

The agenda for a meeting of the Rules Committee generally will be posted 7-10 days before the date of the meeting. At the discretion of the Chair, items may be deleted from or added to the agenda.

AGENDA FOR
RULES COMMITTEE MEETING

May 5, 2017
(Friday)

Judiciary Education and Conference Center
Rooms UL4 & 5
2011 Commerce Park Drive
Annapolis, Maryland
9:30 a.m.

- | | | |
|---------|---|-------------------------|
| Item 1. | Consideration of proposed amendments to Rules in Title 10 (Guardians and Other Fiduciaries) | Mr. Laws
Judge Eaves |
| | Rule 10-101 (Applicability of Title; Jurisdiction) | |
| | Rule 10-106 (Attorney for Minor or Disabled Person) | |
| | New Rule 10-106.1 (Appointment of Investigator) | |
| | Rule 10-108 (Orders) | |
| | Rule 10-111 (Petition for Guardianship of Minor) | |
| | Rule 10-112 (Petition for Guardianship of Alleged Disabled Person) | |
| | New Rule 10-113 (Disqualifying Offenses; Waiver) | |
| | New Rule 10-205.1 (Appointment of Guardian - Criteria; Order) | |
| | New Rule 10-304.1 (Appointment of Guardian - Criterial; Order) | |
| | Rule 10-702 (Bond - Fiduciary Estate) | |
| Item 2. | Consideration of proposed amendments to Rule 19-711 (Complaint; Investigation by Bar Counsel) | Mr. Frederick |

- Item 3. Consideration of proposed amendments to Rules 19-605 (Obligations of Attorneys) and Rule 19-606 (Enforcement of Obligations) Mr. Frederick
- Item 4. Consideration of a proposed new Title 15, Chapter 1400 (Liens for Unpaid Wages) Mr. Frederick
- Rule 15-1401 (Applicability; Definitions)
Rule 15-1402 (Notice to Employer - Requirements)
Rule 15-1403 (Conditions for Establishing Lien for Unpaid Wages - Employer Disputes Lien - Determination of Complaint)
Rule 15-1404 (Filing and recording Wage Lien Instruments - Employer Failure to Dispute Notice of Lien - Confirmatory Order)
Rule 15-1405 (Enforcement of Order)
Rule 15-1406 (Extinguishment or Release of Lien, Priority of Claim, Subsequent Bond Fide Purchasers)
- Item 5. Consideration of proposed Rules changes pertaining to implementation of the Judiciary's Attorney Information System (Materials to be distributed at the Meeting) Judge Wilner

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-101 by adding to section (a) language pertaining to proceedings for guardianship of the property of minors, language pertaining to proceedings for both guardianships of the person and the property, and language pertaining to proceedings whether in a circuit or an orphans' court; and by making stylistic changes, as follows:

Rule 10-101. APPLICABILITY OF TITLE; JURISDICTION

(a) Applicability

Except as otherwise provided by law, the rules in this Title apply to proceedings concerning: (1) the guardianship of minors, and their property, or both, whether in a circuit court or an orphans' court, (2) the guardianship of disabled persons, ~~or their property, or both;~~ ~~(2)~~ (3) a fiduciary estate; and ~~(3)~~ (4) the distribution of prop`erty belonging to an absent or unknown person.

(b) Scope of Jurisdiction

In proceedings under this Title, the court may exercise its jurisdiction generally or for a limited purpose. An investment in a common trust fund by a fiduciary administering an estate subject to the jurisdiction of a court does not bring

the administration of the common trust fund under the jurisdiction of the court.

Cross reference: For the definition of "common trust fund," see Code, Financial Institutions Article, §3-501 (b).

Committee note: The rules in this Title do not apply to a guardian with the right to consent to adoption (Code, Family Law Article, §5-301 *et seq.* and Title 9, Chapter 100 of these rules); a trustee appointed to foreclose a mortgage or deed of trust or to make a judicial sale (Title 14, Chapters 200 and 300 of these rules); a trustee of a recovery by a minor in tort (Code, Estates and Trusts Article, §13-401 *et seq.*); a custodian of property under the Maryland Uniform Transfers to Minors Act (Code, Estates and Trusts Article, §13-301 *et seq.*); or a receiver or assignee for the benefit of creditors (Title 13 of these Rules).

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

REPORTER'S NOTE

The Guardianship Work Group of the Domestic Law Committee of the Judicial Council recommended amendments to the Guardianship Rules. Based upon those recommendations, the Probate/Fiduciary and Family/Domestic Subcommittees of the Rules Committee proposed numerous amendments to the Rules in Title 10.

Proposed amendments to Rule 10-101 (a) clarify that proceedings for guardianship of minors or their property or both can be held in a circuit or an orphans' court. Concurrent jurisdiction of guardianships of minors is provided for in Code, Estates and Trusts Article, §13-105. Stylistic changes to section (a) also are made.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-106 by changing the title, by deleting the second sentence in subsection (a)(1), by adding a Committee note after subsection (a)(1), by deleting language at the end of subsection (a)(2) pertaining to the deposit of money into the court registry or the appointed attorney's escrow account, by adding a Committee note at the end of section (a), by adding a new section (b) pertaining to an attorney's eligibility for appointment, by adding a new section (c) pertaining to fees; by adding a cross reference after subsection (c)(3), by adding a new subsection (d)(2) pertaining to other reasons for termination of an attorney's appointment, by adding a new subsection (d)(4) pertaining to an attorney's appointment after a guardianship is established, by deleting current section (c) pertaining to appointment of an investigator, and by making stylistic changes, as follows:

Rule 10-106. ~~APPOINTMENT OF ATTORNEY OR INVESTIGATOR~~ FOR MINOR OR DISABLED PERSON

(a) ~~Appointment of Attorney by the Court~~ Authority and Duty to Appoint

(1) Minor Persons

Upon the filing of a petition for guardianship of the person, ~~or the property, or both,~~ of a minor who is not represented by an attorney, the court may appoint an attorney for the minor. ~~The fee of an appointed attorney shall be fixed by the court and shall be paid out of the fiduciary estate or as the court shall direct.~~

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, ~~or the property, or both,~~ of a 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 and ~~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 has been entered, subject to further order of the court. If the person is indigent, the State shall pay a reasonable attorney's fee. The court may not require the deposit of an appropriate sum into the court registry or the appointed attorney's escrow account under this section if payment for the services of the court-appointed attorney for the alleged disabled person is the responsibility of (A) a~~

~~government agency paying benefits to the disabled person, (B) a local department of Social Services, or (C) an agency eligible to serve as the guardian of the disabled person under Code, Estates and Trusts Article, §13-707.~~

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

Committee note: This Rule applies to the appointment and payment of an attorney for a minor or alleged disabled person in proceedings to establish a guardianship for the minor or alleged disabled person, or their property, or both. Attorneys may be appointed in other capacities in guardianship proceedings - as an investigator pursuant to Rule 10-106.1 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) have and maintain in effect standard professional liability insurance; and

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

(2) Exercise of Discretion

Except in an action in which the selection of a court-appointed attorney is governed by Code, Estates and Trusts Article, §13-705 (d)(2), the court should fairly distribute

appointments among eligible attorneys, taking into account the attorney's relevant experience and availability and the complexity of the case.

(c) Fees

(1) Generally

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

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

(2) Determination and Payment of Fee

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

~~(b) (d) Automatic Termination or Continuation of Appointment; Continuation of Representation if Public Guardian Appointed~~

(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 termination of the appointment.

(3) Representation if Public Guardian Appointed

If a public guardian has been appointed for ~~the~~ 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.

~~(c) Investigator~~

~~The court may appoint an independent investigator to investigate the facts of the case and report written findings to the court. The fee of an appointed investigator shall be fixed~~

~~by the court and shall be paid out of the fiduciary estate or as the court shall direct. To the extent the estate is insufficient, the fee of an independent investigator appointed by the court shall be paid by the State.~~

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

REPORTER'S NOTE

The Guardianship Work Group of the Domestic Law Committee of the Judicial Council suggested separating out the section pertaining to investigators from Rule 10-106. The Subcommittees suggested the addition of a Committee note after subsection (a)(1), stating that the appointment of an attorney for a minor is discretionary, because often the guardian is a parent or close family member, and the circumstances do not indicate a need for an attorney for the minor. They also suggested the addition of a Committee note after subsection (a)(2) noting that attorneys may be appointed in other capacities, such as investigators or guardians, in guardianship proceedings.

The Work Group suggested adding language to Rule 10-106 that would be similar to the language in the Comment after section (b) of Rule 9-205.1, Appointment of Child's Attorney, which provides that a court should only appoint attorneys who have agreed to serve in child custody and child access cases and have been trained in accordance with Guideline 4 of the Maryland Guidelines for Practice for Court-Appointed Attorneys Representing Children in Cases Involving Child Custody or Child Access. Subsection (b)(1) of Rule 10-106 is based on this and adds basic requirements for eligibility of an attorney. Subsection (b)(2) is also based on language in the Comment after section (b) of Rule 9-205.1. Subsection (c)(1) is derived from the language of former section (c) of Rule 10-106 pertaining to investigators, but the Work Group suggested that the language be revised to provide that, rather than fixing the fee, the court shall order payment of reasonable and necessary fees that may be paid from the estate of the alleged disabled person. The Work Group has drafted guidelines for court-appointed attorneys in guardianship proceedings that the Work Group proposes should be added to the Rules or to the Code. Subsection (c)(2) of Rule 10-106 is derived from those proposed guidelines. Subsection (c)(3) is derived from the language that had been in section (a) pertaining to the court requiring a deposit of an appropriate

sum into the court's registry or the attorney's escrow account. This is taken from Code, Estates and Trusts Article, §13-705 (d)(1), and a cross reference to that provision is added after subsection (c)(3).

Subsection (d)(2) is added because of a suggestion by the Work Group that Rule 10-106 should address what happens when there is a conflict of interest on the part of the attorney. The Subcommittees propose the addition of new subsection (d)(4). In a public agency guardianship, the appointment of an attorney for the disabled person can be automatically renewed. The thought is that it would be helpful to indicate in the Rule that the court can appoint, reappoint, or continue the appointment of an attorney for a disabled person after a private guardianship has been established if the court finds that this is in the best interest of the disabled person.

MARYLAND RULES OF PROCEDURE
TITLE 10- GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 10-106.1, as follows:

Rule 10-106.1. APPOINTMENT OF INVESTIGATOR

(a) In Connection with Petition to Establish Guardianship

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

(b) After Guardianship Established

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

(c) Selection of Investigator

If the court concludes that it is appropriate to appoint an independent investigator, it shall appoint an individual particularly qualified to perform the tasks to be assigned. If

there is an issue as to abuse, neglect, or exploitation of the disabled person, the court may refer the matter to an appropriate public agency to conduct the investigation.

(d) Fee

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

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

REPORTER'S NOTE

Rule 10-601.1 is derived from section (c) of current Rule 10-106, which provides for the court to be able to appoint an independent investigator, who is not the attorney for the alleged disabled person, to investigate the facts of the case and report written findings to the court. Section (c) has been a source of confusion with respect to who can serve as an investigator, what the investigator's role is, and how the investigator is paid. The Guardianship Work Group suggested that section (c) be put into a separate rule. The Work Group also suggested that it would be helpful to clarify that courts have latitude as to who can be appointed, and it would be helpful if the courts included in the orders appointing an independent investigator parameters for what questions the investigator is to answer in his or her written findings to the court. Also, how the investigators are to be paid needs clarification. New Rule 10-106.1 has been rewritten to address these concerns. A new section (b) pertaining to the appointment of an investigator after a guardianship is established, permits the court to appoint an independent investigator to investigate specific issues or concerns regarding the manner in which the guardianship is being administered.

MARYLAND RULES OF PROCEDURE

TITLE 10- GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-108 by adding the language "e-mail address, if available" to subsection (a)(1)(C); by adding the language "date by which proof of bond shall be filed with the court" to subsection (a)(1)(E); by adding a cross reference after subsection (a)(1)(E); by adding a cross reference after subsection (a)(1)(F); in subsection (a)(1)(G), by deleting language referring to the order reciting the powers and duties of the guardian; by adding a new section (a)(1)(H) providing that, with certain exceptions, the order shall direct a guardian other than a public guardian to complete certain orientation and training programs; by adding a Committee note after subsection (a)(1)(H); by adding a new subsection (a)(2) pertaining to confidential information; by adding a cross reference after subsection (a)(2); by adding a Committee note after subsection (a)(2); by deleting the language of section (b) providing that the court may issue letters of guardianship and by adding in its place language providing that an order constitutes letters of guardianship as it is used by certain Code provisions; by adding to the cross reference after section (b); and by making stylistic changes, as follows:

Rule 10-108. ORDERS

(a) Order Appointing Guardian

(1) Generally

An order appointing a guardian shall ~~state~~:

~~(1)~~ (A) Whether state whether the guardianship is of the property, ~~or~~ the person, or both;

~~(2)~~ (B) The state the name, sex, and date of birth of the minor or disabled person;

~~(3)~~ (C) The state the name, address, ~~and~~ telephone number, and e-mail address, if available, of the guardian;

~~(4)~~ (D) Whether state whether ~~or not~~ the appointment of a guardian is solely ~~as a result of~~ due to a physical disability, and if not, the reason for the guardianship;

~~(5)~~ (E) The state (i) the amount of the guardian's bond, ~~or that the~~ a bond is waived and (ii) the date by which proof of bond shall be filed with the court;

Cross reference: See Rule 10-702 (a), requiring the bond to be filed before the guardian commences the performance of any fiduciary duties.

~~(6)~~ (F) The state the date ~~upon~~ by which any annual report of the guardian shall be filed; and

Cross reference: See Rule 10-706 (b).

~~(7)~~ (G) The state the specific powers and duties of the guardian and any limitations on those powers or duties. ~~The order shall recite the powers and duties of the guardian either~~

expressly or by referring to the specific ~~paragraphs~~ sections or subsections of an applicable statute containing those powers and duties-; and

(H) except as to a public guardian, unless the guardian has already satisfied the requirement or the court orders otherwise, direct the guardian to complete an orientation program and training in conformance with the Guidelines for Court-Appointed Guardians attached as an Appendix to the Rules in this Title.

Committee note: An example of an appointment as to which waiver of the orientation and training requirements of subsection (a)(1)(H) may be appropriate is the appointment of a temporary guardian for a limited purpose or specific transaction.

(2) Confidential Information

Information in the order or in papers filed by the guardian that is subject to being shielded pursuant to the Rules in Title 16, Chapter 900 shall remain confidential, but, in its order, the court may permit the guardian to disclose that information when necessary to the administration of the guardianship, subject to a requirement that the information not be further disclosed without the consent of the guardian or the court.

Cross reference: See Rule 16-907 (f) and (j) and Rule 16-908 (d).

Committee note: Disclosure of identifying information to financial institutions and health care providers, for example, may be necessary to further the purposes of the guardianship.

Cross reference: Code, Estates and Trusts Article, §§13-201 (b) and (c), 13-213, 13-214, 15-102, 13-705 (b), and 13-708.

(b) Letters of Guardianship

~~A court may issue letters of guardianship of the property which shall contain a list of any restrictions on the powers of the guardian.~~ An order appointing a guardian entered under this Rule constitutes "letters of guardianship" as that term is used in Code, Estates and Trusts Article.

Cross reference: Code, Estates and Trusts Article, §§13-215 and 13-217, and 13-219.

(c) Orders Assuming Jurisdiction over a Fiduciary Estate
Other than a Guardianship

An order assuming jurisdiction over a fiduciary estate other than a guardianship shall state whether the court has assumed full jurisdiction over the estate. If it has not assumed full jurisdiction over the estate or if jurisdiction is contrary to the provisions in the instrument, the order shall state the extent of the jurisdiction assumed. The order shall state the amount of the fiduciary's bond or that the bond is waived.

(d) Modifications

The court may modify any order of a continuing nature in a guardianship or fiduciary estate upon the petition of an interested person or on its own initiative, and after notice and opportunity for hearing.

Source: This Rule is derived as follows:

Section (a) is derived in part from Code, Estates and Trusts Article, §§13-208 and 13-708 and is in part new.

Section (b) is ~~derived from former Rule V77 e 3~~ new.

Section (c) is derived from former Rules V71 f 1 and f 2.

Section (d) is derived in part from former Rule R78 b and is in part new.

REPORTER'S NOTE

In Rule 10-108, subsection (a)(1)(C) is proposed to be amended so that the order appointing the guardian contains the guardian's e-mail address. This is important in counties in which MDEC is operating and is helpful in other counties as well. In subsection (a)(1)(D), the words "as a result of" are replaced by "due to." Language requiring the date by which proof of bond must be filed is added to subsection (a)(1)(E). A cross reference pertaining to the bond requirement is added after the subsection. Language that is duplicative or obsolete is deleted from subsection (a)(1)(G). Subsection (a)(1)(H) is added to comply with the proposed new Guidelines for Court-Appointed Guardians.

Subsection (a)(2) is added to conform to the Rules in Title 16, Chapter 900, with the addition of a provision permitting disclosure by the guardian when necessary, subject to a prohibition against further disclosure by the recipient of the information without permission of the guardian or the court. Cross references to specific Rules in that Chapter reflect the revised numbering proposed in the 193rd Report of the Rules Committee, currently pending before the Court of Appeals. The Committee note after subsection (a)(2) is added to address the Work Group's concern that being unable to disclose identifying information would interfere with the guardian's ability to administer the guardianship.

There had been a suggestion to delete section (b), because courts do not use letters of guardianship, but the Work Group felt that since "letters of guardianship" are still referred to in the Code, it would be better to provide in the Rule that an order appointing a guardian constitutes letters of guardianship.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-111 by changing the word "jurisdiction" to the word "county" in Section 2. and by adding a "NOTE" pertaining to the use of the word "county"; by adding language and boxes to check pertaining to a minor who may be a beneficiary of the Veterans Administration; by adding language to Section 6. pertaining to a request for certain information about a conviction of a crime; by changing the word "an" to the word "any" in Section 7.; in Section 8., by adding the words "and e-mail addresses, if known" and by updating a cross reference; by deleting the requirement at the end of the form that a facsimile number be provided; and by making stylistic changes, as follows:

Rule 10-111. PETITION FOR GUARDIANSHIP OF MINOR

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

[CAPTION]

In the Matter of

(Name of minor)

In the _____ Court for

(County)

(docket reference)

PETITION FOR GUARDIANSHIP OF MINOR

Administration.

is not a beneficiary of the Veterans Administration.

~~4. 5.~~ *Complete Section ~~4. 5.~~ if the petitioner is asking the court to appoint the petitioner as the guardian.*

(Check only one of the following boxes)

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

I was convicted of such a crime, namely _____

_____.

The conviction occurred in _____, in _____,
(year)

in the _____, but
(Name of court)

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

_____.

~~5. 6.~~ *Complete Section ~~5. 6.~~ if the petitioner is asking the court to appoint an individual other than the petitioner as the guardian.*

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

(Check only one of the following boxes)

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

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

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

namely _____.

The conviction occurred in _____ in the _____
(year)

_____, ~~in~~ _____, but the
(Name of court)

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

_____.

~~6.~~ 7. State the name and address of ~~an~~ any additional
person on whom service shall be made on behalf of the minor,
including a minor who is at least ten years of age: _____

_____.

~~7.~~ 8. The following is a list of the names, addresses, ~~and~~
telephone numbers, and e-mail addresses, if known, of all
interested persons (see Code, Estates and Trusts Article, §13-
101 ~~(j)~~ (k)).

List of Interested Persons

	Name	Address	Telephone Number	<u>E-mail Address</u> (if known)
Parents:	_____	_____	_____	_____
	_____	_____	_____	_____

Siblings:	_____	_____	_____	_____
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Any Other Heirs
at Law: _____

Guardian (if
appointed): _____

Any Person
Holding a Power
of Attorney of
the Minor: _____

Minor's
Attorney: _____

Any Other Person
Having Assumed
Responsibility for
the Minor: _____

Any Government
Agency Paying
Benefits to or for
the Minor: _____

Any Person Having an
Interest in the Property
of the Minor: _____

All Other Persons
Exercising Control over
the Minor or the Minor's
Property: _____

A Person or Agency
Eligible to Serve as
Guardian of the Person
of the Minor: _____

~~8.~~ 9. The names and addresses of the persons with whom the minor resided over the past five years, and the ~~length of time~~ approximate dates of the minor's residence with each person are, as follows:

<u>Names</u>	<u>Addresses</u>	<u>State Time Frame</u> <u>Approximate Dates</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

~~9.~~ 10. Guardianship is sought for the following reason(s):

~~10.~~ 11. If this Petition is for Guardianship of the Property, the following is the list of all the property in which the minor has any interest including an absolute interest, a joint interest, or an interest less than absolute (e.g. trust, life estate).

<u>Property</u>	<u>Location</u>	<u>Value</u>	Sole Owner, Joint Owner (specific type), Life Tenant, Trustee, Custodian, Agent, Co-Tenant , etc.
_____	_____	_____	_____

~~11.~~ 12. The petitioner's interest in the property of the minor listed in ~~10.~~ 11. is _____
_____.

~~12.~~ 13. (a) All other proceedings regarding the minor (including any proceedings in juvenile court) are, as follows:

_____.

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

_____.

~~13.~~ 14. All exhibits required by the Instructions below are attached.

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

should not be appointed as the guardian.

Attorney's Signature

Petitioner's Name

Attorney's Name

Address

Telephone Number

~~Facsimile Number~~

E-mail Address

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

Petitioner's Name

Petitioner's Signature

INSTRUCTIONS

1. The required exhibits are as follows:

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

Veterans Administration shall be prima facie evidence of the necessity for the appointment [Code, Estates and Trusts Article, §13-802 and Maryland Rule 10-301 (d)].

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

Source: This Rule is new.

REPORTER'S NOTE

Several changes to the Petition for Guardianship of a Minor form set forth in Rule 10-111 are proposed. In Section 2., the word "jurisdiction" is changed to the word "county" for clarity. A "NOTE" is added to inform petitioners, many of whom may be *pro se*, that for purposes of the Form, "county" includes Baltimore City. A new Section 4. Is added, requiring the petitioner to indicate by checking boxes whether the minor is a beneficiary of the Veterans Administration and noting that, if so, the guardian may expect to receive benefits. This is added to alert the clerk and all parties that the requirements of Code, Estates and Trusts Article, §13-801 may need to be complied with. Language is added to Sections 5. and 6. pertaining to a request for the year and the name of the court if the individual requested by the petitioner to be the guardian has been convicted of a crime. This provides more information for the court in making the decision as to the appointment of the guardian. A request for the e-mail addresses, if known, of the interested persons is added to Section 8. The requirement at the end of the form that a facsimile number be provided is deleted as unnecessary.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-112 by changing the word "jurisdiction" to the word "county" in Section 2. and by adding a "NOTE" pertaining to the use of the word "county"; by adding language and boxes to check pertaining to an alleged disabled person who may be a beneficiary of the Veterans Administration; by adding language to Section 6. pertaining to a request for certain information about a conviction of a crime; by changing the word "an" to the word "any" in Section 7.; in Section 8., by adding the words "and e-mail addresses, if known," by updating a cross reference, and by changing the term "Local Commission on Aging and Retirement Education" to "Director of the Local Area Agency on Aging"; by deleting the requirement at the end of the form that a facsimile number be provided; and by making stylistic changes, as follows:

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

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

[CAPTION]

In the Matter of

In the Circuit Court for

(Name of Alleged)
Disabled Individual)

(County)

(docket reference)

PETITION FOR GUARDIANSHIP OF
ALLEGED DISABLED PERSON

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

Guardianship of
Person

Guardianship of
Property

Guardianship of
Person and
Property

The petitioner, _____, _____, whose
(name) (age)

address is _____, and whose

telephone number is _____, represents to

the court that:

1. The alleged disabled person _____,
age _____, born on the _____ day of _____,
(month) (year)

a male or female resides at _____

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

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

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

4. The alleged disabled person

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

is not a beneficiary of the Veteran's Administration.

~~4.~~ 5. Complete Section 4. 5. if the petitioner is asking the court to appoint the petitioner as the guardian.

(Check only one of the following boxes)

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

I was convicted of such a crime, namely _____

The conviction occurred in _____ in the _____
(year)

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

exists for me to be appointed as guardian: _____

~~5.~~ 6. Complete Section 5. 6. if the petitioner is asking the court to appoint an individual other than the petitioner as the

guardian.

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

(Check only one of the following boxes)

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

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

~~6.~~ 7. If the alleged disabled person resides with petitioner,
then state the name and address of ~~an~~ any additional person on
whom initial service shall be made: _____

_____.

~~7.~~ 8. The following is a list of the names, addresses, ~~and~~
telephone numbers, and e-mail addresses, if known of all
interested persons (see Code, Estates and Trusts Article, §13-

101 ~~(j)~~ (k):

	<u>Name</u>	<u>Address</u>	<u>Telephone Number</u>	<u>E-mail Address (if known)</u>
Person or Health Care Agent Designated in Writing by Alleged Disabled Person:	_____	_____	_____	_____
Spouse:	_____	_____	_____	_____
Parents:	_____	_____	_____	_____
	_____	_____	_____	_____
Adult Children:	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
Adult Grandchildren*:	_____	_____	_____	_____
	_____	_____	_____	_____
Siblings*:	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
Any Other Heirs at Law:	_____	_____	_____	_____

Guardian
(If appointed): _____

Any Person
Holding a Power
of Attorney of
the Alleged Disabled
Person: _____

Alleged
Disabled
Person's
Attorney: _____

Any Other Person
Having Assumed
Responsibility for
the Alleged Disabled
Person: _____

Any Government
Agency Paying Benefits
to or for the Alleged
Disabled Person: _____

Any Person Having an
Interest in the Property
of the Alleged Disabled
Person: _____

All Other Persons
Exercising Control over
the Alleged Disabled
Person or the Person's
Property: _____

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

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

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

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

~~8.~~ 9. The names and addresses of the persons with whom the alleged disabled person resides or has resided over the past five years and the ~~length of time~~ approximate dates of the alleged disabled person's residence with each person are as follows:

<u>Name</u>	<u>Address</u>	<u>Approximate Dates</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

~~9.~~ 10. A brief description of the alleged disability and how it affects the alleged disabled person's ability to function is as follows:

~~10.~~ 11. (a) Guardianship of the Person is sought because

(Name of Alleged Disabled Person)

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

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

~~11.~~ 12. (a) Guardianship of the Property is sought because

(Name of Alleged Disabled Person) cannot manage property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs or other addictions, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance. State the relevant facts:

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

~~12.~~ 13. If this Petition is for Guardianship of the Property, the following is the list of all the property in which the alleged disabled person has any interest including an absolute interest, a joint interest, or an interest less than absolute (e.g. trust, life estate):

<u>Property</u>	<u>Location</u>	<u>Value</u>	<u>Sole Owner, Joint Owner (specific type), Life Tenant, Trustee, Custodian, Agent, etc.</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

~~13.~~ 14. The petitioner's interest in the property of the alleged disabled person listed in ~~12.~~ 13. is _____

~~14.~~ 15. If a guardian or conservator has been appointed for the alleged disabled person in another proceeding, the name and

Address

Telephone Number

~~Facsimile Number~~

E-mail Address

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

Petitioner's Name

Petitioner's Signature

INSTRUCTIONS

1. The required exhibits are as follows:
 - (a) A copy of any instrument nominating a guardian;
 - (b) A copy of any power of attorney (including a durable power of attorney for health care) which the alleged disabled person has given to someone;
 - (c) Signed and verified certificates of two physicians licensed to practice medicine in the United States who have examined the alleged disabled person, or of one licensed physician, who has examined the alleged disabled person, and one licensed psychologist or certified clinical social worker, who has seen and evaluated the alleged disabled person. An examination or evaluation by at least one of the health care professionals must have occurred within 21 days before the filing of the petition (see Code, Estates and Trusts Article, § 13-103 and §1-102 (a) and (b)).

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

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

Source: This Rule is new.

REPORTER'S NOTE

Several changes to the Petition for Guardianship of an Alleged Disabled Person form set forth in Rule 10-112 are proposed. The changes track the changes to Rule 10-111, Petition for Guardianship of a Minor, and are proposed for the reasons stated in the Reporter's note to that Rule. In addition, in Section 8., the name of the "Local Commission on Aging and Retirement Education" is corrected to "Director of the Local Area Agency on Aging."

MARYLAND RULES OF PROCEDURE
TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 100 - GENERAL PROVISIONS

ADD New Rule 10-113, as follows:

Rule 10-113. DISQUALIFYING OFFENSES; WAIVER

(a) Opportunity to Show Good Cause

Upon request, a proposed guardian who has been convicted of a disqualifying offense under Code, Estates and Trusts Article, §11-114 shall be given an opportunity to show good cause why he or she should be appointed guardian notwithstanding the conviction.

(b) Factors for Court to Consider

In determining whether good cause exists to appoint the proposed guardian notwithstanding the conviction, the court shall consider, among other relevant factors:

- (1) the nature of the offense;
- (2) the time elapsed since the conviction;
- (3) the conduct of the proposed guardian since the conviction;
- (4) the relationship, if any, between the proposed guardian and the minor or disabled person; and
- (5) any special vulnerability of the minor or disabled person.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 10-113 was created as a result of a suggestion of the Guardianship Work Group of the Domestic Law Committee to draft a rule that provides factors for the court to consider in determining whether good cause exists to appoint a guardian who has been convicted of a crime listed in Code, Estates and Trusts Article, §11-114. The statute provides for a showing of good cause but does not explain what would constitute it.

MARYLAND RULES OF PROCEDURE
TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 200 - GUARDIAN OF PERSON

ADD New Rule 10-205.1, as follows:

Rule 10-205.1. APPOINTMENT OF GUARDIAN - CRITERIA; ORDER

(a) Whether to Appoint Guardian

In determining whether to appoint a guardian of the person of a minor or disabled person, the court shall apply the criteria set forth in Code, Estates and Trusts Article, §13-705.

(b) Whom to Appoint

In determining whom to appoint as a guardian, the court shall apply the criteria set forth in Code, Estates and Trusts Article, §13-707 and, with respect to an individual, give preference to an individual who has completed or commits to complete within 120 days or such other time that the court directs a training program in conformance with the *Guidelines for Court-Appointed Guardians of the Person* attached as an Appendix to the Rules in this Chapter.

(c) Order

An order appointing a guardian of the person shall comply with the requirements of Rule 10-108.

Cross reference: Note the requirement in Rule 10-108 (a)(1)(H) requiring the guardian to complete certain orientation and training programs.

Source: This Rule is new.

REPORTER'S NOTE

New Rules 10-205.1 and 10-304.1 are proposed to fill a gap that had previously not been addressed in the Rules -- what criteria are to be used for the court to determine (1) whether to appoint a guardian of the person or property of a minor or an alleged disabled person, and (2) whom to appoint, if a guardian is to be appointed? The Rules refer to the appropriate statute that provides the criteria for the court to use in making the determination. The Rules provide that preference will be given to an individual who has completed or commits to complete the training provided for in the "Guidelines for Court-Appointed Guardians of the Person," which are being drafted. The Rules also refer to Rule 10-108, which states what the order appointing the guardian is required to contain.

MARYLAND RULES OF PROCEDURE
TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 300 - GUARDIAN OF PROPERTY

ADD New Rule 10-304.1, as follows:

Rule 10-304.1. APPOINTMENT OF GUARDIAN - CRITERIA; ORDER

(a) Whether to Appoint Guardian

In determining whether to appoint a guardian of the property of a minor or disabled person, the court shall apply the criteria set forth in Code, Estates and Trusts Article, §13-201.

(b) Whom to Appoint

In determining whom to appoint as a guardian, the court shall apply the criteria set forth in Code, Estates and Trusts Article, §13-207 and, with respect to an individual, give preference to an individual who has completed or commits to complete within 60 days or such other time as the court directs a training program in conformance with the *Guidelines for Court-Appointed Guardians of the Property* attached as an Appendix to the Rules in this Chapter.

(c) Order

An order appointing a guardian of the property shall comply with the requirements of Rule 10-108.

Cross reference: Note the requirement in Rule 10-108 (a)(1)(H) that the guardian complete certain orientation and training programs.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 10-205.1.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 700 - FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS

OF THE PROPERTY

AMEND Rule 10-702 by adding a new section (b) pertaining to factors for the court to consider when determining whether to require a guardian of the property to post a bond; by adding the words "or increase" to subsection (c)(1); in subsection (e)(1), by deleting language from subsection (e)(1)(A) and by adding language providing that the amount of a fiduciary bond shall be based on the value of the property of the estate that is or will be under the fiduciary's control and that the fiduciary has or will have authority to expend, encumber, or convey without further order of court; by adding a Committee note after subsection (e)(1)(A) explaining the intent of that subsection and containing some of the language of current section (d); and by making stylistic changes, as follows:

Rule 10-702. BOND - FIDUCIARY ESTATE

(a) When Required or Excused

(1) Required by Instrument

If the instrument nominating the fiduciary or creating the estate requires the fiduciary to give bond, the fiduciary, whether corporate or non-corporate, shall file a bond before

commencing the performance of any fiduciary duties unless excused pursuant to subsection (5) of this section.

(2) Excused by Instrument

If the instrument nominating the fiduciary or creating the estate excuses a noncorporate fiduciary from furnishing bond, the court shall not require a bond unless the court finds that, notwithstanding the provisions of the instrument, exceptional circumstances make a bond necessary for the protection of interested persons.

(3) Corporate Fiduciary

Except as provided in subsection (1) of this section, a corporate fiduciary shall not be required to furnish a bond.

(4) Noncorporate Fiduciary - Bond not Mentioned in Instrument - Court Appointment

The court may require a non-corporate fiduciary, appointed by the court or nominated under an instrument that is silent as to bond, to file a bond if the court finds that exceptional circumstances make a bond necessary for the protection of interested persons.

(5) Fiduciary Estate not Exceeding \$10,000

Unless the court finds that exceptional circumstances make a bond necessary for the protection of interested persons, the court shall not require a fiduciary to furnish or continue in effect a bond if the assets of the estate (A) do not exceed \$10,000 in value, (B) cannot be transferred by the fiduciary

without approval of the court, and (C) consist only of cash deposited in a restricted account pursuant to Rule 10-705, securities, or real property.

(b) Factors for Court to Consider

In determining whether to require a guardian of the property to post a bond, where one is not required by law or the instrument creating the fiduciary estate, the court shall consider:

(1) the value, liquidity, annual gross income, and other receipts of the estate;

(2) whether a restricted account pursuant to Code, Estates and Trusts Article, §13-209.1 and Rule 10-705 can be established;

(3) the extent to which the income or receipts are payable to a facility responsible for the minor's or disabled person's care and custody;

(4) the guardian's criminal history, if any;

(5) the potential burden on the estate;

(6) the guardian's credit history;

(7) whether the guardian, if a professional capable of having professional malpractice insurance, maintains such insurance that would cover losses to the guardianship estate caused by conduct of the guardian;

(8) if the guardian is an attorney, whether the guardian is a member in good standing of the Maryland Bar and is in compliance with Rule 19-605; and

(9) any impediments to obtaining a bond.

~~(b)~~ (c) Petition to Require or Change Amount of Bond

(1) Who May File

Subject to the provisions of section (a), any interested person may file a petition to require the fiduciary to file a bond if a bond has not previously been filed or to reduce or increase any bond that has been filed.

(2) Where Filed

If a court has assumed jurisdiction over the estate, the petition shall be filed in that court. Otherwise, it shall be filed in the county in which the fiduciary resides, is regularly employed, or maintains a place of business.

(3) Notice

Unless the court orders otherwise, the fiduciary shall mail by ~~ordinary~~ first-class mail to all interested persons and all others exercising control of any of the fiduciary estate a copy of the petition and a show cause order issued pursuant to Rule 10-104.

~~(e)~~ (d) Where Bond to be Filed

(1) Required by Court

If a court requires a bond, the bond shall be filed in that court, unless the court directs otherwise.

(2) Required by Instrument

If a bond is required by the instrument that creates the fiduciary estate or nominates a fiduciary, the bond shall be filed in the following place:

(A) If the instrument specifies the county where the bond is to be filed, the bond shall be filed in the circuit court specified in the instrument;

(B) If the instrument does not specify a place or provide for a place to be selected, the bond shall be filed in the circuit court for the county where the instrument is recorded. If the instrument is not recorded, the bond shall be filed in the circuit court for the county where the estate will be administered.

DRAFTER'S NOTE: Under what circumstances would a petition to file, increase, or decrease a bond be filed in a court other than the one that has assumed jurisdiction over the estate? Even if, as noted in subsection (d)(2), the instrument requires that the bond be filed in a particular court or county, if another court has properly assumed jurisdiction over the estate, wouldn't the bond have to be filed in that court?

~~(d)~~ (e) Amount of Bond - Other Security

(1) Generally

(A) The amount of a fiduciary bond shall ~~not be greater than the aggregate value of the property of the estate in the fiduciary's control, less the value of (A) securities, (B) be set based on the value of the property of the estate that is or will be under the fiduciary's control and that the fiduciary has~~

or will have authority to expend, encumber, or convey without further order of the court.

Committee note: The intent of subsection (e)(1)(A) is that, ordinarily, property that cannot be spent, encumbered, or conveyed by the fiduciary without specific approval by the court not be considered in determining the amount of the bond. This would include ~~money~~ funds deposited in a financial institution as defined in Code, Estates and Trusts Article, §13-301 (h) under arrangements requiring an order of court for their removal, and ~~(C)~~ real property ~~which~~ that the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization.

(B) In lieu of sureties on a bond, the court may accept other security for the performance of the bond, including a pledge of securities or a mortgage of real property.

(C) The court may at any time, subject to the maximum amount provided by this section, require the amount of the bond, or the type or value of security, to be changed. The approval of a new bond shall not discharge any liability that may have accrued under the existing bond before such approval.

(2) Specified by Instrument

If the instrument creating the estate requires that the fiduciary file a bond in a specific amount, the bond shall be in the lesser of that amount or the maximum amount provided in subsection (1).

~~(e)~~ (f) Terms of Bond

A fiduciary bond shall be to the State of Maryland and shall be conditioned upon the faithful discharge of the duties of the fiduciary as follows:

The condition of the above obligation is such, that if _____ shall well and truly perform the office of fiduciary as designated by the _____ and shall discharge the duties required by law as fiduciary without any injury or damage to any person interested in the faithful performance of the office, then the above obligation shall be void; it shall otherwise remain in full force and effect.

~~(f)~~ (g) Payment of Bond Premium from Income

A fiduciary who is required to file a bond shall be entitled to pay and be allowed the cost of the premium out of the income of the estate, unless the court otherwise directs.

Cross reference: Code, Estates and Trusts Article, §13-208.

Source: This Rule is derived from former Rule V73, except for subsection ~~(b)(3)~~ (c)(3) which is in part derived from former Rule V71 d and is in part new.

REPORTER'S NOTE

The Guardianship Work Group recommended that Rule 10-702 be amended to provide factors for the court to consider when determining whether to require a guardian of the property to post a bond. In addition to factors suggested by the Work Group, the Subcommittees added two more factors. One is whether the guardian has malpractice insurance. This would only apply to professionals likely to carry such insurance. Another is whether a guardian who is an attorney is a member in good standing of the Maryland Bar and is in compliance with Rule 19-605.

A proposed amendment to subsection (c)(1) permits an interested person to file a petition to require the fiduciary to increase the amount of a previously filed bond.

Subsection (e)(1)(A) is amended and clarified to provide that the amount of a fiduciary bond is to be set based on the value of the property of the estate that is or will be under the

fiduciary's control and that the fiduciary has or will have authority to expend, encumber, or convey without further order of court. An explanatory Committee note, which, in part, uses language from the text of current section (d) is added following the subsection.

Stylistic changes also are made.

NOTE: Amendments to Rule 19-711 previously approved by the Rules Committee and currently pending before the Court of Appeals as part of the 193rd Report are show in italics.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

ADMINISTRATIVE PROCEDURES

AMEND Rule 19-711 by changing the words "appropriate investigation" to the words "inquiry concerning" in subsection (b) (1); by permitting Bar Counsel to decline a complaint that is duplicative; by permitting Bar Counsel to decline a complaint instead of dismissing one; by permitting Bar Counsel to decline a complaint submitted by an individual who provides information about an attorney derived from certain sources where the complainant appears to have no personal knowledge of the information being submitted; by providing that unless a complaint is declined, Bar Counsel ordinarily shall obtain a written response from the attorney who is the subject of the complaint and consider other appropriate information to assist in evaluating the complaint; by giving Bar Counsel the discretion to close a file without the approval of the Attorney Grievance Commission if Bar Counsel determines that an insufficient basis exists to demonstrate misconduct or incapacity or that the overall circumstances do not warrant

further investigation; in subsection (b)(3), by changing the words "open a file on" to the word "docket," by changing the words "acknowledge receipt of the complaint" to "notify the complainant," and by changing the word "believe" to the word "support"; by permitting Bar Counsel with the approval of the Commission to defer action on a complaint when an investigation of substantially similar or related facts by certain authorities is under way or when there are related allegations in a pending civil or criminal action; and by making stylistic changes, as follows:

Rule 19-711. COMPLAINT; INVESTIGATION BY BAR COUNSEL

(a) Who May Initiate

Bar Counsel may file a complaint on Bar Counsel's own initiative, based on information from any source. Any other individual also may file a complaint with Bar Counsel. Any communication to Bar Counsel that (1) is in writing, (2) alleges that an attorney has engaged in professional misconduct or has an incapacity, (3) includes the name and address of the individual making the communication, and (4) states facts which, if true, would constitute professional misconduct by or demonstrate an incapacity of an attorney constitutes a complaint.

(b) Review of Complaint

(1) Bar Counsel shall make an ~~appropriate investigation of~~ inquiry concerning every complaint that is not facially frivolous, ~~or~~ unfounded, or duplicative.

(2) If Bar Counsel concludes that ~~the~~ a complaint is ~~either~~ without merit, ~~or~~ does not allege facts which, if true, would demonstrate either professional misconduct or incapacity, or is duplicative, Bar Counsel shall ~~dismiss or decline to pursue~~ the complaint and shall notify the complainant ~~of the dismissal~~. Bar Counsel also may decline a complaint submitted by an individual who provides information about an attorney derived from published news reports or third party sources where the complainant appears to have no personal knowledge of the information being submitted.

(3) Unless a complaint is declined for one of the reasons set forth in subsection (b)(2) of this Rule, Bar Counsel ordinarily shall obtain a written response from the attorney who is the subject of a complaint and consider other appropriate information to assist in evaluating the merits of the complaint. If Bar Counsel determines based upon such evaluation that an insufficient basis exists to demonstrate misconduct or incapacity or that the overall circumstances do not warrant investigation, Bar Counsel has discretion to close the file without approval of the Commission. Otherwise, subject to subsection ~~(b)(3)~~ (b)(4) of this Rule, Bar Counsel shall (A)

~~open a file on~~ docket the complaint, (B) ~~acknowledge receipt of the complaint~~ notify the complainant and explain in writing ~~to the complainant~~ the procedures for investigating and processing the complaint, (C) comply with the notice requirement of section (c) of this Rule, and (D) conduct an investigation to determine whether reasonable grounds exist to believe support the allegations of the complaint.

Committee note: Before determining whether a complaint is frivolous or unfounded, Bar Counsel may contact the attorney and obtain an informal response to the allegations.

~~(3)~~ (4) If Bar Counsel concludes that a civil or criminal action involving material allegations against the attorney substantially similar or related to those alleged in the complaint is pending in any court of record in the United States, or that substantially similar or related allegations presently are under investigation by a law enforcement, regulatory, or disciplinary agency, Bar Counsel, with the approval of the Commission, may defer action on the complaint pending a determination of those allegations in ~~that~~ the pending action or investigation. Bar Counsel shall notify the complainant of that decision and, during the period of the deferral, shall report to the Commission, at least every six months, the status of the other action or investigation. The Commission, at any time, may direct Bar Counsel to proceed in accordance with subsection ~~(b)(2)~~ (b)(3) of this Rule.

(c) Notice to Attorney

(1) Except as otherwise provided in this section, Bar Counsel shall notify the attorney who is the subject of the complaint that Bar Counsel is undertaking an investigation to determine whether the attorney has engaged in professional misconduct or is incapacitated. The notice shall be given before the conclusion of the investigation and shall include the name and address of the complainant and the general nature of the professional misconduct or incapacity under investigation. As part of the notice, Bar Counsel may demand that the attorney provide information and records that Bar Counsel deems appropriate and relevant to the investigation. The notice shall state the time within which the attorney shall provide the information and any other information that the attorney may wish to present. The notice shall be served on the attorney in accordance with Rule 19-708 (b).

(2) Bar Counsel need not give notice of investigation to an attorney if, with the approval of the Commission, Bar Counsel proceeds under Rule 19-737, 19-738, or 19-739.

(d) Time for Completing Investigation

(1) Generally

Subject to subsection ~~(b)(3)~~ (b)(4) of this Rule or unless the time is extended pursuant to subsection (d)(2) of this Rule, Bar Counsel shall complete an investigation within 90 days after ~~opening the file on~~ docketing the complaint.

(2) Extension

(A) Upon written request by Bar Counsel and a finding of good cause by the Commission, the Commission may grant an extension for a specified period. Upon a separate request by Bar Counsel and a finding of good cause, the Commission may renew an extension for a specified period.

(B) The Commission may not grant or renew an extension, at any one time, of more than 60 days unless it finds specific good cause for a longer extension.

(C) If an extension exceeding 60 days is granted, Bar Counsel shall provide the Commission with a status report at least every 60 days.

(3) Sanction

For failure to comply with the time requirements of section (d) of this Rule, the Commission may take any action appropriate under the circumstances, including dismissal of the complaint and termination of the investigation.

Source: This Rule is derived from former Rule 16-731 (2016).

REPORTER'S NOTE

At the request of Bar Counsel, several amendments to Rule 19-711 are proposed. An amendment to subsection (b)(1) allows Bar Counsel to make an inquiry concerning every complaint that is not facially frivolous or duplicative. The word "inquiry" replaces the word "investigation," which is a more thorough procedure and only takes place after a complaint has been docketed. Amendments to subsection (b)(2) permit Bar Counsel to decline a complaint that is duplicative of another complaint against the same attorney, alleging the same misconduct. Bar Counsel may also decline a complaint from an individual who has no personal knowledge of the subject matter of a complaint but

seeks to be designated as a complainant by filing a complaint based on publicly available information, often with some political motivation or agenda. Bar Counsel would like to have the authority to decline these complaints and not be required to provide these individuals with confidential responses from attorneys, who may be the subject of media reports, when the complainant appears to be driven by a particular political or ideological persuasion or a desire for self-publicity or both.

Proposed subsection (b)(3) is intended to reflect more accurately the reality of how the Office of Bar Counsel initially screens and reviews complaints before a complaint may reach the "docketed" stage. The new provision expressly recognizes Bar Counsel's discretion to close non-docketed files without the approval of the Attorney Grievance Commission. The latter portion of subsection (b)(3) would incorporate language from current subsection (b)(2) while reflecting the distinctions Bar Counsel makes when a complaint becomes a docketed matter. The subsequent provisions of Rule 19-711 would apply only to docketed complaints, which is how Bar Counsel and the Commission have applied those provisions of the Rule since its inception as former Rule 16-731.

Current subsection (b)(3) of Rule 19-711 gives Bar Counsel, with the approval of the Commission, the authority to defer action on a complaint when there is a civil or criminal action pending in a court of record involving material allegations against the attorney that are substantially similar or related to those alleged in the complaint. Proposed amendments to subsection (b)(4) expand the authority to defer to include the situations where the allegations in the complaint are (1) "related" to the allegations in the pending civil or criminal action, or (2) are substantially similar or related to allegations under investigation by a law enforcement, regulatory, or disciplinary agency.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

AMEND Rule 19-605 by deleting the requirement that an attorney must provide his or her Social Security number to the treasurer of the Client Protection Fund, by modifying provisions pertaining to reporting attorneys' federal tax identification numbers to require reporting only of federal tax identification numbers that have not previously been reported, and by making stylistic changes, as follows:

Rule 19-605. OBLIGATIONS OF ATTORNEYS

(a) Conditions Precedent to Practice

(1) Generally

Except as otherwise provided in subsection (a)(2) of this Rule or 19-215 (h), each attorney admitted to practice before the Court of Appeals or issued a certificate of special authorization under Rule 19-215 or 19-216, as a condition precedent to the practice of law in this State, shall ~~(A) provide to the treasurer of the Fund the attorney's Social Security number,~~ ~~(B)~~ (A) provide to the treasurer of the Fund (i) the attorney's federal tax identification number if it has not already been provided or (ii) a statement that the attorney has no such number or has already provided it, and ~~(C)~~ (B) pay

annually to the treasurer of the Fund the sum, and all applicable late charges, set by the Court of Appeals.

(2) Exception

Unless the attorney is on permanent retired status pursuant to Rule 19-740, upon timely application by an attorney, the trustees of the Fund may approve the attorney for inactive/retired status. By regulation, the trustees may provide a uniform deadline date for seeking approval of inactive/retired status. 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, Inc., an affiliated bar foundation, or the Maryland Legal Services Corporation.

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

(3) Bill; Request for Information; Compliance

For each fiscal year, the trustees by regulation shall set dates by which (A) the Fund shall send to an attorney a bill, together with a request for the information required by subsection (a)(1)(A) of this Rule, and (B) the attorney shall comply with subsection (a)(1) of this Rule by paying the sum due and providing the required information. The date set for compliance shall be not earlier than 60 days after the Fund sends the bill and requests the information.

(4) Method of Payment

Payments of amounts due the Fund shall be by check or money order, or by any additional method approved by the trustees.

(b) Change of Address

Each attorney shall give written notice to the trustees of every change in the attorney's resident address, business address, e-mail address, telephone number, or facsimile number within 30 days of the change. The trustees shall have the right to rely on the latest information received by them for all billing and other correspondence.

Source: This Rule is derived from former Rule 16-811.5 (2016).

REPORTER'S NOTE

At the request of the Executive Director of the Client Protection Fund, the Attorneys and Judges Subcommittee recommends that Rules 19-605 and 19-606 be amended to delete the reference to attorneys providing their Social Security numbers, and that both Rules be modified to indicate that once an

attorney provides his or her federal tax identification number, it is not necessary to provide the same information each year.

The Executive Director advises that the Fund has the Social Security numbers of current members of the Bar, and the Social Security numbers of new attorneys are provided at the time they are admitted to the Bar. Most attorneys do not have a personal federal tax identification number ("TIN"), but if an attorney does have such a number, the attorney is required to provide it. Under the proposed amendments to Rule 19-605, once the TIN has been provided, the attorney is not required to provide it again.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

AMEND Rule 19-606 to conform it to the proposed amendments to Rule 19-605 and to make stylistic changes, as follows:

Rule 19-606. ENFORCEMENT OF OBLIGATIONS

(a) List of Delinquencies

As soon as practicable after January 1, but no later than February 15 of each calendar year, the trustees shall prepare, certify, and file with the Court of Appeals a list showing:

(1) the name and account number, as it appears on their records, of each attorney who, to the best of their information, is engaged in the practice of law and, without justification, has ~~(A) failed to provide to the treasurer of the Fund the attorney's Social Security number, (B) (A) failed to provide to the treasurer of the Fund the attorney's federal tax identification number or a statement that the attorney has no such number,~~ comply with Rule 19-605 (a)(1)(A), or ~~(C) (B)~~ failed to pay (i) one or more annual assessments, (ii) a penalty for late payment, (iii) any charge for a dishonored check, or (iv) reimbursement for publication charges; and

(2) the amount due from that attorney to the Fund.

(b) Required Notice of Delinquency

(1) The trustees shall give notice of delinquency promptly to each attorney on the list by first-class mail addressed to the attorney at the attorney's last address appearing on the records of the trustees. The notice shall state whether the delinquency is based upon ~~(A) a failure to provide the attorney's Social Security number,~~ ~~(B) (A) a failure to provide the attorney's federal tax identification number or a statement that the attorney has no such number~~ comply with Rule 19-605 (a)(1)(A), ~~(C) (B) a failure to pay the attorney's monetary obligation to the Fund, or~~ ~~(D) (C) a combination of any of these failures.~~ Notice of a failure to pay a monetary obligation to the Fund shall include a statement of the amount overdue. A notice of delinquency shall include a statement that failure to provide the required information and pay the amount owed to the Fund within 30 days following the date of the notice will result in the entry of an order by the Court of Appeals prohibiting the attorney from practicing law in the State.

(2) The mailing by the trustees of the notice of delinquency constitutes service of the notice on the attorney.

(c) Additional Discretionary Notice

(1) In addition to the mailed notice, the trustees may give any additional notice to the attorneys on the delinquency list as the trustees deem desirable. Additional notice may be in the form of:

(A) publication in one or more newspapers selected by the trustees;

(B) telephone, facsimile, e-mail, or other transmission to the named attorneys;

(C) dissemination to local bar associations or other professional associations;

(D) posting in one or more courthouses of the State; or

(E) any other means the trustees deem appropriate.

(2) The additional notice may be statewide, regional, local, or personal to a named attorney as the trustees direct.

(d) Temporary Suspension

(1) Proposed Order

Promptly after expiration of the deadline date stated in the mailed notice, the trustees shall submit to the Court of Appeals a proposed Temporary Suspension Order stating the names and account numbers of ~~(A) those attorneys who have failed to provide their Social Security number, (B) (A) those attorneys who have failed to provide their federal tax identification number or a statement that they have no such number, comply with Rule 19-605 (a)(1)(A), and (C) (B) those attorneys whose~~ accounts remain unpaid. The trustees shall furnish additional information from their records or give further notice as the Court of Appeals may direct.

(2) Entry of Order

If satisfied that the trustees have given the required notice to the attorneys remaining delinquent, the Court of Appeals shall enter a Temporary Suspension Order prohibiting each of them from practicing law in the State. The trustees shall mail by first class mail a copy of the Temporary Suspension Order to each attorney named in the order at the attorney's last address as it appears on the records of the trustees. The mailing by the trustees of the copy constitutes service of the order on the attorney.

(3) Effect of Order

(A) An attorney who has been served with a copy of a Temporary Suspension Order and has not been restored to good standing may not practice law and shall comply with the requirements of Rule 19-742 (c) and (d). In addition to any other remedy or sanction allowed by law, an action for contempt may be brought against a attorney who practices law in violation of a Temporary Suspension Order.

(B) Upon written request from any judge, attorney, or member of the public, the trustees, by informal means and, if requested, in writing, promptly shall confirm whether a Maryland attorney named in the request has been temporarily suspended and has not been restored to good standing.

(e) Termination of Temporary Suspension Order

(1) Duty of Trustees

Upon the attorney's compliance with Rule 19-605

(a)(1)(A) and receipt of ~~the attorney's Social Security number, federal tax identification number or statement that the attorney has no such number,~~ and all amounts due by the attorney, including all related costs prescribed by the Court of Appeals or the trustees, the trustees shall:

(A) remove the attorney's name from the list of delinquent attorneys;

(B) if a Temporary Suspension Order has been entered, inform the Court of Appeals that the ~~Social Security number, federal tax identification number or statement that the attorney has no such number,~~ attorney has complied with Rule 19-605

(a)(1)(A) and full payment ~~have~~ has been received and request the Court to enter an order terminating the attorney's suspension; and

(C) if requested by the attorney, confirm that the trustees have complied with the requirements of subsection (e)(1)(A) and (B) of this Rule.

(2) Duty of Court

Upon receipt of the notice and request provided for in subsection (e)(1)(B) of this Rule, the Court of Appeals shall enter an order terminating the temporary suspension of the attorney.

Committee note: Subsection (e)(2) does not affect any other suspension of the attorney.

Source: This Rule is derived from former Rule 16-811.6 (2016).

REPORTER'S NOTE

Proposed amendments to Rule 19-606 conform the enforcement mechanisms contained in the Rule to the proposed amendments to Rule 19-605.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1400 - LIENS FOR UNPAID WAGES

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MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1401, as follows:

Rule 15-1401. APPLICABILITY; DEFINITIONS

This Chapter applies to claims for liens of unpaid wages governed by Code, Labor and Employment Article, Title 3, Subtitle 11. In this Chapter, the definitions in Code, Labor and Employment Article, §3-1101 shall apply except as expressly otherwise provided or as necessary implication requires.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Title 15, Chapter 1400 is designed to address procedural gaps in the Maryland statute governing liens for unpaid wages, Code, Labor and Employment Article, Title 3, Subtitle 11. The proposed new Rules provide greater specificity as to the requirements of a complaint to dispute a lien for unpaid wages, how the employer and employee may request an evidentiary hearing on the complaint, and the time period for a court to hold an evidentiary hearing on the complaint.

Most importantly, at the express request and with the concurrence of the Public Justice Center, the Specific Remedies Subcommittee is recommending a process in proposed Rule 15-1404 that would authorize a circuit court to confirm a wage lien statement that is created as a matter of law under the statute when an employer does not timely file a complaint after being served with an employee's Notice to Employer of Intent to Claim Lien for Unpaid Wages. The Public Justice Center advised the Specific Remedies Subcommittee that it has been encountering difficulty in enforcing a lien against an employer that arises as a matter of law. Code, Labor and Employment Article ("LE"), §3-1104 provides that a lien for unpaid wages is established either (1) after a circuit court issues an order to establish a

lien for unpaid wages or (2), as a matter of law, when the employer has not filed a complaint disputing the lien for unpaid wages within 30 days after a notice is served. However, section 3-1106 (a), provides only that "An order for a lien for unpaid wages shall be enforced in the same manner as any other judgment under State law," which leaves a gap on how a lien can be enforced when there is no order and the lien is established as a matter of law because of the employer's failure to file a complaint.

It is the Subcommittee's belief that the rulemaking authority of the Court of Appeals extends to adopting a Rule that would authorize a circuit court to issue an order confirming a lien statement that arises as a matter of law, if adequate safeguards are also put in place to assure fairness to the parties. Proposed Rule 15-1404 establishes a process that would require an employee to submit a [written request] [petition] to a circuit court for an order establishing a lien when the employer does not timely file a complaint, and the contents of the application. The process is loosely patterned the process set forth in Rule 2-613, which governs default judgments. Upon receipt of a [request] [petition] from an employee, a court would enter a Confirmatory Order if it determines that a proper complaint was not timely filed. The clerk would then issue a written notice to the employer to inform the employer of the confirmatory order and that the employer may move to vacate the order. Proposed Rule 15-1404 sets forth the requirements of the employer's motion and the criteria the court would use to determine whether to vacate the confirmatory order. If the court decides to vacate the Confirmatory Order, the employer would be directed to file a complaint within 15 days. The matter would then proceed as if the employer had initially filed a complaint. However, if the employer does not file a motion or if the motion is denied, the court shall enter a Confirmatory Order.

The Subcommittee also concluded that the statute raises a number of issues that fall outside the purview of what can be accomplished by rules of practice and procedure. If an employer does file a complaint, LE §3-1104 (d)(1) provides that the "court shall determine whether to issue an order ... within 45 days after the date on which the complaint was filed." LE §3-1104 (c)(1) provides that the "employer or employee may request an evidentiary hearing." However, the statute does not address fundamental questions such as discovery rights, whether an employee may file an answer to a complaint, motions' practice in general, or impleading other parties, for example. The 45 day window dictated by the statute would seem to prevent such common

place components of the litigation process, which in turn raises questions about the quality of any hearing.

The statute also raises substantial questions about fairness and procedural due process. The Public Justice Center has contended that because the Maryland Unpaid Wage Lien Law was closely modeled on the Maryland Contract Lien Act, Code, Real Property Article, §§14-201 et seq., which was upheld against a challenge on due process grounds in *General Sands v. Waller*, 313 Md. 484 (1988), the Unpaid Wage Lien Law therefore is also constitutional. The Subcommittee was not convinced that the decision in *Waller*, which dealt with a relatively straightforward dispute between a unit owner and condominium association, would necessarily apply to unpaid wages disputes, where the issues could be much more complicated, starting with the issue of whether the proper employer was served with the notice. See *Jones v. Hoffberger Moving Services LLC*, 92 F. Supp. 3d 405 (D. Md. 2015) (Summary judgment denied to majority owner of corporation because an issue of material fact existed on whether the owner exercised sufficient "operational control" to qualify as an employer under Maryland's Wage and Hour law.) These are problems with the statute that cannot be addressed through rulemaking.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1402, as follows:

Rule 15-1402. NOTICE TO EMPLOYER - REQUIREMENTS

To establish a lien for unpaid wages an employee under Code, Labor and Employment Article, Title 3, Subtitle 11, the employee shall serve the employer with a notice that:

(1) Contains (i) the name and address of the individual seeking a lien; (ii) the name of the employer; (iii) the dates of employment; (iv) The dates for which wages are due but were not paid; (v) The basis for the claim that wages were due but were not paid; (vi) The monetary amount of the lien sought; (vii) The real or personal property, or both, against which the lien is sought along with a description adequate to identify the property, name of owner, and location; and (viii) Notice to the employer of the employer's right to dispute the lien by filing a complaint within 30 days of receipt of the notice.

Committee note: Code, Labor and Employment Article, §3-1102 (3) requires that the notice to the employer "contain[s] the information required by the Commissioner [of Labor and Industry] under §3-1110 of this Subtitle to provide the employer with adequate notice of the wages claimed and the property against which the lien for unpaid wages is sought." The list in (1) is taken almost verbatim from COMAR 09.12.39.02B.

(2) Is personally served on the employer in accordance with Maryland Rule 2-121.

(3) Is served on the employer within the statute of limitations period under Code, Courts Article, §5-101; and

(4) Is under oath.

Source: This Rule is new.

REPORTER'S NOTE

Proposed Rule 15-1402 differs from the requirements of the Commissioner of Labor and Industry as to the notice to the employer in three respects. First, COMAR 09.12.39.02B (2) provides that the form of the Notice shall include, "The name of the business or individual for whom the employee performed work." In contrast, proposed Rule 15-1402 (1)(ii) refers simply to the "employer," which is defined in the statute as "a person who acts directly or indirectly in the interest of another employer with an employee." LE §3-1101 (b). Proposed Rule 15-1402 (1)(ii) uses the terminology of the statute rather than the regulation to avoid further complicating the matter.

Second, proposed Rule 15-1402 (2) repeats the statutory requirement of LE §3-1102 (2) that the written notice "is personally served in accordance with Maryland Rule 2-121." COMAR 09.12.39.02C repeats the requirements of rule 2-121 for service of process but does not require, as the statute does, that the employer be "personally served." The Subcommittee was unwilling to decide whether the word "personally" in the statute was unnecessary and accordingly simply repeated the statutory language.

Third, Rule 15-1402 (4) requires that the Notice be under oath, which is not required by the Commission of Labor and Industry, but seemed by the Subcommittee to be a matter of fundamental fairness given the interests at stake.

See also the Reporter's note to Rule 15-1401.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1403, as follows:

Rule 15-1403. CONDITIONS FOR ESTABLISHING LIEN FOR UNPAID WAGES
- EMPLOYER DISPUTES LIEN - DETERMINATION OF COMPLAINT

(a) Time for Employer's Complaint

Within 30 days after the employer is served with the notice, the employer may dispute the lien for unpaid wages by filing a complaint in the circuit court for the county where any of the property identified in the employee's notice to employer of intent to claim lien for unpaid wages is located.

(b) Lien Established

A lien for unpaid wages is established if the employer does not file a complaint disputing the lien within 30 days after the notice is served in accordance with Code, Labor and Employment Article, §§3-1102 through 1104.

(c) Requirements of Complaint

A complaint shall include or be accompanied by:

(1) a copy of the notice to establish a lien for unpaid wages that was served on the employer in accordance with Code, Labor and Employment Article, §3-1102 and Rule 15-1402;

(2) The date that the employee served the Notice to Employer of Intent to Claim Lien for Unpaid Wages on the employer;

(3) the names of the employer and employee named in the Notice of Intent to Claim Lien for Unpaid Wages;

(4) an explanation of why the wages claimed by the employee are not due and owing by the employer;

(5) a statement of any defense to the lien for unpaid wages;

(6) a statement of whether the employer has an ownership interest in the property identified in the notice and the nature of the interest;

(7) an affidavit containing a statement of facts that support any defenses raised; and

(8) a description of supporting documents with the supporting documents attached

(d) Service and Request for Hearing

(1) The complaint shall be served on the employee. An employer desiring a hearing on the complaint shall request the hearing in the complaint under the heading "Request for Hearing." The title of the complaint shall state that a hearing is requested.

(2) The complaint shall be accompanied by an admission or waiver of service or a signed certificate showing the date and manner of making service. A certificate of service is prima facie proof of service.

(3) An employee may submit a request a hearing within five days after service of the complaint.

(4) If a request for a hearing is filed by the employer or employee, the court shall hold a hearing within 30 days after the latest timely request.

(e) Generally

Within 45 days after the date that an employer files a complaint, the circuit court shall determine whether to issue an order establishing a lien for unpaid wages in accordance with Code, Labor and Employment Article, §3-1103. The employee has the burden of proof to establish the employee's right to the lien based a preponderance of the evidence.

(f) Cost and Fees

(1) If the court issues an order to establish a lien for unpaid wages, the employee is entitled to court costs and reasonable attorney's fees.

(2) If the court determines the effort to establish a lien for unpaid wages to have been frivolous or made in bad faith, the court may award court costs and reasonable attorney's fees to an employer.

Cross reference: Rule 15-1403 (f)(2) is derived from LE §3-1103 (d)(2).

(g) When Order Issued

If the court issues an order under section (e), the employee may record a wage lien statement: (1) for a lien

against real property, by filing a wage lien statement, in a form prescribed by the Commissioner, with the clerk of the circuit court for the county where any portion of the property is located; and (2) for a lien against personal property, by filing a wage lien statement in the same manner, form, and place as a financing statement under Title 9, Subtitle 5 of the Commercial Law Article.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 15-1401.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1404, as follows:

Rule 15-1404. FILING AND RECORDING WAGE LIEN INSTRUMENTS -
EMPLOYER FAILURE TO DISPUTE NOTICE OF LIEN - CONFIRMATORY ORDER

(a) Generally

If the employer does not file a complaint within 30 days after service of the notice, the employee may record the lien for unpaid wages by filing a wage lien statement under Code, Labor and Employment Article, §3-1105 (b) and this Rule. The wage lien statement shall be accompanied by proof of service of the written notice to the employer in accordance with Maryland Rule 2-126.

(b) Recording Lien Against Real Property

A wage lien statement may be recorded for a lien against real property pursuant to this Rule by filing a wage lien statement, in a form prescribed by the Commissioner of Labor and Industry, with the clerk of the circuit court for the county where any portion of the property is located. The form shall follow the requirements of Rule 1-301 for court papers.

(c) Recording Lien Against Personal Property

A wage lien statement may be recorded for a lien against personal property by filing a wage lien statement in the same, manner, form, and place as a financing statement under Title 9, Subtitle 5 of the Commercial Law Article.

(d) Extinguishment or Release of Lien

(1) If an employee does not record a wage lien statement within 180 days after the lien for unpaid wages is established, a lien for unpaid wages shall be extinguished without prejudice.

(2) If payment is made or a bond is filed for the amount of wages and damages stated in the wage lien statement, the recorded lien for unpaid wages shall be released.

(e) Priority

A lien for unpaid wages recorded under this section shall be considered a secured claim that has priority if no complaint disputing the lien for unpaid wages is filed, from the date that the employee filed the wage lien statement.

(f) Request for Confirmatory Order

If the employer does not timely file a complaint after notice is served on the employer pursuant to Code, Labor and Employment Article, §3-1104 and section (a) of this Rule, in addition to filing a wage lien statement pursuant to this Rule, an employee may file a [written request] [petition] for an Order confirming the lien. The request shall be filed in the circuit court for the county where any part of the property identified in the wage lien statement is located.

If the [request] [petition] complies with this section and the court finds that the time for the employer to file a complaint has expired, the Court shall enter an Order confirming the lien.

Drafter's Note: The proposed Rule circulated to the Subcommittee used the term "request," to mirror Rule 2-613. The proposal being submitted to the Committee offers the word "petition" as an alternative. A request for a default judgement under Rule 2-613 occurs when a case already exists, and there was concern that a "request" made when no case is open would create confusion. A "petition," in contrast, would trigger the opening of a case.

(g) Notice

Promptly upon entry of the Confirmatory Order, the clerk shall issue a notice informing the employer that the Confirmatory Order has been entered and that the employer may move to vacate the order within 30 days after its entry. The notice shall be mailed to the employer at the address stated in the proof of service accompanying the request. The Court may provide for additional notice to the employer.

(h) Motion by Employer

The employer may move to vacate the Confirmatory Order within 30 days after its entry. The motion shall state the reasons for the failure to file a complaint and the legal and factual bases for any defense to the lien for unpaid wages. The motion shall be supported by an affidavit if it is based on any facts not contained in the employee's request or Notice to establish lien.

(i) Disposition of Motion

If the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action and that it is equitable to excuse the employer's failure to file a complaint, the court shall vacate the Confirmatory Order and direct the employer to file a complaint within 15 days of the court's decision and that the controversy proceed in accordance with Rule 15-1403.

(j) Entry of Order

If a motion was not filed under section (h) of this Rule or was filed and denied, the court shall enter an Order confirming the lien that shall be enforceable pursuant to Rule 15-1405.

(k) Extinguishment of Lien

An employee against whom an employee has recorded a wage lien statement may move to extinguish the lien at any time on the grounds of fraud, mistake, or irregularity.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 15-1401.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1405, as follows:

Rule 15-1405. ENFORCEMENT OF ORDER

An order for a lien for unpaid wages shall be enforceable in the same manner as any other judgment under State law.

Source: This Rule is new.

REPORTER'S NOTE

Proposed Rule 15-1405 repeats LE §3-1106 (a) verbatim. See also the Reporter's note to Rule 15-1401.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1406, as follows:

Rule 15-1406. EXTINGUISHMENT OR RELEASE OF LIEN, PRIORITY OF CLAIM, SUBSEQUENT BONA FIDE PURCHASERS

(a) Time for Recording

If an employee does not record a wage lien statement within 180 days after the lien for unpaid wages is established, a lien for unpaid wages shall be extinguished without prejudice.

(b) When Lien Released

If payment is made or a bond is filed for the amount of wages and damages stated in the wage lien statement, the recorded lien for unpaid wages shall be released.

(c) Priority of Claim

A lien for unpaid wages recorded under Rule 15-1404 shall be considered a secured claim that has priority: (1) from the date of the court order establishing the lien for unpaid wages; or (2) if no complaint disputing the lien for unpaid wages is filed, from the date that the employee filed the wage lien statement.

(d) Subsequent Bona Fide Purchasers

Subsequent bona fide purchasers of any property subject to a recorded lien for unpaid wages are deemed to have

constructive notice of the lien for unpaid wages from the date of recordation of a wage lien statement.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 15-1401.