation of the client will be materially limited by the attorney's own interest in accommodating the person paying the attorney's fee or by the attorney's responsibilities to a payer who is also a co-client, then the attorney must comply with the requirements of section (b) of this Rule before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations--[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in section (b) of this Rule, some conflicts are nonconsentable, meaning that the attorney involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the attorney is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under subsection (b)(1) of this Rule, representation is prohibited if in the circumstances the attorney cannot reasonably conclude that the attorney will be able to provide competent and diligent representation. See Rule 19-301.1 (1.1) (Competence) and Rule 19-301.3 (1.3) (Diligence).

[16] Subsection (b)(2) of this Rule describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same attorney may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government attorney are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

[17] Subsection (b)(3) of this Rule describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this subsection requires examination of the context of the proceeding. Although this subsection does not preclude an attorney's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 19-301.0 (p) (1.0)), such representation may be precluded by subsection (b)(1) of this Rule.

Informed Consent--[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 19-301.0 (g) (1.0) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the attorney represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the attorney cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate

representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing--[20] Section (b) of this Rule requires the attorney to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the attorney promptly records and transmits to the client following an oral consent. See Rule 19-301.0 (b) (1.0). See also Rule 19-301.0 (q) (1.0) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the attorney must obtain or transmit it within a reasonable time thereafter. See Rule 19-301.0 (b) (1.0). The requirement of a writing does not supplant the need in most cases for the attorney to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent--[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the attorney's representation at any time. Whether revoking consent to the client's own representation precludes the attorney from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the attorney would result.

Consent to Future Conflict--[22] Whether an attorney may properly request a client to waive conflicts that might arise in the future is subject to the test of section (b) of this Rule. The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the

likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by another attorney in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under section (b).

Conflicts in Litigation--[23] Subsection (b)(3) of this Rule prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by subsection (a)(2) of this Rule. A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily an attorney should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of section (b) of this Rule are met.

[24] Ordinarily an attorney may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the attorney in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that an attorney's action on behalf of one client will materially limit the attorney's effectiveness in representing

another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the attorney. If there is significant risk of material limitation, then absent informed consent of the affected clients, the attorney must refuse one of the representations or withdraw from one or both matters.

[25] When an attorney represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the attorney for purposes of applying subsection (a)(1) of this Rule. Thus, the attorney does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, an attorney seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the attorney represents in an unrelated matter.

Nonlitigation Conflicts--[26] Conflicts of interest under subsections (a)(1) and (a)(2) of this Rule arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the attorney's relationship with the client or clients involved, the functions being performed by the attorney, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. An attorney may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict

of interest rules, the attorney should make clear the attorney's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, an attorney may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, an attorney may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The attorney seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the attorney act for all of them.

Special Considerations in Common Representation--[29] In considering whether to represent multiple clients in the same matter, an attorney should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the attorney will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, an attorney cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the attorney is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the attorney subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[29.1] Rule 19-301.7 (1.7) may not apply to an attorney appointed by a court to serve as a Child's Best Interest Attorney in the same way that it applies to other attorneys. For example, because the Child's Best Interest Attorney is not bound to advocate a client's objective, siblings with conflicting views may not pose a conflict of interest for a Child's Best Interest Attorney, provided that the attorney determines the siblings' best interests to be consistent. A Child's Best Interest Attorney should advocate for the children's best interests and ensure that each child's position is made a part of the record, even if that position is different from the position that the attorney advocates. See Md. Rule 9-205.1 and Appendix to the Maryland Rules: Maryland Guidelines for Practice for Court-appointed Attorneys Representing Children in Cases Involving Child Custody or Child Access.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-attorney confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the attorney not to disclose to the other client information relevant to the common representation. This is so because the attorney has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the attorney will use that information to that client's benefit. See Rule 19-301.4 (1.4). The attorney should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the attorney will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the attorney to proceed with the representation when the clients have agreed, after being properly informed, that the attorney will keep certain information confidential. For example, the attorney may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect

representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the attorney should make clear that the attorney's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 19-301.2 (c) (1.2).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 19-301.9 (1.9) concerning the obligations to a former client. The client also has the right to discharge the attorney as stated in Rule 19-301.16 (1.16).

Organizational Clients--[34] An attorney who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 19-301.13 (a) (1.13). Thus, the attorney for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the attorney, there is an understanding between the attorney and the organizational client that the attorney will avoid representation adverse to the client's affiliates, or the attorney's obligations to either the organizational client or the new client are likely to limit materially the attorney's representation of the other client.

[35] An attorney for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The attorney may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the attorney's resignation from the board and the possibility of the corporation's obtaining legal advice from another attorney in such situations. If there is material risk that the dual role will compromise the attorney's independence of professional

judgment, the attorney should not serve as a director or should cease to act as the corporation's attorney when conflicts of interest arise. The attorney should advise the other members of the board that in some circumstances matters discussed at board meetings while the attorney is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the attorney's recusal as a director or might require the attorney and the attorney's firm to decline representation of the corporation in a matter.

Model Rules Comparison: Rule 19-301.7 (1.7) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for omitting the word "concurrent" in Rule 19-301.7 (1.7) (a) and (b) and Comment [1], adding language to Comment [5], and retaining most of existing Maryland language in Comment [12].

REPORTER'S NOTE

An unforeseeable concurrent client conflict occurs when there is "a conflict between two or more clients that: 1) did not exist at the time the representation commenced, but arose only during the ongoing representation of both clients, where 2) the conflict was not reasonably foreseeable at the outset of the representation, 3) the conflict arose through no fault of the lawyer, and 4) the conflict is of a type that is capable of being waived … but one of the clients will not consent to the dual representation" (*Ass'n of the Bar of the City of N.Y. Comm. On Prof'l and Judicial Ethics, Formal Op. 2005-05*).

The concept of unforeseeable concurrent client conflict is addressed in DC R RPC 1.7, but it not expressly addressed in ABA Model Rule 1.7 or in Maryland Rule 19-301.7, which follows Model Rule 1.7. The Rules Committee proposes revisions to Comment [5] of Rule 19-301.7 to provide additional clarification to a practitioner who discovers that the practitioner is faced with an unforeseeable concurrent client conflict. Specifically, under section (a) of this Rule, an attorney is required to withdraw from one or both representations involving conflicted clients unless each affected client gives informed consent, confirmed in writing as contemplated in subsection (b)(4).

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-304.4 by adding new section (c) about information from third parties, by adding a Committee note and a cross reference following section (c), and by adding new Comment [4], as follows:

Rule 19-304.4. RESPECT FOR RIGHTS OF THIRD PERSONS (4.4)

(a) In representing a client, an attorney shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) An attorney who receives a document, electronically stored information, or other property relating to the representation of the attorney's client and knows or reasonably should know that the document, electronically stored information, or other property was inadvertently sent shall promptly notify the sender.

(c) In communicating with third persons, an attorney representing a client in a matter shall not seek information relating to the matter that the attorney knows or reasonably should know is protected from disclosure by statute or by an

established evidentiary privilege, unless the protection has been waived. An attorney who receives information that is protected from disclosure shall (1) terminate the communication immediately and (2) give notice of the disclosure to the person entitled to enforce the protection against disclosure.

Committee note: If the person entitled to enforce the protection against disclosure is represented by an attorney, the notice required by this Rule shall be given to the person's attorney. See Rules 1-331 and 19-304.2 (4.2).

Cross reference: To compare generally the duties of a party who receives inadvertently sent materials during discovery in a civil action in a circuit court, see Rule 2-402. See also Rules 2-510 and 2-510.1 to compare the duties of a party who receives inadvertently sent materials in answer to a subpoena.

COMMENT

...

[4] Third persons may possess information that is confidential to another person under an evidentiary privilege or under a law providing specific confidentiality protection, such as trademark, copyright, or patent law. For example, present or former organizational employees or agents may have information that is protected as a privileged attorney-client communication or as work product. An attorney may not knowingly seek to obtain confidential information from a person who the attorney knows or reasonably should know has no authority to waive the privilege. Regarding current employees of a represented organization, see also Rule 19-304.2 (4.2).

Model Rules Comparison - Sections (a) and (b) of Rule 19-304.4 ~~is~~ are substantially similar to the language of Model Rule 4.4 of the Ethics 2000 amendments to the ABA Model Rules of Professional Conduct. Section (c) substantially restores to the Rule Maryland language as it existed prior to a 2017 amendment, with slight modification.

REPORTER'S NOTE

Amendments to Rule 19-304.4, effective April 1, 2017, conformed the Rule to ABA Model Rule 4.4 after the Ethics 2000 amendments to the Model Rules of Professional Conduct. The amendments deleted language from former section (b) that addressed certain responsibilities of an attorney when obtaining information from third persons, without adding comparable language elsewhere in the Rule.

Proposed amendments to Rule 19-304.4 were transmitted to the Supreme Court in the 194th and 195th Reports. The amendments proposed in these earlier Reports substantially restored the deleted language by adding new section (c), a Committee note following section (c), and Comment [4]. Additionally, a cross reference to Rules 2-402, 2-510, and 2-510.1 was added following the Committee note.

After an open meeting on the 195th Report, the proposed amendments were withdrawn for further consideration by the Rules Committee. Upon further consideration by the Committee, restoration of language in section (c) is still recommended, but with slight modification regarding the responsibilities of an attorney upon receipt of protected information from a third party. An attorney is no longer required to notify the tribunal of a disclosure. In addition, the proposed language in Comment [4] has been amended to add an attorney's knowledge requirement concerning the right of a third party to waive privilege.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-304.2 by replacing gendered pronouns with non-gender specific language, adding new language, and updating a reference in Comment [6], as follows:

Rule 19-304.2. COMMUNICATIONS WITH PERSONS REPRESENTED BY AN ATTORNEY (4.2)

...

COMMENT

[6] If an agent or employee of a represented person that is an organization is represented in the matter by ~~his or her~~ the agent or employee's own attorney, the consent by that attorney to a communication will be sufficient for purposes of this Rule. Compare Rule 19-303.4 (f) (3.4). In communicating with a current agent or employee of an organization, an attorney must not seek to obtain information that the attorney knows or reasonably should know is subject to an evidentiary or other privilege of the organization. Consent of the organization's attorney is not required for communication with a former employee. Regarding communications with former employees, see Rule 19-304.4 ~~(b)~~ (c) (4.4).

...

REPORTER'S NOTE

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Committee on

Equal Justice Rules Review Subcommittee (hereinafter "the EJC Report"). One recommendation contained in the EJC Report was for the Rules Committee to remove gendered pronouns from the Rules. In Comment [6], gendered pronouns "his or her" are replaced with "the agent or employee's."

An amendment to Comment [6] is proposed to directly address the inapplicability of Rule 19-304.2 to communications with former employees of a represented organization. The proposed additional language is taken from Comment [7] of Rule 4.2 of the American Bar Association Model Rules of Professional Conduct and is consistent with the approach taken by neighboring jurisdictions, including the District of Columbia.

A proposed amendment also corrects the section of Rule 19-304.4 referenced in Comment [6]. The addition of a section (c) to Rule 19-304.4 has been proposed.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-305.5 by adding language to the stem of section (d), by adding new subsection (d)(3), by updating Comment [15] to conform to the new subsection, by expanding Comment [18] to address the new subsection, and by making stylistic changes, as follows:

Rule 19-305.5. UNAUTHORIZED PRACTICE OF LAW; MULTI-JURISDICTIONAL PRACTICE OF LAW (5.5)

(a) An attorney shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) An attorney who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the attorney is admitted to practice law in this jurisdiction.

(c) An attorney admitted in another United States jurisdiction, and not disbarred or suspended from practice in

any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with an attorney who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the attorney, or a person the attorney is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within subsections (c)(2) or (c)(3) of this Rule and arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted to practice.

(d) An attorney admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this

jurisdiction ~~that~~ and may establish an office or other systematic or continuous presence in this jurisdiction to provide those services if the legal services:

(1) are provided to the attorney's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; ~~or~~

(2) are services that the attorney is authorized to provide by federal law or other law of this jurisdiction; or

(3) exclusively involve the law of another jurisdiction in which the attorney is licensed to practice law, provided the attorney advises the attorney's client in writing that the attorney is not licensed to practice Maryland law.

...

COMMENT

...

[15] Section (d) of this Rule identifies ~~two~~ three circumstances in which an attorney who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis.

[16] Subsection (d)(1) of this Rule applies to an attorney who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This subsection does not authorize the provision of personal legal services to the employer's officers or employees. The subsection applies to in-house corporate attorneys, government attorneys and others who are employed to render legal services to the employer. The attorney's ability to represent

the employer outside the jurisdiction in which the attorney is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the attorney's qualifications and the quality of the attorney's work.

[17] If an employed attorney establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the attorney is governed by Md. Code, Business Occupations and Professions Article, § 1-206(d). In general, the employed attorney is subject to disciplinary proceedings under the Maryland Rules and must comply with Md. Code, Business Occupations and Professions Article, § 10-215 (and Rule 19-214) for authorization to appear before a tribunal. See also Rule 19-215 (as to legal services attorneys).

[18] Subsection (d)(2) of this Rule recognizes that an attorney may provide legal services in a jurisdiction in which the attorney is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. Subsection (d)(3) recognizes that an attorney who is not licensed in Maryland may provide legal services in Maryland if the services exclusively involve the law of another jurisdiction in which the attorney is licensed to practice. The attorney must advise the client in writing that the attorney is not licensed to practice Maryland law. *See Attorney Grievance Commission v. Jackson*, 477 Md. 174 (2022).

[19] An attorney who practices law in this jurisdiction pursuant to section (c) or (d) of this Rule or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 19-308.5 (a) (8.5) and Md. Rules 19-701 and 19-711.

[20] In some circumstances, an attorney who practices law in this jurisdiction pursuant to section (c) or (d) of this Rule may have to inform the client that the attorney is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 19-301.4 (b) (1.4).

[21] Sections (c) and (d) of this Rule do not authorize communications advertising legal services to prospective clients in this jurisdiction by attorneys who are admitted to practice in other jurisdictions. Rules 19-307.1 (7.1) to 19-307.5 (7.5)

govern whether and how attorneys may communicate the availability of their services to prospective clients in this jurisdiction.

[22] Section (e) is not intended to permit a foreign attorney to be admitted pro hac vice in any proceeding, but it does not preclude the foreign attorney (1) from being present with a Maryland attorney at a judicial, administrative, or ADR proceeding to provide consultative services to the Maryland attorney during the proceeding, or (2) subject to Rule 5-702, from testifying as an expert witness.

Model Rules Comparison: Rule 19-305.5 (5.5) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, except that subsection (d)(3) and section (e) ~~is~~ are new.

REPORTER'S NOTE

In *Attorney Grievance Commission v. Jackson*, 477 Md. 174 (2022), the Supreme Court, then the Court of Appeals, addressed claims of unauthorized practice of law against an attorney who was not admitted to practice in Maryland. The attorney, who was licensed in the District of Columbia, was the partner of a law firm with its office located in Maryland. The law firm also employed attorneys licensed in Maryland.

As part of its decision, the Court held that, because none of the listed exceptions applied, the attorney's physical presence in the firm's Maryland office while practicing D.C. law technically violated the current text of Rule 19-305.5 (5.5). However, having determined that no sanction was appropriate, the Court dismissed the case. *Id.* at 225.

Despite holding that a violation of the plain language of Rule 5.5 occurred, the Court questioned "whether the 'physical presence' limitations set forth in Rule 5.5 (b)(1) continue to strike the appropriate balance between protecting the public and our profession on the one hand and recognizing the realities of the modern practice of law on the other." *Id.* at 212. In its discussion of Rule 5.5, the Court pointed to the professional rules of several other states and questioned whether Maryland should follow their lead. Accordingly, the Court referred the Rule "to the Standing Committee on Rules of Practice and

Procedure for consideration and recommendation, as a matter of general policy, regarding whether an amendment to Rule 5.5 (b)(1) may be warranted." *Id.* at 213.

While the Court pointed to subsection (b)(1) of Rule 19-305.5 for possible amendment, section (d), providing exceptions to the general prohibition against the practice of law in section (b), may also prove relevant. In other states that have primarily adopted the American Bar Association (ABA) Model Rule 5.5, several have amended section (d) to provide additional exceptions to the general prohibition against the practice of law.

Over the course of several meetings, the Attorneys and Judges Subcommittee of the Rules Committee considered amendments to Rule 19-305.5 to address the issues raised by the Supreme Court in *Jackson*. During these discussions, several concerns were raised about attorneys practicing the law of another jurisdiction while present in Maryland, including: (1) the sufficiency of notice to clients and prospective clients; (2) the possibility of registration with the Attorney Information System ("AIS"); (3) the regulation of attorney trust accounts; (4) the treatment of these attorneys in regard to monetary assessments and reporting requirements, including payments to the Client Protection Fund, reports to taxing agencies, and consequences for child support arrearages; and (5) the status of potential amendments to ABA Model Rule 5.5. Overall, research revealed that the issues presented are very complex, some approaches to these issues could involve substantial funds to implement, and most of the issues will require additional time to work through.

Maryland is not the only state acknowledging the realities of modern remote law practice. The ABA currently has an active Rule 5.5 Working Group considering possible amendments to the Model Rule. At this time, the group has not finalized any changes nor submitted reports to the ABA House of Delegates. It appears that the ABA will be closely examining the same issues that were raised by the Rules Committee, as well as additional concerns. The ABA will receive feedback from multiple states that may provide insight into how states may need to work in tandem to implement certain changes to Rule 5.5. Therefore, it is likely that the Maryland Rule will require additional consideration and revision if the Model Rule is amended. The Chair of the ABA Working Group has indicated that August 2024 would be the earliest that amendments may be submitted to the House of Delegates for consideration.

Although the ABA Model Rule will not be updated for some time, the provisions of the Maryland Rule currently conflict with the decision of *Attorney Grievance Commission v. Jackson*, 477 Md. 174 (2022). Therefore, a temporary fix to Rule 19-305.5 has been prepared to remove the conflict between the text of the Rule and the *Jackson* opinion.

The proposed amendments to Rule 19-305.5 before the Committee mirror the slight changes made to the Model Rule by other states as discussed in *Jackson*. Proposed amendments to the stem of section (d) clarify that the exceptions within the section also apply to establishing an office or other systematic or continuous presence to provide legal services in the State. New subsection (d)(3) permits an attorney to provide legal services in Maryland that exclusively involve the law of another jurisdiction in which the attorney is licensed to practice. The subsection also explicitly requires the attorney to advise the attorney's client that the attorney is not licensed to practice Maryland law. This explicit requirement ensures that clients will not be confused about an attorney's licensing despite a physical presence in the state. The new subsection is derived in part from the versions of Rule 5.5 adopted by Arizona and Minnesota.

Comment [15] is updated to reflect that section (d) now contains three exceptions to the general prohibition against practicing law in Maryland. Proposed additional language in Comment [18] discuses new subsection (d)(3) and adds a citation to the *Jackson* decision.

As discussed above, these proposed amendments do not represent a final solution to every issue raised by the Rules Committee. Additional amendments will be considered after further research and review of any changes finalized by the ABA.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 100 – STATE BOARD OF LAW EXAMINERS AND CHARACTER COMMITTEES

AMEND Rule 19-103 by revising provisions pertaining to payments made to a Character Committee and by requiring the State Board of Law Examiners to adopt a certain Board Rule, as follows:

Rule 19-103. CHARACTER COMMITTEES

The Court shall appoint a Character Committee for each of the seven Appellate Judicial Circuits of the State. Each Character Committee shall consist of not less than five members whose terms shall be five years each. The terms shall be staggered. Each Character Committee member shall be an attorney admitted and in good standing to practice law in Maryland. The Court shall designate the chair of each Committee and vice chair, if any. For each character questionnaire referred to a Character Committee, the Board shall ~~remit to the Committee a sum to defray some of the expense of the investigation~~ reimburse the actual expenses incurred by the Character Committee in conducting the investigation and shall remit a reasonable sum for administrative support to the extent a Character Committee

chooses to obtain such administrative support. The Board shall adopt by Board Rule policies and procedures pertaining to the authorization of payments under this Rule.

Cross reference: See Rule 19-204 for the Character Review Procedure.

Source: This Rule is derived from former Rule 17 of the Rules Governing Admission to the Bar of Maryland (2016) and is in part new.

REPORTER'S NOTE

At the request of the Supreme Court and the State Board of Law Examiners (the "Board"), amendments to Rule 19-103 are proposed to specify the expenditures for which a Character Committee may be reimbursed or receive payment and to require the Board to adopt by Board Rule policies and procedures pertaining to authorization of payments under the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

SPECIAL AUTHORIZATION TO PRACTICE

AMEND Rule 19-218 by expanding the definition of "legal services program" in subsection (a)(3) to apply to a "program" in addition to a "clinic" and by replacing the term "pro bono" with "free" in subsection (a)(3), as follows:

Rule 19-218. SPECIAL AUTHORIZATION FOR OUT-OF-STATE ATTORNEYS AFFILIATED WITH PROGRAMS PROVIDING LEGAL SERVICES TO LOW-INCOME INDIVIDUALS

(a) Definition

As used in this Rule, "legal services program" means a program operated by (1) an entity that provides civil legal services to low-income individuals in Maryland who meet the financial eligibility requirements of the Maryland Legal Services Corporation and is on a list of such programs provided by the Corporation to the State Court Administrator and posted on the Judiciary website pursuant to Rule 19-505; (2) the Maryland Office of the Public Defender; (3) a clinic or program offering ~~pro bono~~ free legal services and operating in a courthouse facility; or (4) a local pro bono committee or bar

association affiliated project that provides pro bono legal services.

(b) Eligibility

Pursuant to this Rule, a member of the Bar of another state who is employed by or associated with a legal services program may practice in this State pursuant to that program if (1) the individual is a graduate of a law school meeting the requirements of Rule 19-201 (a)(2) and (2) the individual will practice under the supervision of a member of the Bar of this State.

Cross reference: For the definition of "State," see Rule 19-101 (l).

(c) Proof of Eligibility

To obtain authorization to practice under this Rule, the out-of-state attorney shall file with the Clerk of the Supreme Court a written request accompanied by (1) evidence of graduation from a law school as defined in Rule 19-201 (a)(2), (2) a certificate of the highest court of another state certifying that the attorney is a member in good standing of the Bar of that state, and (3) a statement signed by the Executive Director of the legal services program that includes (A) a certification that the attorney is currently employed by or associated with the program, (B) a statement as to whether the attorney is receiving any compensation other than reimbursement

of reasonable and necessary expenses, and (C) an agreement that, within ten days after cessation of the attorney's employment or association, the Executive Director will file the Notice required by section (e) of this Rule.

(d) Certificate of Authorization to Practice

Upon the filing of the proof of eligibility required by this Rule, the Clerk of the Supreme Court shall issue a certificate under the seal of the Court certifying that the attorney is authorized to practice under this Rule, subject to the automatic termination provision of section (e) of this Rule. The certificate shall state (1) the effective date, (2) whether the attorney (A) is authorized to receive compensation for the practice of law under this Rule or (B) is authorized to practice exclusively as a pro bono attorney pursuant to Rule 19-504, and (3) any expiration date of the special authorization to practice. If the attorney is receiving compensation for the practice of law under this Rule, the expiration date shall be no later than two years after the effective date. If the attorney is receiving no compensation other than reimbursement of reasonable and necessary expenses, no expiration date shall be stated.

Cross reference: An attorney who intends to practice law in Maryland for compensation for more than two years should apply for admission to the Maryland Bar.

(e) Automatic Termination

Authorization to practice under this Rule is automatically terminated if the attorney ceases to be employed by or associated with the legal services program. Within ten days after cessation of the attorney's employment or association, the Executive Director of the legal services program shall file with the Clerk of the Supreme Court notice of the termination of authorization.

(f) Disciplinary Proceedings in Another Jurisdiction

Promptly upon the filing of a disciplinary proceeding in another jurisdiction, an attorney authorized to practice under this Rule shall notify the Executive Director of the legal services program of the disciplinary matter. An attorney authorized to practice under this Rule who in another jurisdiction (1) is disbarred, suspended, or otherwise disciplined, (2) resigns from the bar while disciplinary or remedial action is threatened or pending in that jurisdiction, or (3) is placed on inactive status based on incapacity shall inform Bar Counsel and the Clerk of the Supreme Court promptly of the discipline, resignation, or inactive status.

(g) Revocation or Suspension

At any time, the Court, in its discretion, may revoke or suspend an attorney's authorization to practice under this Rule by written notice to the attorney. By amendment or deletion of this Rule, the Court may modify, suspend, or revoke the special

authorizations of all out-of-state attorneys issued pursuant to this Rule.

(h) Special Authorization not Admission

Out-of-state attorneys authorized to practice under this Rule are not, and shall not represent themselves to be, members of the Bar of this State, except in connection with practice that is authorized under this Rule. They are required to make payments to the Client Protection Fund of the Bar of Maryland and the Disciplinary Fund, except that an attorney who is receiving no compensation other than reimbursement of reasonable and necessary expenses is not required to make the payments.

(i) Rules of Professional Conduct

An attorney authorized to practice under this Rule is subject to the Maryland Attorneys' Rules of Professional Conduct.

(j) Reports

Upon request by the Administrative Office of the Courts, an attorney authorized to practice under this Rule shall timely file an IOLTA Compliance Report in accordance with Rule 19-409 and a Pro Bono Legal Service Report in accordance with Rule 19-503.

Source: This Rule is derived from former Rule 19-215 (2018).

REPORTER'S NOTE

The Rules Committee proposes revising subsection (a)(3) of Rule 19-218 so that the definition of "legal services program" applies to the Maryland Center for Legal Assistance ("MCLA"). This change would permit the MCLA to recruit out-of-state and retired attorneys to provide certain pro bono services to self-represented litigants throughout the State.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 500 – PRO BONO LEGAL SERVICES

AMEND Rule 19-505 by adding a provision requiring notice of court-based pro bono opportunities to be posted on the judiciary website and by making stylistic changes, as follows:

Rule 19-505. LIST OF PRO BONO AND LEGAL SERVICES PROGRAMS

At least once a year, the Maryland Legal Services Corporation shall provide to the State Court Administrator a current list of all grantees and other entities recognized by the Corporation that serve low-income individuals who meet the financial eligibility criteria of the Corporation. The State Court Administrator shall post the current list on the Judiciary website along with information about pro bono opportunities in court-based legal services programs.

Cross reference: See Rules 1-325, 1-325.1, ~~and~~ 19-215, and 19-605.

Source: This Rule is derived from former Rule 16-905 (2016).

REPORTER'S NOTE

The Rules Committee proposes amending Rule 19-505 to require that information concerning court-based pro bono opportunities be posted annually on the judiciary website in an effort to increase public awareness of these services and to assist with the recruitment of pro bono attorneys.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

AMEND Rule 19-605 by adding a provision to subsection (b)(2) permitting an attorney on inactive/retired status to participate in a court-based legal services program and by making a stylistic change, as follows:

Rule 19-605. OBLIGATION OF ATTORNEYS

(a) Conditions Precedent to Practice

(1) Generally

Except as otherwise provided in subsection (a)(2) of this Rule or Rule 19-218 (h), each attorney admitted to practice law in Maryland or issued a certificate of special authorization under Rule 19-218 or Rule 19-219, as a condition precedent to the practice of law in Maryland, shall (A) provide to the treasurer of the Fund the attorney's social security number if the social security number has not already been provided to the Board of Law Examiners, (B) provide to the treasurer of the Fund the attorney's federal tax identification number or a statement that the attorney has no such number, and (C) no later than September 10 of each year, pay to the treasurer of the Fund the sum set by the Supreme Court, and in the event of delinquent

payment of that sum, pay all applicable late charges, as set by the trustees. Late charges set by the trustees are subject to the approval of the Supreme Court.

(2) Exceptions

An attorney is exempt from payment of the mandatory assessment but may contribute voluntarily to the Fund if:

(A) the attorney is a federal or Maryland judge, including a senior judge, or full-time magistrate and is not permitted to practice law otherwise in Maryland;

(B) the attorney is a full-time federal or Maryland administrative law judge or hearing examiner and is not permitted to practice law otherwise in Maryland;

(C) the attorney is on inactive/retired status pursuant to subsection (b)(2) of this Rule; or

(D) the attorney is a full-time judicial law clerk and is not permitted to practice law otherwise in Maryland.

Cross reference: See Rule 19-705 (Disciplinary Fund).

(3) Method of Payment

Payments of amounts due the Fund shall be (A) by check or money order~~,~~ or (B) transmitted electronically. Firms, agencies, and other entities with more than one attorney may submit payment for all attorneys by one check or money order, provided that a list of all attorneys for whom payment is made shall be included.

Committee note: AIS currently is unable to accept a single credit card payment applicable to the payment obligations of multiple attorneys.

(b) Attorneys on Inactive/Retired Status

(1) The trustees of the Fund may approve attorneys, other than attorneys on permanent retired status pursuant to Rule 19-717.1, for inactive/retired status, and, by regulation, may provide a uniform deadline date for seeking approval of inactive/retired status.

(2) An attorney on inactive/retired status may engage in the practice of law without payment to the Fund or to the Disciplinary Fund if (A) the attorney is on inactive/retired status solely as a result of having been approved for that status by the trustees of the Fund and not as a result of any action against the attorney pursuant to the Rules in Chapter 700 of this Title, and (B) the attorney's practice is limited to representing clients without compensation, other than reimbursement of reasonable and necessary expenses, as part of the attorney's participation in a legal services or pro bono publico program sponsored or supported by a local bar association, the Maryland State Bar Association, an affiliated bar foundation, ~~or~~ the Maryland Legal Services Corporation, or a clinic or program offering free legal services and operating in a courthouse facility.

(c) Invoice for Assessment or Contribution

On or before July 10 of each year, from information supplied by the Fund, AIS shall generate and send electronically to each attorney who is responsible for an assessment for the next ensuing fiscal year or who has volunteered to contribute to the Fund, an invoice for the amount due, along with notice that (1) payment thereof is due within 60 days, and (2) payment may be made electronically or by check or money order payable to the Fund.

(d) Notice of Payment

AIS shall notify the Fund of all electronic payments received and the Fund shall record in AIS all checks and money orders received.

Source: This Rule is derived in part from former Rule 16-811.5 (2016) and is in part new.

REPORTER'S NOTE

The Rules Committee proposes expanding the provisions of subsection (b)(2) of Rule 19-605 so that attorneys on inactive/retired status are eligible to participate in court-based legal services programs.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION REINSTATEMENT

AMEND Rule 19-751 by adding new subsection (b)(1) requiring that an attorney, as a condition precedent to reinstatement, pay all outstanding assessments and applicable late fees; by adding new language to subsection (c)(3) requiring an attorney to affirmatively state in the petition for reinstatement that all assessments and applicable late fees are paid; and by making stylistic changes, as follows:

Rule 19-751. REINSTATEMENT—SUSPENSION SIX MONTHS OR LESS

(a) Scope of Rule

This Rule applies to an attorney who has been suspended for a fixed period of time not exceeding six months.

(b) Reinstatement Not Automatic

(1) Condition Precedent to Reinstatement

Before an attorney may be reinstated under this Rule, the attorney shall pay all outstanding assessments, including late fees, if any, owed to the Client Protection Fund pursuant to Rule 19-605 and the Disciplinary Fund pursuant to Rule 19-705 that accrued prior to the attorney's suspension.

(2) Order of Reinstatement Required

An attorney subject to this Rule is not automatically reinstated upon expiration of the period of suspension. An attorney is not reinstated until the Supreme Court enters an Order of Reinstatement.

(c) Petition for Reinstatement

(1) Requirement

An attorney who seeks reinstatement shall file a verified petition for reinstatement with the Clerk of the Supreme Court and serve a copy on Bar Counsel. The attorney shall be the petitioner and Bar Counsel shall be the respondent.

(2) Timing

The petition may not be filed earlier than ten days prior to the end of the period of suspension.

(3) Content

The petition shall be captioned "In the Matter of the Petition for Reinstatement of XXXX to the Bar of Maryland" and shall state the effective date of the suspension and the asserted date of its completion, certify that (A) the attorney has complied with Rule 19-741 and all requirements and conditions specified in the suspension order, (B) the attorney has paid all assessments and applicable late fees owed to the Client Protection Fund and the Disciplinary Fund as of the effective date of the attorney's suspension, and ~~(B)~~ (C) to the

best of the attorney's knowledge, information, and belief, no complaints or disciplinary proceedings are currently pending against the attorney. The petition shall be accompanied by (i) a copy of the Court's order imposing the suspension, (ii) any opinion that accompanied that order, and (iii) any filing fee prescribed by law.

(d) Review by Bar Counsel

Bar Counsel shall promptly review the petition and, within five days after service, shall file with the Clerk of the Supreme Court and serve on the attorney any objection to the reinstatement. The basis of the objection shall be stated with particularity.

(e) Action by Supreme Court

(1) If No Timely Objection Filed

If Bar Counsel has not filed a timely objection, the Clerk shall promptly forward to the Chief Justice or a justice of the Court designated by the Chief Justice the petition, a certificate that no objection had been filed, and a proposed Order of Reinstatement. The Chief Justice or the designee may sign and file the order on behalf of the Court.

(2) If Timely Objection Filed

If Bar Counsel files a timely objection, the Clerk shall refer the matter to the full Court for its consideration. The

Court may overrule Bar Counsel's objections and enter an Order of Reinstatement or set the matter for hearing.

(f) Effective Date of Reinstatement Order

An order that reinstates the petitioner may provide that it shall become effective immediately or on a date stated in the order.

(g) Duties of Clerk

(1) Attorney Admitted to Practice

Promptly after the effective date of an order that reinstates a petitioner, the Clerk of the Supreme Court shall comply with Rule 19-761.

(2) Attorney Not Admitted to Practice

Upon receiving a reinstatement notice authorized by section (e) of this Rule, or on the effective date of an order or notice that reinstates a petitioner not admitted by the Supreme Court to practice law, the Clerk of the Supreme Court shall remove the petitioner's name from the list maintained in that Court of non-admitted attorneys who are ineligible to practice law in this State, and shall certify that fact to the Board of Law Examiners and the clerks of all courts in the State.

(h) Motion to Vacate Reinstatement

Bar Counsel may file a motion to vacate an order that reinstates the petitioner if (1) the petitioner has failed to

demonstrate substantial compliance with the order, including any condition of reinstatement imposed under Rule 19-741 (e) or (2) the petition filed under section (a) of this Rule contains a false statement or omits a material fact, the petitioner knew the statement was false or the fact was omitted, and the true facts were not disclosed to Bar Counsel prior to entry of the order. The petitioner may file a verified response within 15 days after service of the motion, unless a different time is ordered. If there is a factual dispute to be resolved, the court may enter an order designating a judge in accordance with Rule 19-722 to hold a hearing. The judge shall allow reasonable time for the parties to prepare for the hearing and may authorize discovery pursuant to Rule 19-726. The applicable provisions of Rule 19-727 shall govern the hearing. The applicable provisions of Rules 19-728 and 19-740, except section (c) of Rule 19-740, shall govern any subsequent proceedings in the Supreme Court. The Court may reimpose the discipline that was in effect when the order was entered or may impose additional or different discipline.

Source: This Rule is new.

REPORTER'S NOTE

The Rules Committee proposes new subsection (a)(1) be added to Rule 19-751 to clarify that, as a condition precedent prior

to petitioning the Court for reinstatement, an attorney must pay any outstanding assessments and applicable late fees owed to the Client Protection Fund and the Disciplinary Fund that accrued prior to the attorney's suspension. Stylistic changes are also proposed to section (a).

In addition, new subsection (c)(3)(B) is proposed to require the attorney to affirmatively aver in the petition that all assessments and applicable late fees are paid. Stylistic changes are also proposed to subsection (c)(3).

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION REINSTATEMENT

AMEND Rule 19-752 by adding new subsection (c)(3)(D) requiring a petitioner to certify in a petition for reinstatement that all applicable assessments and late fees have been paid; by adding a provision to subsection (f)(1) requiring compliance with subsection (h)(2)(H) of this Rule; by adding new subsection (h)(2)(H)(i) requiring that a petitioner, as a condition precedent to reinstatement, must pay all applicable outstanding assessments and late fees prior to being eligible for reinstatement; and by making stylistic changes, as follows:

Rule 19-752. REINSTATEMENT--OTHER SUSPENSION; DISBARMENT; DISABILITY INACTIVE STATUS; RESIGNATION

(a) Scope of Rule

This Rule applies to an attorney who has been disbarred, suspended indefinitely, suspended for a fixed period longer than six months, or transferred to disability inactive status or who has resigned from the practice of law.

(b) Reinstatement Not Automatic

An attorney subject to this Rule is not automatically reinstated upon expiration of the period of suspension. An attorney is not reinstated until the Supreme Court enters an Order of Reinstatement.

(c) Petition for Reinstatement

(1) Requirement

An attorney who seeks reinstatement under this Rule shall file a verified petition for reinstatement with the Clerk of the Supreme Court and serve a copy on Bar Counsel. The attorney shall be the petitioner. Bar Counsel shall be the respondent.

(2) Timing Following Order of Suspension or Disbarment

(A) If the attorney was suspended for a fixed period, the petition may not be filed earlier than 30 days prior to the end of the period of suspension.

(B) If the attorney was suspended for an indefinite period or disbarred, the petition may not be filed earlier than ~~(i)~~ the time specified in the order of suspension or disbarment.

(3) Content

The petition shall be captioned "In the Matter of the Petition for Reinstatement of XXXXX to the Bar of Maryland" and state or be accompanied by the following:

(A) docket references to all prior disciplinary or remedial actions, including all actions pending as of the date

of the attorney's disbarment or suspension, to which the attorney was a party;

(B) a copy of the order that disbarred or suspended the attorney, placed the attorney on inactive status, or accepted the resignation of the attorney and any opinion of the Court that accompanied the order;

(C) that the attorney has complied in all respects with the provisions of Rule 19-741 or, if applicable, Rule 19-743, and with any terms or conditions stated in the disciplinary or remedial order;

(D) that the attorney has paid all assessments and applicable late fees owed to the Client Protection Fund pursuant to Rule 19-605 and the Disciplinary Fund pursuant to Rule 19-705 as of the effective date of the attorney's suspension, disbarment, transfer to disability inactive status, or resignation;

~~(D)~~ (E) a description of the conduct or circumstances leading to the order of disbarment, suspension, placement on inactive status, or acceptance of resignation;

~~(E)~~ (F) facts establishing the attorney's subsequent conduct and reformation, present character, present qualifications and competence to practice law, and ability to satisfy the criteria set forth in section (h) of this Rule; and

~~(F)~~(G) a statement that, to the best of the attorney's knowledge, information, and belief, no complaints or disciplinary proceedings are currently pending against the attorney.

. . .

(f) Disposition

(1) Consent by Bar Counsel

If, pursuant to subsection (e)(2) of this Rule, Bar Counsel has filed a consent to reinstatement, and if the attorney has complied with subsection (h)(2)(H) of this Rule, the Clerk shall proceed in accordance with Rule 19-751 (e)(1).

(2) Other Cases

In other cases, upon review of the petition and Bar Counsel's response, the Court may (A) without a hearing, dismiss the petition or grant the petition and enter an order of reinstatement with such conditions as the Court deems appropriate, or (B) order further proceedings in accordance with section (g) of this Rule.

. . .

(h) Criteria for Reinstatement

(1) Generally

In determining whether to grant a petition for reinstatement, the Supreme Court shall consider the nature and circumstances of the attorney's conduct that led to the

disciplinary or remedial order and the attorney's (A) subsequent conduct, (B) current character, and (C) current qualifications and competence to practice law.

(2) Specific Criteria

The Court may order reinstatement if the attorney meets each of the following criteria or presents sufficient reasons why reinstatement should be ordered in the absence of satisfaction of one or more of those criteria:

(A) the attorney has complied in all respects with the provisions of Rule 19-741 or, if applicable, 19-743 and with the terms and conditions of prior disciplinary or remedial orders;

. . .

(H) the attorney has complied with all financial obligations required by these Rules or by court order, including (i) payment of all outstanding assessments, including late fees, if any, owed to the Client Protection Fund pursuant to Rule 19-605 and the Disciplinary Fund pursuant to Rule 19-705 that accrued prior to the attorney's suspension, disbarment, transfer to disability inactive status, or resignation, (ii) reimbursement of all amounts due to the attorney's former clients, ~~(ii)~~(iii) payment of restitution which, by court order, is due to the attorney's former clients or any other person, ~~(iii)~~(iv) reimbursement of the Client Protection Fund for all claims that arose out of the attorney's practice of law and

satisfaction of all judgments arising out of such claims, and ~~(iv)~~ (v) payment of all costs assessed by court order or otherwise required by law.

. . .

REPORTER'S NOTE

The Rules Committee proposes that new subsection (c)(3)(D) be added to Rule 19-752 to clarify that, as a condition precedent prior to petitioning the Court for reinstatement, an attorney must pay any outstanding assessments and applicable late fees owed to the Client Protection Fund and the Disciplinary Fund that occurred prior to the attorney's suspension, disbarment, transfer to disability inactive status, or resignation. Stylistic changes are also proposed to subsection (c)(3).

In addition, new subsection (h)(2)(H)(i) is proposed to require the attorney to affirmatively aver in the petition that all assessments and applicable late fees are paid.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 200 – CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-202 by replacing "Justice" with "justice" in section (n), as follows:

Rule 1-202. DEFINITIONS

In these rules the following definitions apply except as expressly otherwise provided or as necessary implication requires:

. . .

(n) Judge

"Judge" means a judge of a court of this State and refers, as applicable under the circumstances, to a judge of the court (1) to which the title, chapter, or rule applies or (2) in which the particular action or proceeding has been filed or properly could be filed. Subject to those conditions, "judge" includes a ~~Justice~~ justice of the Supreme Court of Maryland.

. . .

REPORTER'S NOTE

Rule 1-202 (n) has been updated in accordance with the Supreme Court's decision at the March 24, 2023 open meeting on the 214th and 215th Reports of the Rules Committee that "justice,"

rather than "Justice," be used when generally referring to one or more members of the Supreme Court of Maryland. The title, "Chief Justice," remains capitalized.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 500 – EXPUNGMENT OF RECORDS

AMEND Rule 4-504 by updating the cross reference after section (a), as follows:

Rule 4-504. PETITION FOR EXPUNGEMENT WHEN CHARGES FILED

(a) Scope and Venue

A petition for expungement of records may be filed by any defendant who has been charged with the commission of a crime and is eligible under Code, Criminal Procedure Article, § 10-105 or Code, Criminal Procedure Article, § 10-110, as applicable, to request expungement. The petition shall be filed in the original action. If that action was commenced in one court and transferred to another, the petition shall be filed in the court to which the action was transferred, except that for criminal proceedings that began in a circuit court or the District Court and were transferred to a juvenile court under Code, Criminal Procedure Article, §§ 4-202 or 4-202.2, the petition shall be filed in the court that issued the order of transfer. If the proceeding in a court of original jurisdiction was appealed to a court exercising appellate jurisdiction, the petition shall be filed in the appellate court.

Cross reference: See Code, Criminal Procedure Article, § 10-104, which permits the District Court on its own initiative to order expungement when the State has entered a nolle prosequi as to all charges in a case in which the defendant has not been served. See Code, Criminal Procedure Article, § 10-105, which allows an individual's attorney or personal representative to file a petition for expungement if the individual died before disposition of the charge by nolle prosequi or dismissal. See also Criminal Procedure Article, § 10-105(a)(11), which permits a person who has been convicted of a crime to file a petition for expungement when the act on which the conviction is based no longer is a crime, and Criminal Procedure Article, § 10-105(e)(4), which permits a person to petition for an expungement for an act on which a probation before judgment was based no longer is a crime. See Code, Criminal Procedure Article, § 10-110 regarding petitions for expungement of certain ~~misdemeanor~~ convictions.

...

REPORTER'S NOTE

Chapter 683, 2023 Laws of Maryland (SB 37) made several changes to the Criminal Procedure Article, including providing that unpaid court fees or costs are not a bar to certain expungement and altering the list of convictions that may be expunged under Code, Criminal Procedure Article, § 10-110. Upon review, it was determined that the cross reference in Rule 4-504 should be updated to reflect that Code, Criminal Procedure Article, § 10-110 permits the filing of a petition for expungement if a person is convicted of certain misdemeanors *and* felonies. Accordingly, a proposed amendment deletes the word "misdemeanor" from the last sentence of the cross reference.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-329 by deleting and replacing language in subsection (a)(1) and by making a stylistic change in subsection (a)(3), as follows:

Rule 4-329. ADVICE OF EXPUNGEMENT

(a) Notice Pursuant to Code, Criminal Procedure Article, § 10-105.2

(1) Generally

When all of the charges in a case involving ~~a criminal offense or~~ a civil offense under Code, Criminal Law Article, § 5-601(c)(2)(ii) or a criminal offense other than a violation of the Transportation Article for which the defendant is not required to appear are disposed of by (A) acquittal, including an acquittal based on a verdict of not guilty, (B) dismissal, or (C) nolle prosequi other than nolle prosequi with a requirement of drug or alcohol treatment, the court shall provide written notice to the defendant of the defendant's right to expungement in accordance with and subject to the conditions of Code, Criminal Procedure Article, § 10-105.2.

(2) Form and Content of Notice

The notice shall be on a form approved by the State Court Administrator and shall notify the defendant of (A) the defendant's entitlement under Code, Criminal Procedure Article, § 10-105.1 to expungement by operation of law three years after the disposition and (B) the right to file a petition for expungement in accordance with Code, Criminal Procedure Article, Title 10, Subtitle 1 and Title 4, Chapter 500 of these Rules within three years after the disposition if accompanied by a completed General Waiver and Release form approved by the State Court Administrator. The notice shall include or be accompanied by a blank General Waiver and Release form for all tort claims relating to the charge or charges eligible for expungement under Code, Criminal Procedure Article, § 10-105.

(3) Method of Delivery

If the defendant is in court when the disposition occurs, the written notice may be handed to the defendant in court. If the defendant does not receive the notice at that time, the court shall send the notice to the defendant by ~~first class mail~~ first-class mail to the defendant's last known address.

...

REPORTER'S NOTE

Chapters 684/685, 2023 Laws of Maryland (HB 189/SB 173) clarified language in Code, Criminal Law, §§ 10-105.1 and 10-105.2. Upon review of the relevant Rules concerning expungement, the Committee recommends an amendment to Rule 4-329 that modifies the language of subsection (a)(1) to mirror the clarified language of § 10-105.2.

A stylistic change in subsection (a)(3) corrects the placement of the hyphen in the phrase "first-class mail."

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT, AND CHILD CUSTODY

AMEND Rule 9-211 by deleting and adding language to section (d) establishing that service is not required and by making a stylistic change to section (e), as follows:

Rule 9-211. RESTORATION OF FORMER NAME AFTER JUDGMENT OF ABSOLUTE DIVORCE

(a) Applicability

This Rule applies to a post-judgment motion for a change of name pursuant to Code, Family Law Article, § 7-105.

Committee note: A motion under Code, Family Law Article, § 7-105 must be filed within 18 months after the judgment of absolute divorce was entered. Instead of proceeding under § 7-105 and this Rule, a party may file a petition for change of name at any time under Rule 15-901.

(b) Motion

The motion shall be filed under oath in the action in which the judgment of absolute divorce was entered and shall state:

(1) the change of name desired and the fact that the party formerly used the name;

(2) that the party took a new name upon marriage and no longer wishes to use it; and

(3) that the party is not requesting the name change for any illegal, fraudulent, or immoral purpose.

(c) No Fee for Filing Motion

No filing fee shall be charged for the filing of the motion for change of name pursuant to Code, Family Law Article, § 7-105.

(d) Service

A motion filed ~~within 30 days after the entry of the judgment of absolute divorce shall be served in the manner provided in Rule 1-321. If more than 30 days have passed since the entry of the judgment, the motion shall be served in the manner described in Rule 2-121, and proof of service shall be filed in accordance with the method described in Rule 2-126~~ pursuant to this Rule is not required to be served on any party unless otherwise ordered by the court.

(e) Action by Court

Notwithstanding Rule 2-311 (f), the court may hold a hearing or may rule on the motion without a hearing even if ~~one~~ a hearing was requested. The court shall not deny the motion without a hearing, regardless of whether a hearing was requested.

Source: This Rule is new.

REPORTER'S NOTE

The Rules Committee was contacted by the Domestic Law Committee of the Judicial Council regarding Rule 9-211 (d). The Domestic Law Committee received a request to reconsider the service provisions of Rule 9-211 requiring litigants to serve their former spouse if they decide to restore their maiden name within 18 months after entry of a divorce decree as permitted by Code, Family Law Article, § 7-105. The statute provides that "the court shall change the name of the requesting party" if certain conditions are met, rendering the position of the spouse unnecessary. Eliminating the need to serve a motion filed pursuant to Rule 9-211 mirrors the lack of service required if the party instead pursues a name change under Rule 15-901.

Proposed amendments to Rule 9-211 (d) delete the requirement that a motion filed under this Rule be served on the opposing party. The section currently states that a motion filed within 30 days after the entry of the judgment of absolute divorce shall be served in the manner provided in Rule 1-321 and a motion filed after that time period shall be personally served pursuant to Rule 2-121. Proposed amendments delete these service requirements and add language to section (d) clarifying that a motion filed pursuant to Rule 9-211 is not required to be served on any party unless otherwise ordered by the court.

A stylistic change is proposed in section (e).

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT, AND CHILD CUSTODY

AMEND Rule 9-202, by adding to section (a) the requirement that an e-mail address, if any, be provided; by deleting a reference to a judgment of limited divorce in section (c); by updating the tagline of section (d); by adding and deleting language from section (d) concerning judgments of limited divorce; and by adding a Committee note after section (d), as follows:

Rule 9-202. PLEADING

(a) Signing - Telephone Number - E-mail Address

A party shall personally sign each pleading filed by that party and, if the party is not represented by an attorney, shall state in the pleading a telephone number at which the party may be reached during ordinary business hours and an e-mail address, if any, through which the party may be contacted.

Cross reference: See Rule 1-202 (v).

(b) Child Custody

When child custody is an issue, each party shall provide in the party's first pleading the information required by Code, Family Law Article, § 9.5-209(a).

(c) Amendment to Complaint

~~Except when a judgment of limited divorce has been entered, a~~ A complaint may be amended pursuant to Rule 2-341 to include a ground for divorce that by reason of the passage of sufficient time has become a ground for divorce after the filing of the complaint.

(d) Supplemental Complaint for Absolute Divorce ~~After~~ after Judgment of Limited Divorce Entered before October 1, 2023

A party who has obtained a judgment of limited divorce before October 1, 2023 may file a supplemental complaint for an absolute divorce in the same action in which the limited divorce was granted if ~~(1) the sole ground for the absolute divorce is that the basis of the limited divorce by reason of the lapse of sufficient time has become a ground for an absolute divorce and (2)~~ the supplemental complaint is filed not later than two years after the entry of the judgment of limited divorce. Service of the supplemental complaint shall be in accordance with Rule 1-321 if the defendant has an attorney of record in the action at the time the supplemental complaint is filed. Otherwise, service of the supplemental complaint shall be in accordance with Rule 2-121 or in accordance with Rule 2-122.

Cross reference: For automatic termination of an attorney's appearance, see Rule 2-132.

Committee note: Effective October 1, 2023, the authority of a court to enter a judgment of limited divorce was repealed by Chapters 645 and 646, 2023 Laws of Maryland.

(e) Financial Statement--Spousal Support

If spousal support is claimed by a party and either party alleges that no agreement regarding support exists, each party shall file a current financial statement in substantially the form set forth in Rule 9-203 (a). The statement shall be filed with the party's pleading making or responding to the claim. If the claim or the denial of an agreement is made in an answer, the other party shall file a financial statement within 15 days after service of the answer.

(f) Financial Statement--Child Support

If establishment or modification of child support is claimed by a party, each party shall file a current financial statement under affidavit. The statement shall be filed with the party's pleading making or responding to the claim. If the establishment or modification of child support in accordance with the guidelines set forth in Code, Family Law Article, §§ 12-201 - 12-204 is the only support issue in the action and no party claims an amount of support outside of the guidelines, the required financial statement shall be in substantially the form

set forth in Rule 9-203 (b). Otherwise, the statement shall be in substantially the form set forth in Rule 9-203 (a).

Source: This Rule is derived in part from former Rule S72 a, c, and f and is in part new.

REPORTER'S NOTE

Proposed new language in section (a) of Rule 9-202 requires that an unrepresented party include in the pleading an e-mail address, if any, through which the party may be contacted. The court uses e-mail addresses when it sets up remote electronic proceedings.

Chapters 645/646, 2023 Laws of Maryland (HB 14/SB 36), effective October 1, 2023, repealed the authority of a court to enter a judgment of limited divorce and otherwise altered certain grounds for divorce. As a result of these amendments, changes are proposed in sections (c) and (d) of Rule 9-202.

A reference to a judgment of limited divorce is deleted from section (c). Proposed amendments to section (d) add language to the tagline and to the section clarifying that section (c) applies to a judgment of limited divorce entered before October 1, 2023 because no judgment of limited divorce can be entered after that date. Due to the alteration of grounds for absolute divorce in the statute, Rule 9-202 (d) is further amended to remove the requirement that the sole ground in a supplemental complaint for absolute divorce is that the basis of the limited divorce became a ground for absolute divorce by lapse of sufficient time. A new Committee note explains that the court's authority to enter a judgment of limited divorce was repealed by Chapters 645 and 646, 2023 Laws of Maryland, effective October 1, 2023.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-507 by deleting a reference to limited divorce in section (c), as follows:

Rule 2-507. DISMISSAL FOR LACK OF JURISDICTION OR PROSECUTION

...

(c) For Lack of Prosecution

An action is subject to dismissal for lack of prosecution at the expiration of one year from the last docket entry, other than an entry made under this Rule, Rule 2-131, or Rule 2-132, except that an action for ~~limited divorce or for~~ permanent alimony is subject to dismissal under this section only after two years from the last such docket entry.

...

REPORTER'S NOTE

Chapters 645/646, 2023 Laws of Maryland (HB 14/SB 36), effective October 1, 2023, repealed the authority of a court to enter a judgment of limited divorce and otherwise altered certain grounds for divorce.

As a result of these statutory changes, a reference to limited divorce is proposed to be deleted from Rule 2-507 (c) because complaints for limited divorce should no longer be filed after October 1, 2023.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT, AND CHILD CUSTODY

ADD new Rule 9-204.3, as follows:

Rule 9-204.3. PREVENTION OF CHILD ABDUCTION

(a) Generally

A petition for an abduction prevention order, including a request for an ex parte warrant for physical custody of the child, is governed by the Maryland Child Abduction Prevention Act, Code, Family Law Article, Title 9.7.

Cross reference: For the factors considered in evaluating whether there is a credible risk of abduction, see Code, Family Law Article, § 9.7-107. See also Code, Family Law Article, § 9.5-204 regarding temporary emergency jurisdiction.

(b) Abduction Prevention Order

If, after notice and opportunity for a hearing on a petition pursuant to this Rule or on the court's own motion, the court finds a credible risk of abduction of the child, the court shall enter an abduction prevention order in compliance with Code, Family Law Article, § 9.7-108.

Source: This Rule is new.

REPORTER'S NOTE

Chapters 760/761, 2023 Laws of Maryland (HB 267/SB 383), also known as the Maryland Child Abduction Prevention Act, creates new Title 9.7 of the Family Law Article. The new Code sections authorize a court to order abduction prevention measures when there is a credible risk of abduction of a child. Pursuant to new Code, Family Law Article, § 9.7-104, "A party to a child custody determination or another individual or entity having a right under the law of a state to seek a child custody determination for the child may file a petition seeking abduction prevention measures to protect the child under this title." The statute further provides, "A prosecutor or public authority under § 9.5-315 of this Article may seek a warrant to take physical custody of a child under § 9.7-109 of this title or take other appropriate prevention measures."

Proposed new Rule 9-204.3 has been drafted to address this new form of petition for relief in regard to child custody. Section (a) provides that a petition for an abduction prevention order is governed by the Maryland Child Abduction Prevention Act, Code, Family Law Article, Title 9.7. A cross reference after the section points to the statutory factors for evaluating whether a credible risk of abduction exists and to the statutory provisions regarding temporary emergency jurisdiction. Section (b) addresses the requirements for an abduction prevention order.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 300 – CIRCUIT COURTS – ADMINISTRATION AND CASE MANAGEMENT

AMEND Rule 16-302 by adding language to subsection (b)(2)(A) and the subsequent Committee note, as follows:

Rule 16-302. ASSIGNMENT OF ACTIONS FOR TRIAL; CASE MANAGEMENT PLAN

...

(b) Case Management Plan; Information Report

(1) Development and Implementation

(A) The County Administrative Judge shall develop and, upon approval by the Chief Justice of the Supreme Court, implement a case management plan for the prompt and efficient scheduling and disposition of actions in the circuit court. The plan shall include a system of differentiated case management in which actions are classified according to complexity and priority and are assigned to a scheduling category based on that classification and, to the extent practicable, follow any template established by the Chief Justice of the Supreme Court.

(B) The County Administrative Judge shall send a copy of the plan and all amendments to it to the State Court

Administrator. The State Court Administrator shall review the plan or amendments and transmit the plan or amendments, together with any recommended changes, to the Chief Justice of the Supreme Court.

(C) The County Administrative Judge shall monitor the operation of the plan, develop any necessary amendments to it, and, upon approval by the Chief Justice of the Supreme Court, implement the amended plan.

(2) Family Law Actions

(A) The plan shall include appropriate procedures for the granting of emergency relief and expedited case processing in family law actions when there is a credible risk of imminent abduction of a child or a credible prospect of imminent and substantial physical or emotional harm to a child or susceptible or older adult.

Committee note: The intent of this subsection is that the case management plan contain procedures for assuring that the court can and will deal immediately with a credible risk of imminent abduction of a child or a credible prospect of imminent and substantial physical or emotional harm to a child or susceptible or older adult, at least to stabilize the situation pending further expedited proceedings. Circumstances requiring expedited processing include threats to imminently terminate services necessary to the physical or mental health or sustenance of the child or susceptible or older adult or the imminent removal of the child or susceptible or older adult from the jurisdiction of the court.

Cross reference: See Code, Estates and Trust Article, § 13-601 for definitions of the terms "older adult" and "susceptible adult."

(B) In courts that have a family division, the plan shall provide for the implementation of Rule 16-307.

Cross reference: See Rule 9-204 for provisions that may be included in the case management plan concerning an educational seminar for parties in actions in which child support, custody, or visitation are involved.

...

REPORTER'S NOTE

Chapters 760/761, 2023 Laws of Maryland (HB 267/SB 383), also known as the Maryland Child Abduction Prevention Act, creates new Title 9.7 of the Family Law Article. As part of the Act, a court may issue a warrant to take physical custody of a child to prevent imminent abduction.

Rule 16-302 (b) addresses the development of case management plans. Regarding family law actions, case management plans must include procedures for emergency relief and expedited case processing under certain circumstances. Proposed amendments to Rule 16-307 (b)(2)(A) acknowledge the new emergency relief contemplated by the Maryland Child Abduction Prevention Act by adding that the case management plan shall include appropriate procedures for granting emergency relief and expedited case processing when there is a credible risk of imminent abduction of a child. The Committee note following the subsection is amended accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 300 – CIRCUIT COURTS – ADMINISTRATION AND CASE MANAGEMENT

AMEND Rule 16-307 by adding the Maryland Child Abduction Prevention Act to subsection (a)(2)(B), as follows:

Rule 16-307. FAMILY DIVISION AND SUPPORT SERVICES

(a) Family Division

(1) Established

In each county having more than seven resident judges of the circuit court authorized by law, there shall be a family division in the circuit court.

(2) Actions Assigned

In a court that has a family division, the following categories of actions and matters shall be assigned to that division:

(A) dissolution of marriage, including divorce, annulment, and property distribution;

(B) child custody and visitation, including proceedings governed by the Maryland Uniform Child Custody Jurisdiction and Enforcement Act, Code, Family Law Article, Title 9.5, the Maryland Child Abduction Prevention Act, Code, Family Law

Article, Title 9.7, and the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A;

(C) alimony, spousal support, and child support, including proceedings under the Maryland Uniform Interstate Family Support Act, Code, Family Law Article, Title 10, Subtitle 3;

(D) establishment and termination of the parent-child relationship, including paternity, adoption, guardianship that terminates parental rights, and emancipation;

(E) criminal nonsupport and desertion, including proceedings under Code, Family Law Article, Title 10, Subtitle 2 and Code, Family Law Article, Title 13;

(F) name changes;

(G) guardianship of minors and disabled individuals under Code, Estates and Trusts Article, Title 13;

(H) involuntary admission and emergency evaluation under Code, Health General Article, Title 10, Subtitle 6;

(I) family legal-medical issues, including decisions on the withholding or withdrawal of life-sustaining medical procedures;

(J) actions involving domestic violence under Code, Family Law Article, Title 4, Subtitle 5;

(K) juvenile causes under Code, Courts Article, Title 3, Subtitles 8 and 8A;

(L) matters assigned to the family division by the County Administrative Judge that are related to actions in the family division and appropriate for assignment to the family division; and

(M) civil or criminal contempt arising out of any of the categories of actions and matters set forth in subsection (a)(2)(A) through (a)(2)(L) of this Rule.

Committee note: The jurisdiction of the circuit courts, the District Court, and the Orphans' Court is not affected by section (a) of this Rule. For example, the District Court has concurrent jurisdiction with the circuit court over proceedings under Code, Family Law Article, Title 4, Subtitle 5, and the Orphans' Courts and circuit courts have concurrent jurisdiction over guardianships of the person of a minor and over protective proceedings for minors under Code, Estates and Trusts Article, § 13-105.

...

REPORTER'S NOTE

Chapters 760/761, 2023 Laws of Maryland (HB 267/SB 383), also known as the Maryland Child Abduction Prevention Act, creates new Title 9.7 of the Family Law Article. The new Code sections authorize a court to order abduction prevention measures when there is a credible risk of abduction of a child.

Rule 16-307 provides information about the family division and support services of a court. Subsection (a)(2) sets forth the categories of actions that are required to be assigned to the family division of a court. Proposed amendments to Rule 16-307 (a)(2)(B) add actions under the Maryland Child Abduction Prevention Act to the list of case types that must be assigned to a family division, if applicable.

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 500 – TAX SALES

AMEND Rule 14-503 to add a provision to section (d) requiring certain documents to be provided to a municipal corporation in certain circumstances and by making stylistic changes, as follows:

Rule 14-503. PROCESS

(a) Notice to Defendants Whose Whereabouts are Known

Upon the filing of the complaint, the clerk shall issue a summons as in any other civil action. The summons, complaint, and exhibits, including the notice prescribed by Rule 14-502 (c)(3), shall be served in accordance with Rule 2-121 on each defendant named in the complaint whose whereabouts are known.

(b) Notice to Defendants Whose Whereabouts are Unknown, Unknown Owners, and Unnamed Interested Persons

When the complaint includes named defendants whose whereabouts are unknown, unknown owners, or unnamed persons having or claiming to have an interest in the property, the notice filed in accordance with Rule 14-502 (c)(3), after being issued and signed by the clerk, shall be served in accordance with Rule 2-122.

(c) Posting of Property

Upon the filing of the complaint, the plaintiff shall cause a notice containing the information required by Rule 14-502 (c)(3) to be posted in a conspicuous place on the property. The posting may be made either by the sheriff or by a competent private person, appointed by the plaintiff, who is 18 years of age or older, including an attorney of record, but not a party to the action. A private person who posts the notice shall file with the court an affidavit setting forth the name and address of the affiant, the caption of the case, the date and time of the posting, and a description of the location of the posting and shall attach a photograph of the location showing the posted notice.

(d) Notice to Collector and Municipal Corporation

Upon the filing of the complaint, the plaintiff shall mail a copy of the complaint and exhibits to the collector of taxes in the county in which the property is located and, if the property is located in a municipal corporation as authorized by Article XI-E of the Maryland Constitution, to the registered agent of the municipal corporation.

Cross reference: For due process requirements, see *St. George Church v. Aggarwal*, 326 Md. 90 (1992).

Source: This Rule is new. Section (a) is derived in part from Code, Tax-Property Article, § 14-839(a). Section (b) is derived in part from Code, Tax-Property Article, § 14-840. Section (c)

is new. Section (d) is derived from Code, Tax-Property Article, § 14-839(c).

REPORTER'S NOTE

Existing section (d) of Rule 14-503 requires the plaintiff to provide a copy of the complaint and exhibits to the tax collector of the county in which the property is located. Because there are 157 municipal corporations in Maryland, and the plaintiff is not currently required to provide a copy of the complaint or exhibits to these entities, the Rules Committee proposes that section (d) be amended to add a provision requiring the plaintiff to provide a copy of the complaint and exhibits to the municipal corporation in which the subject property is located, if the subject property is located within a municipal corporation.