COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Training Rooms 5 and 6 of the Judiciary Education and Conference Center, 2011-D Commerce Park Drive, Annapolis, Maryland on May 3, 2013.

Members present:

Hon. Alan M. Wilner, Chair
Hon. Robert A. Zarnoch, Vice Chair

Robert R. Bowie, Jr., Esq.
Albert D. Brault, Esq.
James E. Carbine, Esq.
Ms. Pamela Q. Harris
J. Brooks Leahy, Esq.
Hon. Thomas J. Love
Timothy F. Maloney, Esq.
Hon. Danielle M. Mosley
Hon. W. Michel Pierson
Hon. Paula A. Price
Kathy P. Smith, Clerk
Steven M. Sullivan, Esq.
Melvin J. Sykes, Esq.
Hon. Julia B. Weatherly
Robert Zarbin, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Cheryl Lyons-Schmidt, Esq., Assistant Reporter
Glenn M. Grossman, Esq., Bar Counsel, Attorney Grievance Commission
Raymond A. Hein, Esq., Deputy Bar Counsel, Attorney Grievance Commission
Kendall R. Ruffatto, Esq., Executive Secretary, Attorney Grievance Commission
Linda H. Lamone, Esq., Chair, Attorney Grievance Commission
Deborah A. Unitus, Manager, Program Services
Richard Montgomery, Esq., Maryland State Bar Association
Brian L. Zavin, Esq., Appellate Division, Office of the Public Defender
Ms. Janet C. Moss, Client Protection Fund
Greg Hilton, Esq., Chief Deputy Clerk, Court of Special Appeals

The Chair convened the meeting. He told the Committee that on April 18, 2013, the Court of Appeals had adopted the Maryland Electronic Courts Rules (MDEC) as they had been submitted in the

176th Report to the Court and the Supplement to that Report. The Court gave a general effective date of July 1, 2013. The Rules will not be implemented until the MDEC system starts in Anne Arundel County at some point in the first quarter of 2014, followed six months later by the counties on the upper Eastern Shore, followed at some point after that by the counties on the lower Eastern Shore, followed after that by Baltimore County. Part 1 of the 178th Report, which includes the reorganization of the court administration rules in Title 16 was submitted to the Court of Appeals two days ago. It is on the Judiciary website. Hopefully, the Court will conduct an open meeting on this some time in July. The comment period ends on June 17, 2013.

The Chair said that what the Committee sent to the Court will be labeled as Part 1 of the 178th Report. Part 2 will be Title 18, which the Committee finished at the April 5, 2013 meeting. It addresses judges and judicial appointees. Part 3 will be comprised of what is on the agenda for the meeting today pertaining to attorneys. The Court had been advised that most of these Rules are currently in Title 16. Some of them are derived from administrative orders of the Chief Judge. They all need to have the same effective date. With the exception of the Juvenile Rules (on which the Subcommittee is making progress), this will complete the reorganization of the Maryland Rules that began in 1984 with Titles 1 through 4. That project had started initially in the 1970's.

Agenda Item 1. Consideration of a proposed new Rule 1-332 (Accommodations Under the Americans with Disabilities Act; Court Interpreters)and conforming amendments to Appendix: Maryland Code of Conduct for Court Interpreters and Appendix: Court Interpreter Inquiry Questions

---

The Chair presented Rule 1-332, Accommodations under the Americans with Disabilities Act; Court Interpreters, Appendix: Maryland Code of Conduct for Court Interpreters, and Appendix: Court Interpreter Inquiry Questions for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

DELETE Rule 1-332 and ADD new Rule 1-332, as follows:

Rule 1-332. ~~NOTIFICATION OF NEED FOR~~ ACCOMMODATIONS UNDER THE AMERICANS WITH DISABILITIES ACT; COURT INTERPRETERS

(a) Definitions

~~The~~ In this Rule, the following definitions apply ~~in this Rule~~ except as otherwise expressly provided or as necessary implication requires:

(1) ADA

"ADA" means the Americans with Disabilities Act, 42 U.S.C. §12101, et seq.

~~(1)~~ (2) Certified Interpreter

"Certified Interpreter" means an interpreter who is certified by:

(A) the Maryland Administrative Office of the Courts;

(B) a member of the ~~Consortium for State Court Interpreter Certification~~ Council for Language Access Coordinators; or

Committee note: The Council for Language Access Coordinators is a unit of the National Center for State Courts.

(C) the Federal Administrative Office of the Courts.

~~(5)~~ (3) ~~Person~~ Individual Who Needs an Interpreter

"~~Person~~ Individual who needs an interpreter" means a party, ~~or a~~ witness, or victim who is deaf or unable adequately to understand or express himself or herself in spoken or written English and a juror or prospective juror who is deaf.

~~(2)~~ (4) Interpreter

"Interpreter" means an adult who has the ability to render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written and without explanation.

~~(3)~~ (5) Interpreter Eligible for Certification

"Interpreter eligible for certification" means an interpreter who is not a certified interpreter but who:

(A) has submitted to the Maryland Administrative Office of the Courts a completed Maryland State Judiciary Information Form for Spoken and Sign Language Court Interpreters and a statement swearing or affirming compliance with the Maryland Code of Conduct for Court Interpreters;

(B) has attended the Maryland Judiciary's orientation workshop on court interpreting; and

(C) does not have, in a state or federal court of record, a pending criminal charge or conviction on a charge punishable by a fine of more than $500 or imprisonment for more than six months unless pardoned or expunged in accordance with law.

~~(4)~~ (6) Non-certified Interpreters

"Non-certified interpreter" means an interpreter other than a certified interpreter or an interpreter eligible for certification.

(7) Victim

"Victim" includes a victim's representative as defined in Code, Criminal Procedure Article, §11-104.

(b) Accommodation under the ADA

(1) Notification of Need for Accommodation

A person requesting an accommodation under the ~~Americans With Disabilities Act, 42 U.S.C. § 12101, et seq.~~ ADA, for an attorney, a party, ~~or~~ a witness, or a victim shall notify the court promptly. ~~As far as practicable~~ To the extent practicable, a request for an accommodation shall be (1) presented on a form approved by administrative order of the Court of Appeals and available from the clerk of the court and (2) submitted not less than 30 days before the proceeding for which the accommodation is requested.

~~(1)~~ (2) Sign Language Interpreter

The court shall determine whether a sign language interpreter is needed in accordance with the requirements of the ~~Americans with Disabilities Act, 42 U.S.C. §12101, et seq.~~ ADA; Code, Courts Article, §9-114; and Code, Criminal Procedure Article, §§1-202 and 3-103.

(3) Provision of Accommodation

The court shall provide an accommodation if one is required under the ADA. If the accommodation is the provision of a sign language interpreter, the court shall appoint one in accordance with section (d) of this Rule.

(c) Spoken Language Interpreters

(1) Applicability

This section applies to spoken language interpreters. It does not apply to sign language interpreters.

~~(b)~~ (2) Application for the Appointment of an Interpreter

A person who needs an interpreter ~~may apply to the court~~ shall file an application for the appointment of an interpreter. ~~As far as practicable, an application for the appointment of an interpreter shall be (1) presented on a form approved by administrative order of the Court of Appeals and available from the clerk of the court and (2) submitted not less than 30 days before the proceeding for which the interpreter is requested.~~ To the extent practicable, the application shall be filed not later than 30 days before the proceeding for which the interpreter is requested on a form approved by the Court of Appeals and available from the clerk of the court. If a timely and complete application is filed, the court shall appoint an interpreter in accordance with section (d) of this Rule.

~~(c)~~ (3) ~~Procedures to Determine the Need for Interpreters~~ Where Timely Application Not Filed

If a timely application is not filed pursuant to subsection (c)(2) of this Rule and an individual who may qualify as an individual who needs an interpreter appears at a proceeding, the court shall determine the need for an interpreter as follows:

~~(2) Spoken Language Interpreter~~

(A) Examination of Party or Witness

To determine whether ~~a spoken language~~ an interpreter is needed, the court, on request or on its own initiative, shall examine a party, ~~or~~ witness, or victim on the record. The court shall appoint ~~a spoken language~~ an interpreter if the court determines that:

(i) the party does not understand English well enough to participate fully in the proceedings and to assist counsel, or

(ii) the party, ~~or a~~ witness, or victim does not speak English well enough to ~~be understood by counsel, the court, and the jury~~ readily understand or communicate the spoken English language.

(B) Scope of Examination

The court's examination of the party, ~~or~~ witness, or victim should include questions relating to:

(i) identification;

(ii) active vocabulary in vernacular English; and

(iii) the court proceedings.

Committee note: Examples of matters relating to identification are: name, address, birth date, age, and place of birth. Examples of questions that elicit active vocabulary in vernacular English are: How did you come to court today? What kind of work do you do? Where did you go to school? What was the highest grade you completed? What do you see in the courtroom? Examples of questions relating to the proceedings are: What do you understand this case to be about? What is the purpose of what we are doing here in court? What can you tell me about the rights of the parties to a court case? What are the responsibilities of a court witness? Questions should be phrased to avoid "yes or no" replies.

(d) Selection and Appointment of Interpreters

(1) Certified Interpreter Required; Exceptions

When the court determines that an interpreter is needed, the court shall make a diligent effort to obtain the services of a certified interpreter. If a certified interpreter is not available, the court shall make a diligent effort to obtain the services of an interpreter eligible for certification. The court may appoint a non-certified interpreter only if neither a certified interpreter nor an interpreter eligible for certification is available. A person related by blood or marriage to a party or to the person who needs an interpreter may not act as an interpreter.

Committee note: The court should be cautious about appointing a non-certified interpreter and should consider carefully the seriousness of the case and the availability of resources before doing so.

(2) Inquiry of Prospective Interpreter

Before appointing an interpreter under this Rule, the court shall conduct an appropriate inquiry of the prospective interpreter on the record.

Committee note: The court should use the interpreter inquiry questions promulgated by the Maryland Judicial Conference Advisory Committee on Interpreters and published, together with suggested responses, in the October 20, 1998 Report of the Advisory Committee. The questions and suggested responses are reprinted as an Appendix to these Rules.

(3) Oath

Upon appointment by the court and before acting as an interpreter in the proceeding, the interpreter shall ~~solemnly~~ swear or affirm under the penalties of perjury to interpret accurately, completely,

and impartially and to refrain from knowingly disclosing confidential or privileged information obtained while serving in the proceeding. If the interpreter is to serve in a grand jury proceeding, the interpreter also shall take and subscribe an oath that the interpreter will keep secret all matters and things occurring before the grand jury.

(4) Multiple Interpreters in the Same Language

At the request of a party or on its own initiative, the court may appoint more than one interpreter in the same language to ensure the accuracy of the interpretation or to preserve confidentiality if:

(A) the proceedings are expected to exceed three hours;

(B) the proceedings include complex issues and terminology or other such challenges; or

(C) an opposing party requires an interpreter in the same language.

Committee note: To ensure accurate interpretation, after interpreting for a period of forty-five minutes, an interpreter ordinarily should be granted a reasonable rest period.

(e) Removal from Proceeding

A court interpreter may be removed from a proceeding by a judge or judicial appointee within the meaning of Rule ~~16-814 (e)(1)~~ 18-200.3 (a)(1), who shall then notify the Maryland Administrative Office of the Courts that the action was taken.

(f) Compensation of Court Interpreters

Compensation for interpreters shall be in accordance with Code, Criminal Procedure Article, §§1-202 and 3-103 and Code, Courts Article, §9-114.

Committee note: Code, Courts Article, §9-114 provides for the appointment of interpreters for certain parties and witnesses, generally. Code, Criminal Procedure Article, §§1-202 and 3-103 provide for the appointment of interpreters for certain defendants in criminal proceedings and proceedings under Title 3 of that Article.

Source: This Rule is derived from former Rules 1-322 (2013) and 16-819 (2013).

Rule 1-332 was accompanied by the following Reporter's note.

The placement of most of the Rules currently in Title 16 will be in revised Titles 16 (Court Administration), 18 (Judges and Judicial Appointees), and 19 (Attorneys).

Because of (1) the broad applicability of the Rule pertaining to court interpreters; (2) the similarity of the procedure for requesting an interpreter to the procedure for requesting an accommodation under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §12101, et seq.; and (3) the fact that the provision of a sign language interpreter is the provision of an accommodation under the ADA, current Rule 16-819 (Court Interpreters) is moved to Title 1 and combined with current Rule 1-322 (Notification of Need for Accommodation).

The combined Rule includes the addition of provisions pertaining to victims and victims' representatives, in accordance with Chapter 705, Laws of 2012 (HB 1148), and clarifies that extensive inquiry into the need for a spoken language interpreter is required only if a timely request had not been filed.

In subsection (c)(3)(A)(ii), the statutory phrase, "readily understand or communicate the spoken English language," replaces the phrase, "be understood by counsel, the court, and the jury," which is in the current Rule.

Additionally, stylistic changes are made.

MARYLAND RULES OF PROCEDURE

APPENDIX: MARYLAND CODE OF CONDUCT FOR COURT INTERPRETERS

AMEND Appendix: Maryland Code of Conduct for Court Interpreters to conform to the transfer of certain provisions from the Rules in Title 16 to Rule 1-332, as follows:

APPENDIX: MARYLAND CODE OF CONDUCT FOR COURT INTERPRETERS

Preamble

In the absence of a court interpreter, many persons who come before the courts are partially or completely excluded from full participation in the proceedings because they have limited proficiency in the English language, have a speech impairment, or are deaf or hard of hearing. It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position and enjoy equal access to justice as similarly situated persons for whom there is no such barrier. As officers of the court, interpreters help to ensure that these persons enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively.

Applicability

This Code shall guide and be binding upon all certified interpreters and interpreters eligible for certification, as those terms are defined in Rule ~~16-819~~ 1-332, and all agencies and organizations that

administer, supervise the use of, or deliver interpreting services in the courts of this State.

. . .

The Appendix: Maryland Code of Conduct for Court Interpreters was accompanied by the following Reporter's note.

The proposed amendment to Appendix: Maryland Code of Conduct for Court Interpreters conforms the Code to the transfer of the substance of Rule 16-819 to Rule 1-332, with amendments.

MARYLAND RULES OF PROCEDURE

APPENDIX: COURT INTERPRETER INQUIRY QUESTIONS

AMEND Appendix: Court Interpreter Inquiry Questions to delete references to a rescinded Administrative Order, add references to the current Administrative Order, and to delete an obsolete sentence, as follows:

APPENDIX: COURT INTERPRETER INQUIRY QUESTIONS

. . .

Explanation of Responses to Voir Dire Questions for Interpreters*:

. . .

(10) *Have you attended the Maryland Judiciary's Orientation Workshop for Court Interpreters?*

The answer should be "yes", as this is

required under the Administrative Order issued on ~~December 7, 1995~~ October 19, 2012. This workshop includes components on legal terminology, ethics, and skills but is merely a 2-day overview and not an intensive course.

. . .

(31) *Have you submitted to the Administrative Office of the Courts a completed information form, a statement swearing or affirming compliance with the Maryland Code of Conduct for Court Interpreters and a statement subscribing to the Interpreter's Oath?*

The answer to this question should be "yes" as to the information form, as this is required under the Administrative Order dated ~~December 7, 1995~~ October 19, 2012. ~~The remaining documents will be required should the Subcommittee report be adopted.~~

. . .

The Appendix: Court Interpreter Inquiry Questions was accompanied by the following Reporter's note.

The Explanation of Responses to Questions 10 and 31 set forth in Appendix: Court Interpreter Inquiry Questions are proposed to be revised to update references to the most recent Administrative Order pertaining to court interpreting and to delete an obsolete sentence.

The Chair said that Agenda Item 1 was the last straggler of the court administration rules. Current Rule 1-332, Notification of Need for Accommodation, addresses necessary accommodations under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §12101, et seq. Someone would have to make a request for an accommodation at least 30 days before the proceeding for which

the person would like an accommodation if it is practicable to do so on a form approved by the Court of Appeals and available from the clerk's office. The ADA does require an accommodation for people who are hearing-impaired. The accommodation is a sign language interpreter. So far, spoken language interpreters needed because someone does not understand English but is able to hear have not been put under the ADA. The request for a spoken language interpreter is covered by Rule 16-819, Court Interpreters. It is longer than Rule 1-332, but it provides essentially the same procedure. The person needing an interpreter must make the request 30 days before the proceeding for which he or she needs the interpreter.

The Chair commented that because of the rewriting of Title 16, Rule 16-819 needs to be moved somewhere. It could be left in the new Title 16, but since it addresses some interpreters but not others, and since the process of request is very similar to the one in Rule 1-332, the decision was made to combine the two Rules and move Rule 16-819 into Title 1 where it is more transparent. It is not so much a court administration rule as it is a rule pertaining to trials and hearings. The idea was that people would tend to look for it more in Title 1, which applies to all courts, including Orphans' Courts. There is not much in Title 16 that refers to Orphans' Courts. Rule 16-819 seems to be better placed together with the ADA Rule.

The Chair noted that section (b) of proposed Rule 1-332, which pertains to the ADA, had not been changed substantively.

Section (b) contains only a few style changes. Section (c) addresses spoken language interpreters. It seems to follow current Rule 16-819 with some reorganization and style changes. It adds victims to the list of people who are entitled to accommodations, because State law requires this. The proposed change addresses a gap in Rule 16-819. Jurors who are hearing-impaired have been added to the ADA part of the Rule. The statute, stating the qualifications for jurors (Code, Courts Article, §8-103), requires that they be able to understand English. There should not be a problem with interpreters unless the court wants to make them available. This does not seem to be required at this point. The Rule is updated simply to reflect current practice. Both Ms. Unitus, who is with the Administrative Office of the Courts and was present at the meeting, as well as the Honorable Audrey J. S. Carrion, of the Circuit Court for Baltimore City, who chairs the Maryland Judicial Conference Committee on Court Interpreters and Translation Services, helped with the drafting of proposed Rule 1-332.

The Chair commented that one change that was necessary to make was pointed out by Ms. Unitus after the Rule had been initially drafted. It was in subsection (a)(2)(C) of Rule 1-332 and was a change from the language "Federal Administrative Office of the Courts" to the correct term "Administrative Office of the U.S. Courts." A more substantive change which reflects what is actually happening is that if someone files a timely application

for a spoken language interpreter, then one is assigned. The court does not go behind the application, unless something stands out as improper. If a timely application is not filed, then under the current Rule, the court can make an inquiry at the hearing as to whether an interpreter is needed, and whether the person is qualified to have a court-appointed interpreter. This has been retained in the proposed Rule. The only change is that if the application for an interpreter is filed, the applicant will get an interpreter. After Rule 1-332 had been drafted, Ms. Unitus had also pointed out a necessary change to the Committee note after subsection (d)(4)(C). This provides that an interpreter is entitled to a break after 45 minutes. The current practice is that when there is more than one interpreter, they trade off interpreting every 20 minutes. The 45-minute period should be changed to 20 minutes to reflect current practice.

The Chair said that Ms. Unitus had also pointed out a change to section (f) of proposed Rule 1-332 pertaining to compensation. The references to the Code sections are correct, but the actual compensation schedule is prepared by the Administrative Office of the Courts ("AOC"). Section (f) should be revised to state: "Compensation for interpreters shall be in accordance with a schedule adopted by the State Court Administrator consistent with...". Ms Unitus agreed with this language. By consensus, the Committee approved this change.

Judge Weatherly remarked that when multiple interpreters are in her courtroom, they never ask to change every 20 minutes.

Ms. Unitus noted that when a case has two interpreters, one is the active interpreter, and one is the passive interpreter. They spell each other. The way it works now seems to be that one interpreter works for 45 minutes straight. If the person needs a break before 45 minutes, the other interpreter can take over. The Chair asked if a change to the Committee note after subsection (d)(4)(C) was needed. Ms. Unitus responded that she had sent the Chair information as to how the procedure really works. In the original Committee note, there was no time frame. She was not sure where the 45-minute period came from. The Reporter asked whether there are national standards on this issue. Ms. Unitus said that the 20-minute time period came from the national standards. The Reporter commented that when the interpreter rules were first adopted, which was a long time ago, it was evident that the interpreters would need a break, and the 45-minute period was randomly selected.

Judge Pierson said that the way this works in practice when there is one interpreter at a hearing or trial is that the break interval depends on the interpreter, who will let the judge know when he or she needs a break. Judge Pierson had thought that the Committee note did not only address cases with multiple interpreters but also addressed cases with single interpreters. It seemed to him that rather than putting a specific time limit in the Rule, the Committee note should provide that the time limit should be dependent on the needs of the interpreter.

Judge Weatherly remarked that much like the courtroom staff,

interpreters tend to look to the judge for permission to break. She had been told that court stenographers should get a break every 90 minutes. To some extent, it is similar for the interpreters. They could probably use a break every one hour to 90 minutes. Judge Pierson added that it also depends on what is going on. If it is legal argument, the interpreters may need a break much sooner than if they are interpreting testimony.

The Chair inquired if the problem would be solved if the language "after interpreting for a period of forty-five minutes" was taken out of the Committee note after subsection (d)(4)(C). The Reporter observed that when this Rule had been discussed at an earlier time, the problem was that some judges would say that four hours was a reasonable amount of time before an interpreter was allowed to take a break. The 45-minute time period was a compromise that was randomly chosen. Ms. Unitus said that having such a number locks in the judge somewhat. The Chair responded that the number could be taken out. The Committee note would read: "To ensure accurate interpretation, an interpreter ordinarily should be granted a reasonable rest period." Judge Pierson suggested that the language could be "...reasonable rest periods at frequent intervals." By consensus, the Committee agreed to Judge Pierson's suggested changes, including pluralizing the term "rest period."

Judge Pierson commented that although he did not disagree with any of the text of the proposed Rule, combining Rules 1-332 and 16-819 could possibly lead to confusion. There is the

potential for requests for accommodation that have nothing to do with interpreters. In his view, the ADA portion of the Rule had now been subsumed and was sort of buried there. The Chair responded that the Rule contained separate sections. Judge Pierson remarked that the look and feel of the Rule was that it pertains to interpreters, and accommodations can refer to many other situations. The Chair agreed with Judge Pierson about the other accommodations, but the Chair pointed out that the title of the Rule is "Accommodations Under the Americans with Disabilities Act; Court Interpreters." Would it be clearer for the title to be "...Americans with Disabilities Act and Court Interpreters?" Judge Pierson expressed the opinion that this is mixing apples and oranges. The Chair disagreed, explaining that sign language interpreters are under the ADA. Judge Pierson admitted that sign language interpreters are a form of accommodation. The Reporter agreed, noting that this is the only real overlap between the two parts of proposed Rule 1-332.

The Reporter asked Ms. Unitus if her office administers the sign language interpreters, also. Ms. Unitus replied affirmatively. Originally, the request for a language interpreter had been combined with requests for sign language interpreters and all ADA accommodations in the same form. She and her colleagues had separated the two requests into two different forms. The ADA form refers to sign language interpreters and any other ADA accommodation as opposed to the form to request foreign language interpreters.

The Reporter inquired if Ms. Unitus still had a form with a checklist of what can be requested. Ms. Unitus answered affirmatively. The Chair commented that the Rules could be split, but the two Rules, one following the other, would read almost exactly the same. Judge Pierson countered that the two Rules do not read exactly the same. The Rule as it was now could be numbered Rule 1-332, and the other Rule could be numbered Rule 1-333 with the paragraph pertaining to ADA accommodations removed. There would be content in Rule 1-332 that does not pertain to ADA accommodations. The Chair agreed, noting that this is section (c) of proposed Rule 1-332 as it appears in the meeting materials.

Judge Pierson moved to separate Rule 1-332 into two rules. The motion was seconded, and it passed on a vote of eight in favor and five opposed.

Ms. Smith commented that at times, the accommodations forms come in at the last minute. It may be that people do not know that the forms are available on the Judiciary's website as well. She suggested that this information be put into the Rule pertaining to ADA accommodations. By consensus, the Committee agreed to this suggestion.

Mr. Brault remarked that he remembered when the issue of foreign language interpreters had been discussed previously. The problem is that there are about 150 different languages spoken in Maryland. He asked Ms. Unitus how her office had been able to address the problem of so many spoken languages and obtaining

interpreters for those languages. Ms. Unitus responded that this is still a problem, not only in Maryland but nationwide. The top need in the State is by far for Spanish interpreters. There are now 110 certified Spanish court interpreters in the State. The second greatest need is for American Sign Language ("ASL") interpreters. After this, the need drastically drops down to 2% for other languages such as Korean, Russian, and Vietnamese. The State is in a fairly good situation, except for certified Korean and Vietnamese interpreters. In a case where there is no certified interpreter, they do have eligible interpreters, but they could always use more. Mr. Brault observed that in Montgomery County, many people speak African languages, and this causes problems.

By consensus, the Committee approved Rule 1-332 as amended, including separating it into two Rules.

The Chair said that two appendices are also proposed to be moved to Title 1 without change. They are the Maryland Code of Conduct for Court Interpreters and the Court Interpreter Inquiry Questions, which are currently attached to Rule 16-819. The Chair asked if there was any objection to this. The Reporter pointed out that there were several changes. In the Code of Conduct, the cross reference to "Rule 16-819" had been changed to "Rule 1-332." In the Court Interpreter Inquiry Questions, references to an administrative order had been updated, and a sentence referring to the earlier administrative order had been deleted. The Chair noted that the changes were not substantive.

By consensus, the Committee approved the two appendices as presented and approved moving them to Title 1.

Agenda Item 2. Consideration of Chapters 300-700 of proposed new Title 19 (Attorneys)- Chapter 300 (Maryland Lawyers' Rules of Professional Conduct), Chapter 400 (Attorney trust Accounts), Chapter 500 (Pro Bono Legal Services), Chapter 600 (Client Protection Fund), and Chapter 700 (Discipline, Inactive Status, Resignation)

The Chair said that the Committee had already approved Chapters 100 and 200 of Title 19, which are the Bar Admission Rules. The rest of Title 19 was before the Committee. The Chair presented Chapter 300 of Title 19 for the Committee's consideration. (See Appendix 1). The Rules in Chapter 300 consist of the Rules of Professional Conduct ("RPC"). There had been no substantive changes to those Rules. The most obvious style change was similar to what the Committee had done with the Code of Judicial Conduct, which was to incorporate all of the Rules in Chapter 300 into one Rule.

The Chair commented that the Rules themselves are now in an appendix. The proposal was to give each Rule a Maryland Rule number, but to follow the numbering system of the American Bar Association ("ABA"), so it would be obvious that Rule 19-301.1 is ABA Rule 1.1, Rule 19-301.2 is ABA Rule 1.2, etc. There should not be any confusion about this. This change is mentioned specifically in the Code itself. It appears as the last paragraph of Rule 19-300.1, the Preamble to the RPC. There were changes in cross references. The word "paragraph" in the current

Rule was changed to the word "section," because now the parts of the Rules are termed "sections," rather than paragraphs of canons. Other than that, there were no changes.

The Chair told the Committee that there had been one omission. In Title 16 and Title 18, the word "lawyer" had been changed to the word "attorney," but that was not changed in Title 19. Some of the Rules had referred to "lawyer," some to "counsel," and some to "attorney." It seemed better to use one term in the Rules. So far, the Court of Appeals had gone along with this. The question was whether the word "lawyer" in Chapter 300 should be changed to the word "attorney." These would be the only rules using the word "lawyer." Mr. Brault expressed the view that the word "attorney" reads better. By consensus, the Committee approved changing the word "lawyer" to the word "attorney" in the Rules in Chapter 300 of Title 19.

The Chair pointed out that attached to the Chapter 300 Rules were the three appendices that currently follow the Rules as they exist now. (See Appendix 1). Appendix A was the Ideals of Professionalism, which had been drafted at the request of the Court of Appeals, and they had adopted; Appendix B was the Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings; and Appendix C was the Guidelines for Practice for Court-appointed Attorneys Representing Children in Cases Involving Child Custody or Child Access. These three were already in appendices to the current Rules.

Mr. Brault noted that no substantive changes had been made to the Rules in Chapter 300 of Title 19 or the Appendices. He had spoken again with Glenn Grossman, Esq., Bar Counsel, to make sure that Mr. Grossman was in agreement with the draft of the Chapter 300 Rules, and Mr. Grossman had indicated that he approved of the Rules. The Chair asked Mr. Grossman and Ms. Lamone, who is Chair of the Attorney Grievance Commission ("AGC"), if either wanted to comment on any of the Rules in Chapter 300 of Title 19, and they answered negatively.

By consensus, the Committee approved the Rules in Chapter 300 of Title 19 as amended.

The Chair presented Chapter 400, Attorney Trust Accounts, of Title 19 for the Committee's consideration. (See Appendix 2). These Rules were a relocation without change of current Rules 16-601 through 16-612, except for the correction of cross references. He assumed that the Committee would change the word "lawyer" to the word "attorney," which no one objected to. He asked if anyone had a comment on the Rules in Chapter 400, Rules 19-401 through 19-413 of Title 19. None was forthcoming.

By consensus, the Committee approved the Rules in Chapter 400 of Title 19 as amended.

The Chair presented Chapter 500, Pro Bono Legal Services, of Title 19 for the Committee's consideration. (See Appendix 3). Chapter 500 of Title 19 represented a relocation without change of current Rules 16-901 through 16-903. Again, the word "lawyer" would be changed to the word "attorney."

There being no comment, the Committee approved the Rules in Chapter 500 of Title 19 as amended.

The Chair explained that Chapter 600 of Title 19 pertained to the Client Protection Fund. This was mostly derived from current Rule 16-811. The Rules had been updated somewhat as requested by the Trustees of the Fund. There was a substantive change in the text of a rule requested by the Court of Appeals.

The Chair presented Rule 19-601, Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

Rule 19-601. DEFINITIONS

In this Chapter, the following definitions apply:

(a) Client Protection Fund; Fund

"Client Protection Fund" and "Fund" mean the Client Protection Fund of the Bar of Maryland created by Code, Business Occupations and Professions Article, §10-311.

(b) Local Bar Association

"Local Bar Association" means (1) in Baltimore City, the Bar Association of Baltimore City, or (2) in each county, the bar association with the greatest number of members who are residents of the county and who maintain their principal offices for the practice of law in that county.

(c) These Rules

"These Rules" means the Rules in this

Chapter.

Source: This Rule is new but is derived, in part, from former Rule 16-811 (2013).

The Chair said that Rule 19-601 had no changes.

By consensus, the Committee approved Rule 19-601 as presented.

The Chair presented Rule 19-602, Purpose, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

Rule 19-602. PURPOSE

(a) Purpose

The purpose of the Client Protection Fund is to maintain the integrity and protect the good name of the legal profession by reimbursing, to the extent authorized by these Rules and deemed proper and reasonable by the trustees of the Fund, losses caused by defalcations of members of the Bar of Maryland or out-of-state attorneys authorized to practice in this State under Rule 19-215, acting either as attorneys or, except to the extent they are bonded, as fiduciaries.

(b) Fiduciary; Definition

For purposes of this Rule, "fiduciary" means an attorney acting in a fiduciary capacity that is traditional and customary in the practice of law in Maryland, such as a personal representative of a probate estate, a trustee of an express trust, a guardian, a custodian acting pursuant to statute, or an attorney-in-fact by written appointment.
Cross reference: Regulations of the Client

Protection Fund of the Bar of Maryland, section (a)(1).

(c) Fiduciary Relationship Not Formed

A fiduciary relationship is not formed between an attorney and a third party who has been assigned an interest in the proceeds of a civil award or settlement, including attorneys' fees, in consideration for the advancement of funds by the third party to the attorney or client.

Committee note: For purposes of this Rule, a fiduciary relationship is not formed between an attorney and a lawsuit cash advance lending company. Section (c) is not intended to apply to medical, healthcare, or other service providers that may be owned money for services rendered.

Source: This Rule is derived from former Rule 16-811 (2013).

Rule 19-602 was accompanied by the following Reporter's note.

Subsection a. 3. of current Rule 16-811 and the accompanying cross reference are carried forward, with some changes, to new Rule 19-602 (a).

Section (b), Fiduciary; Definition, is new. The definition is derived from the Regulations of the Client Protection Fund. It is not included in proposed Rule 19-601, Definitions, because the word "fiduciary" appears only in Rule 19-602.

Section (c) is new. It is proposed in response to issues associated with lawsuit cash advance lenders. Lawsuit lending companies provide loans to clients awaiting payment on lawsuit settlements. These companies typically charge high interest rates, and some have taken the position that the attorney is responsible for ensuring payment of both the principal and the interest. Section (c) and the accompanying

Committee note are proposed in order to make clear that, for purposes of this Rule, a fiduciary relationship is not created between a lawsuit cash advance lending company and an attorney. It is not intended to foreclose the possibility of the formation of a fiduciary relationship between an attorney and a medical or other service provider who provided services to the client and must be compensated with settlement proceeds.

The Chair noted that section (c) of Rule 19-602 and the Committee note that followed section (c) were new. This had been requested by the Trustees of the Client Protection Fund and was explained in the Reporter's note. Ms. Janet Moss, the Executive Director of the Fund was present. The Chair asked her if she had any comments, and she answered that she did not.

By consensus, the Committee approved Rule 19-602 as presented.

The Chair presented Rule 19-603, Appointment, Compensation, Meetings of Trustees, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

Rule 19-603. APPOINTMENT, COMPENSATION, MEETINGS OF TRUSTEES

(a) Number of Trustees

The Court of Appeals shall appoint nine individuals to be the trustees of the Client Protection Fund. Eight of the trustees shall be members of the Maryland Bar. One individual shall not be an attorney.

(b) Geographic Appointment

One trustee who is a member of the Maryland Bar shall be appointed from each of the seven appellate judicial circuits. The other two trustees shall be appointed at large.

(c) Term

The term of each trustee is seven years. A trustee may be removed by the Court at any time. In the event of a vacancy, the Court shall appoint a successor trustee for the unexpired term.

(d) Compensation; Expenses

The trustees shall serve without compensation, but unless no other source of funds is available, shall be entitled to reimbursement from the Fund for their expenses reasonably incurred in the performance of their duties as trustees, including transportation costs.

(e) Meetings

Meetings of the trustees shall be held at the call of the chair or a majority of the trustees on reasonable notice. The trustees shall meet at least once each year.

(f) Quorum

(1) Five trustees shall constitute a quorum. Except as otherwise provided by these Rules, a majority of the trustees present at a duly constituted meeting may exercise any powers held by the trustees.

(2) The trustees' powers under Rule 19-604 (a) may be exercised only by the affirmative vote of at least five trustees.

Source: This Rule is derived from former Rule 16-811 (2013).

Rule 19-603 was accompanied by the following Reporter's note.

Current Rule 16-811 b. 1. states that one trustee shall not be a "member of the Bar." It was intended that this individual not be an attorney (a member of *any* Bar). The current language could be interpreted to mean that this individual can be an attorney, but cannot be a member of the *Maryland* Bar. The proposed amendment to Rule 19-603 (a) resolves this ambiguity. The remaining sections are carried forward, with stylistic changes, from current Rule 16-811.

The Chair told the Committee that section (a) of Rule 19-603 had been somewhat ambiguous as to whether the ninth person who is a trustee could be an attorney from another state. The intention of the trustees was that the ninth person is not supposed to be an attorney at all. This had been clarified in section (a).

By consensus, the Committee approved Rule 19-603 as presented.

The Chair presented Rule 19-604, Powers and Duties of Trustees; Treasurer, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

Rule 19-604. POWERS AND DUTIES OF TRUSTEES; TREASURER

(a) Trustees

The trustees have the following powers and duties:

(1) To elect, from among their membership, a chair, a treasurer, and such other officers as they deem necessary or appropriate.

(2) To receive, hold, manage, and distribute, pursuant to this Rule, the funds raised hereunder, and any other monies that may be received by the Fund through voluntary contributions or otherwise.

(3) To authorize payment of claims in accordance with this Rule.

(4) To adopt regulations for the administration of the Fund and the procedures for the presentation, consideration, recognition, rejection and payment of claims, and to adopt bylaws for conducting business. A copy of the regulations shall be filed with the Clerk of the Court of Appeals, who shall mail a copy of them to the clerk of the circuit court for each county and to all Registers of Wills. The regulations shall be posted on the Judiciary website.

(5) To enforce claims for restitution, arising by subrogation or assignment or otherwise.

(6) To deposit funds in any bank or other savings institution (A) that is chartered and whose financial activities are regulated under federal or Maryland law, and (B) whose deposits are insured by an instrumentality of the federal government.

(7) To invest funds not needed for current use in such investments as they deem appropriate, consistent with an investment policy specified in regulations adopted by the trustees and approved by the Court of Appeals.

(8) To employ and compensate consultants, agents, legal counsel and employees.

(9) To delegate the power to perform routine acts which may be necessary or desirable for the operation of the Fund, including the power to authorize disbursements for routine operating expenses of the Fund, but authorization for payments of claims shall be made only as provided in Rule 19-609.

(10) To sue or be sued in the name of the Fund without joining any or all individual trustees.

(11) To comply with the requirements of Rules 19-704 (e), 19-705 (c), 19-708 (a), and 19-723.

(12) To designate an employee to perform the duties set forth in Rules 19-708 (a) and 19-723 and notify Bar Counsel of that designation.

(13) To file with the Court of Appeals an annual report of the management and operation of the Fund and to arrange for an annual audit of the accounts of the Fund by state or private auditors. The cost of the audit shall be paid by the Fund if no other source of funds is available.

(14) To file additional reports and arrange for additional audits as the Court of Appeals may order.

(15) To perform all other acts authorized by these Rules or necessary or proper for the fulfillment of the purposes of the Fund and its efficient administration.

(b) Treasurer

The treasurer shall:

(1) maintain the Fund in a separate account;

(2) disburse moneys from the Fund only upon the action of the trustees pursuant to these Rules;

(3) file annually with the trustees a bond for the proper execution of the duties of the office of treasurer of the Fund in an amount established by the trustees and with one or more sureties approved by the trustees; and

(4) comply with the requirements of Rule 19-705 (c).

> Source: This Rule is derived from former Rule 16-811 (2013).

Rule 19-604 was accompanied by the following Reporter's note.

> With the exceptions outlined below, the substance of proposed Rule 19-604 is carried forward with stylistic changes from current Rule 16-811 b., c., g., and i.
>
> The last sentence of subsection (a)(4) is new. It is proposed because it would be useful to require the trustees to post their regulations on the Judiciary website in light of the increasing use of technology.
>
> Subsection (a)(6) has been amended to ensure that the bank or savings institution into which funds are deposited is one regulated by law and whose deposits are insured.
>
> Subsection (a)(7) permits the trustees to invest funds not needed for current use as they deem appropriate. Appropriateness will be governed by the trustees' investment policy as specified in their regulations. The policy must be approved by the Court of Appeals.

The Chair said that Rule 19-604 had several changes. The last sentence of subsection (a)(4) requires that the regulations of the Trustees be posted on the Judiciary website, which was a new addition. Subsections (a)(6) and (7) pertained to the power to deposit funds from investments made by the Fund in a bank. The current Rule has these two provisions together in one paragraph. Both of these provisions had been restyled to conform to current practice. The Trustees had approved both of these changes.

By consensus, the Committee approved Rule 19-604 as presented.

The Chair presented Rule 19-605, Obligations of Attorneys, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

Rule 19-605. OBLIGATIONS OF ATTORNEYS

(a) ~~Payment to Fund~~ Conditions Precedent to Practice

(1) Generally

Except as otherwise provided in this section, each attorney admitted to practice before the Court of Appeals or issued a certificate of special authorization under Rule 19-215, 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 and (B) pay annually to the treasurer of the Fund the sum, and all applicable late charges, set by the Court of Appeals.

(2) Exception

Upon timely application by an attorney, the trustees of the Fund may approve an 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 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 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.

(3) Due Date

Payment for any fiscal year is due within 60 days after the bill is sent.

(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 numbers, or facsimile numbers 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 (2013).

Rule 19-605 was accompanied by the following Reporter's note.

The provisions of Rule 19-605 (a)(1) and (2) are carried forward from current Rule 16-811 e. 2. with stylistic changes and the addition of a requirement that the attorney provide to the treasurer of the Client Protection Fund the attorney's Social Security Number.

The requirement to provide the Social Security Number is added to subsection (a)(1). Current Rule 16-778 (Referral from Child Support Enforcement Administration), which is based on statutory requirements set forth in Code, Family Law Article, §10-119.3, provides a mechanism by which the license of an attorney may be suspended for failure to

> pay child support. In order to fully implement the statute, a process is needed to require an attorney to provide the attorney's Social Security Number and to enforce that requirement.
>
> The enforcement mechanism is added to Rule 19-606. That Rule set out the existing process for the temporary suspension of an attorney who fails to pay the attorney's monetary obligation to the Fund. Added to Rule 19-606 are provisions by which the same process for temporary suspension can be used to enforce the requirement that the attorney provide his or her Social Security Number to the Fund.
>
> Subsection (a)(3) of Rule 19-605 is carried forward from Rule 16-811 e. 4., except that, because the bills are not sent to all attorneys at the same time, the Subcommittee suggests that the due date be tied to the date the bills are sent to the attorneys.
>
> Section (b) is carried forward from current Rule 16-811 e. 3. The requirement to notify the trustees of a change in e-mail address and facsimile numbers is added.

The Chair told the Committee that the Court of Appeals had requested that Rule 19-605 require attorneys to provide the treasurer of the Client Protection Fund with the attorney's social security number. This is not new. There are two statutes that already require attorneys to provide social security numbers. One is Code, Business Occupations Article, §10-313, which requires that by August 31 of each year, the Fund shall provide to the Maryland Department of Assessments and Taxation and to the Comptroller a list of all attorneys. Among the contents of what has to be provided is the federal tax

identification number of the attorney, or if he or she does not have a federal tax identification number, the person's social security number. Obviously, the Fund has to procure that information to turn it over to those two agencies.

The Chair said that the second statute, which is what triggered the request for the social security number, is Code, Family Law Article, §10-119.3, addressing child support enforcement. The statute provides for the suspension of occupational licenses for persons identified by the Child Support Enforcement Administration who are four months in arrears on child support. Until recently, attorneys had not been included in the list of persons who hold occupational licenses. It may have been looked at as a separation of powers issue concerning telling the Court of Appeals what to do with attorneys' licenses. However, about two years ago, the legislature added a requirement for the Court of Appeals to adopt rules, so that when the Child Support Enforcement Administration sends the list of attorneys in default on child support to the AGC, the Commission has to give the list to Bar Counsel.

The Chair commented that some attorneys had not been supplying their social security numbers. Now under the provision in the Family Law Article, an attorney in default in child support is referred to the AGC, which then proceeds with a petition to suspend the attorney. It is the grievance mechanism for attorneys whom the Child Support Enforcement Administration has found to have not paid their child support for four months.

This requires social security numbers, and the statute provides that the Administration, in a request for information, has to supply the social security number of the obligor. The Court of Appeals had indicated that it would prefer to deal with this not by going through the AGC, but by a decertification process like it does with respect to attorneys who do not report their *pro bono* activity or their information as to Interest on Lawyers' Trust Accounts (IOLTA).

The Chair said that most attorneys will pay up when a penalty process starts to happen. Rather than go through the entire grievance mechanism which can end up with a complicated court hearing, the Court of Appeals prefers the decertification process. Rule 19-605 adds that an attorney must submit his or her social security number to the Client Protection Fund, so that the number is available to give to both the Department of Assessments and Taxation and the Comptroller as well as for purposes of any decertification. The Reporter noted that the term "decertification" had been changed to the term "temporary suspension," a procedure that does not go through the AGC.

Mr. Brault inquired how secure the information with the social security number is. Ms. Moss replied that the information is secure when given to the Client Protection Fund. The Fund does not put the information online nor do they conduct any business online. One of the issues that had arisen was the fact that the Fund presents the information to the State agencies. Once the information leaves the hands of the Fund, Ms. Moss has

no way of making sure the information is secure. This is an issue that has caused problems for attorneys. The Comptroller has had access to social security numbers for a very long time, so the information is secure there. It is the same with the Child Support Enforcement Administration and the Department of Assessments and Taxation. Mr. Brault asked how the arrangement with the Child Support Enforcement Administration worked. Ms. Moss answered that she provides a disk to them that is locked by a password number. She did not know what security measures that agency uses.

Judge Weatherly said that a social security number is needed for the earnings withholding orders in child support cases. They are treated as a confidential, financial document. The papers with the social security number are put into a sealed file. If the number appears on the file jacket, it is redacted. This pertains to private attorneys. The regulations allow the Child Support Enforcement Administration itself to send out earnings withholding orders that are not filed by the court. The court does not see those. If a case has been filed by a private attorney, he or she will give the court an earnings withholding order, and, for purposes of the employer, it requires that a social security number be given. The masters are skilled at handling these cases, because they do them in such volume. A brochure goes to the Office of the Child Support Enforcement Administration. It is filled out by the parties in the courtroom. It not only asks for their name and social security

number; it asks for the social security numbers of the children. The brochure is stapled into the file and then it is sent intact to the child support agency.

Judge Weatherly commented that in her many years of handling these cases, there had not been a problem with identity theft. The Chair pointed out that in the court file, all but the last four digits of the social security number are shielded. Rule 19-605 simply requires that attorneys give their social security number to the Client Protection Fund, because the Fund has to turn it over to other agencies. Ms. Moss added that new attorneys have to give their social security numbers to take the bar examination. From this point forward, the Fund gets the necessary information.

By consensus, the Committee approved Rule 19-605 as presented.

The Chair presented Rule 19-606, Enforcement of Obligations, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

Rule 19-606. ENFORCEMENT ~~– UNPAID ASSESSMENTS GENERALLY~~ OF OBLIGATIONS

(a) List of ~~Unpaid Assessments~~ 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 failed to provide the attorney's Social Security Number to the treasurer of the Fund or failed to pay (A) one or more annual assessments, (B) a penalty for late payment, (C) any charge for a dishonored check, or (D) reimbursement for publication charges; and

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

(b) Required Notice of ~~Default~~ 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 failure to provide the attorney's Social Security Number, a failure to pay the attorney's monetary obligation to the Fund, or a failure to do both. Notice of a failure to pay a monetary obligation to the Fund shall include a statement of the amount ~~of the obligation to the Fund, that payment is overdue, and~~ overdue. A notice of delinquency shall include a statement that failure to provide the attorney's Social Security Number 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 ~~default~~ 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 court houses 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 and (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 ~~in default~~ 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 (a) and (b). 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) Payment; Termination of Temporary Suspension Order

(1) Method of Payment

Payment of amounts due the Fund shall be by certified or bank check.

(2) Duty of Trustees

Upon ~~payment of~~ receipt of the attorney's Social Security 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 and full payment ~~has~~ have 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)(2)(A) and (B) of this Rule.

(3) Duty of Court

Upon receipt of the notice and request provided for in subsection (e)(2)(B) of this Rule, the Court of Appeals shall enter an order terminating the temporary suspension of the attorney.

Committee note: Subsection (e)(3) does not affect any other suspension of the attorney.

Source: This Rule is new but is derived in part from former Rule 16-811 (2013).

Rule 19-606 was accompanied by the following Reporter's note.

Proposed Rule 19-606, Enforcement - Unpaid Assessment Generally, is derived primarily from current Rule 16-811 f. The majority of the proposed amendments are stylistic in nature, except for the addition of provisions concerning enforcement of the requirement to provide the attorney's Social Security Number to the treasurer of the Client Protection Fund, as described in the Reporter's note to Rule 19-605.

Subsection (d)(3)(B), regarding requests for information about a Maryland attorney's status, has been amended to reflect the current practice of the Client Protection Fund ("Fund"). The current Rule appears to allow only a *Maryland* judge, attorney, or litigant to request information about an attorney's status. In practice, the Fund responds to requests from any judge, attorney, or member of the public, and, because the information is a matter of public record there appears to be no reason not to do so.

Current Rule 16-811 f. 4. (iii) prohibits a judge from permitting a suspended attorney to practice in his or her court. The Subcommittee proposes deleting this

section because it is disciplinary in nature, and therefore would be more appropriate in another Chapter.

Subsection (e)(1), Method of Payment, is derived from current Rule 16-811 d. 5. The current Rule allows payment by cash or "bank official's check." Because it is questionable whether the Fund should be handling cash, and it is not clear what "bank official's check" means, the Rule has been amended to require payment by certified check or bank check.

Subsection (e)(2) outlines the duty of trustees with respect to the termination of a temporary suspension order. Subsection (e)(3) outlines the duty of the court. The current Rule requires the trustees to request that the Court terminate the temporary suspension but does not require the Court to do so. The proposed amendment requires the Court to enter an order terminating suspension because an attorney who has provided his or her Social Security Number and paid all amounts owed is no longer delinquent.

The Chair explained that Rule 19-606 pertained to the enforcement generally of the obligation of attorneys to pay the Client Protection Fund and to supply their social security number.

By consensus, the Committee approved Rule 19-606 as presented.

The Chair presented Rule 19-607, Dishonored Checks, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

Rule 19-607. DISHONORED CHECKS

(a) Notice by Treasurer

If a check to the Fund is dishonored, the treasurer of the Fund shall notify the attorney immediately by the quickest available means.

(b) Duty of Attorney

Within seven business days following the date of the notice, the attorney shall pay to the treasurer of the Fund the full amount of dishonored check plus any additional charge that the trustees shall prescribe. Payment shall be by certified or bank check.

(c) Temporary Suspension Order

(1) Notice by Treasurer

The treasurer of the Fund promptly (but not more often than once each calendar quarter) shall submit to the Court of Appeals a proposed interim Temporary Suspension Order stating the name and account number of each attorney who remains in default of payment for a dishonored check and related charges.

(2) Entry and Service of Order

The Court of Appeals shall enter an Interim Temporary Suspension Order prohibiting the practice of law in the State by each attorney as to whom the Court is satisfied that the treasurer has made reasonable efforts to give notice concerning the dishonored check. The treasurer shall mail by first class mail a copy of the interim 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 treasurer of the copy constitutes service of the order on the attorney.

(d) Payment; Termination or Replacement of Interim Order

(1) Procedure Upon Payment

Upon payment of the full amount due by the attorney, the trustees and the Court shall follow the procedure set forth in Rule 19-606 (e).

(2) If No Payment

If the full amount due is not paid by the time the Court enters its next Temporary Suspension Order under Rule 19-606 and, as a result, the attorney is included in that order, the interim order shall terminate and be replaced by the Temporary Suspension Order.

Source: This Rule is derived from former Rule 16-811 (2013).

Rule 19-607 was accompanied by the following Reporter's note.

Rule 19-607, Dishonored Checks, is carried forward from current Rule 16-811 e. and f.

Section (d) is added because the current Rule does not cover what happens after an interim order is issued. Presumably, either the attorney will make good on the check or will fail to make payment. Section (d) provides a procedure for terminating the interim order if payment is made and continuing the suspension in the next temporary suspension order if payment is not made.

The Chair told the Committee that section (d) of Rule 19-607 was new. The Reporter's note explained that the change fixes a gap, because the current Rule does not cover what happens after an interim order is issued.

By consensus, the Committee approved Rule 19-607 as presented.

The Chair presented Rule 19-608, Notices Concerning Temporary Suspension, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

Rule 19-608. NOTICES CONCERNING TEMPORARY SUSPENSIONS

(a) Sending Copies

The Clerk of the Court of Appeals shall send a copy of each Temporary Suspension Order and order that terminates a temporary suspension and restores the attorney to good standing entered pursuant to these Rules to:

(1) the Clerk of the Court of Special Appeals;

(2) the clerk of each circuit court;

(3) the Chief Clerk of the District Court;

(4) the Register of Wills for each county;

(5) the State Court Administrator; and

(6) the Office of Administrative Hearings.

(b) Posting to Website

The Clerk shall also post to the Judiciary website any order sent pursuant to section (a) of this Rule.

Source: This Rule is derived from former Rule 16-811 (2013).

Rule 19-608 was accompanied by the following Reporter's note.

Section (a) of proposed Rule 19-608 is carried forward from current Rule 16-811 f. 7. with stylistic changes and the addition of a requirement to send copies of orders to the Office of Administrative Hearings.

Section (b) is new. In light of the increasing use of technology, it would be useful to post the orders on the Judiciary website.

The Chair said that section (b) of Rule 19-608, which provided for posting the orders on the website, was new. This was the only change to Rule 19-608.

By consensus, the Committee approved Rule 19-608 as presented.

The Chair presented Rule 19-609, Claims, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

Rule 19-609. CLAIMS

(a) Method of Making Claim

A claim against the Fund shall be made in conformance with regulations adopted by the trustees.

(b) Review by Trustees

(1) Generally

The trustees shall determine whether a claim merits reimbursement from the Fund and, if so:

(A) the amount of such reimbursement;

(B) the time, place, and manner of payment;

(C) any conditions upon which payment will be made; and

(D) the order in which payments will be made.

(2) No Rights in Fund

No claimant or other person has any right in the Fund, as beneficiary or otherwise.

(3) Assistance in Investigation

The trustees may request bar associations, Bar Counsel, other organizations of attorneys, and individual attorneys to assist the trustees in the investigation of claims.

(c) Factors to be Considered

In exercising their discretion, the trustees may consider:

(1) The amounts available and likely to become available to the Fund for the payment of claims;

(2) The amount and number of claims likely to be presented in the future;

(3) The total amount of losses caused by defalcations of any one attorney or associated groups of attorneys;

(4) The unreimbursed amounts of claims recognized by the trustees in the past as meriting reimbursement, but for which reimbursement has not been made in the total amount of the loss sustained;

(5) The amount of the claimant's loss as compared with the amount of the losses sustained by other claimants who may merit reimbursement from the Fund;

(6) The degree of hardship the claimant

has suffered by the loss; and

(7) Any other factor the trustees deem appropriate.

(d) Conditions to Payment

In addition to other conditions and requirements, the trustees may require claimants, as a condition of payment, to take such action and to enter into such agreements and execute such instruments as the trustees find appropriate, including assignments, subrogation agreements, trust agreements, and promises to cooperate with the trustees in making and prosecuting claims or charges against any person.

Source: This Rule is derived from former Rule 16-811 (2013).

Rule 19-609 was accompanied by the following Reporter's note.

Proposed Rule 19-609, Claims, is derived from current Rule 16-811 h. Bar Counsel is added to subsection (b)(3) as a person the trustees may request to assist them in the investigation of claims. The requirement that an affirmative vote of five trustees is needed to exercise the power under section (b) has been moved to Rule 19-603 (f)(2). The remaining changes are stylistic.

The Chair explained that in subsection (b)(3) of Rule 19-609, Bar Counsel was added to the list of persons and organizations from whom the Trustees can request assistance in the investigation of claims.

By consensus, the Committee approved Rule 19-609 as presented.

The Chair presented Rule 19-610, Judicial Review, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

Rule 19-610. JUDICIAL REVIEW

(a) Generally

A person aggrieved by a final determination of the trustees may seek judicial review of the determination pursuant to Title 7, Chapter 200 of the Maryland Rules.

(b) Standard of Review

In the action for judicial review, the decision of the trustees shall be deemed prima facie correct and shall be affirmed unless the decision was arbitrary, capricious, unsupported by substantial evidence on the record considered as a whole, beyond the authority vested in the trustees, made upon unlawful procedure, or unconstitutional or otherwise illegal. Any party, including the Fund, aggrieved by the judgment of the circuit court may appeal the judgment to the Court of Special Appeals.

Source: This Rule is derived from former Rule 16-811 (2013).

Rule 19-610 was accompanied by the following Reporter's note.

Proposed Rule 19-610 is derived from current Rule 16-811 i.

The Chair told the Committee that no change had been made to Rule 19-610.

By consensus the Committee approved Rule 19-610 as presented.

The Chair presented Rule 19-611, Supervisory Authority of Court of Appeals, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

Rule 19-611. SUPERVISORY AUTHORITY OF COURT OF APPEALS

(a) Audit

In addition to the authority of the trustees under Rule 19-604, the Court of Appeals may at any time arrange for an audit of the accounts of the Fund to be made by State or private auditors. The cost of any such audit shall be paid by the Fund if no other source of funds is available.

(b) Administrative Advice

The trustees may apply to the Court of Appeals, in its nonadjudicator, supervisory capacity, for interpretation of these Rules and for advice as to their powers and as to the proper administration of the Fund. Any final order issued by the Court in response to any such application shall and determine all rights with respect to the matters covered and shall be binding.

(c) Dissolution

The Court of Appeals may provide for the dissolution and winding up of the affairs of the Fund.

Source: This Rule is derived from former Rule 16-811 (2013).

Rule 19-611 was accompanied by the following Reporter's note.

Rule 19-611, Supervisory Authority of

Court of Appeals, is derived from current Rule 16-811 i.

Current Rule 16-811 i. 1., regarding the power of the Court to change the Rule, is proposed to be deleted because it is unnecessary except as to the provision concerning the dissolution and winding up of the affairs of the Fund. The Court has the Constitutional authority to amend and repeal any of its Rules. By Rule, the Court regards the exercise of its Rule-making authority as subject to open meeting requirements, which would preclude the repeal or modification of these Rules without prior notice. When necessary, the Court may adopt Rules changes on an emergency basis, but it has always provided some notice.

Sections (a) and (b) are carried forward with stylistic changes.

The Chair said that section (c) of Rule 19-611 stated that the Court of Appeals can provide for the dissolution and winding up of the affairs of the Fund. Language in the current Rule provides that the Court of Appeals can repeal this Rule without notice. The Subcommittee proposed to delete this, because the Court can repeal any rule, but under the procedures for changes to the Rules, there has to be an open meeting. The Chair and the Reporter had discussed this and concluded that it was not only inconsistent with the rule-making process, but it was unnecessary, since the Court can dissolve the Fund.

By consensus, the Committee approved Rule 19-611 as presented.

The Chair said that Title 19, Chapter 700 would be discussed next. The Rules had been changed. The proposals for change were

drafted with the active collaboration and participation of Ms. Lamone and Mr. Grossman. Some of the items added to the Rules in Chapter 700 were added at their request. Most of the changes involved restyling and updating, and in some of the later Rules, significant reorganization took place.

The Chair presented Rule 16-701, Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

PART 1 - GENERAL PROVISIONS

Rule 19-701. DEFINITIONS

In this Chapter, the following definitions apply except as otherwise expressly ~~otherwise~~ provided or as necessary implication requires:

(a) Attorney

"Attorney" means ~~a person~~ an individual admitted by the Court of Appeals to practice law in this State. For purposes of discipline or inactive status, the term also includes ~~a person~~ (1) an individual not admitted by the Court of Appeals but who engages in the practice of law in this State, ~~or who~~ holds himself or herself out as practicing law in this State, or who has the obligation of supervision or control over another ~~lawyer~~ attorney who engages in the practice of law in this State, and (2) an individual who is seeking reinstatement pursuant to Rules 19-751 or 19-752 following the imposition of discipline or inactive status.

Cross reference: See Rule 19-308.5 (8.5) of the Maryland Lawyers' Rules of Professional Conduct.

(b) Circuit

"Circuit" means Appellate Judicial Circuit.

(c) Client Protection Fund

"Client Protection Fund" means the Client Protection Fund of the Bar of Maryland created by Code, Business and Occupations Article, §10-311 and administered pursuant to Rule 19-604.

~~(c)~~ (d) Commission

"Commission" means the Attorney Grievance Commission of Maryland.

~~(d)~~ (e) Conditional Diversion Agreement

"Conditional diversion agreement" means the agreement provided for in Rule ~~16-736~~ 19-716.

~~(e)~~ (f) Disbarment

"Disbarment" means the unconditional termination of any privilege to practice law in this State pursuant to Rule 19-742 and, when applied to an attorney not admitted by the Court of Appeals to practice law, means the unconditional exclusion from the admission to or the exercise of any privilege to practice law in this State.

~~(f)~~ (g) Incapacity

"Incapacity" means the inability to render adequate legal service by reason of mental or physical illness or infirmity, or addiction to or dependence upon ~~an~~ alcohol or one or more drugs or other intoxicants ~~or drug~~.

~~(g)~~ (h) Office for the Practice of Law

"Office for the practice of law"

means an office in which an attorney usually devotes a substantial part of the attorney's time to the practice of law during ordinary business hours in the traditional work week.

~~(h)~~ (i) Petition for Disciplinary or Remedial Action

"Petition for disciplinary or remedial action" means the ~~initial pleading filed in the Court of Appeals against an attorney alleging that the attorney has engaged in professional misconduct or is incapacitated or both~~ petition filed by Bar Counsel pursuant to Rule 19-721.

~~(i)~~ (j) Professional Misconduct

"Professional misconduct" or "misconduct" has the meaning set forth in Rule 19-308.4 (8.4) of the Maryland Lawyers' Rules of Professional Conduct~~, as adopted by Rule 16-812~~ in Chapter 300 of this Title. The term includes the knowing failure to respond to a request for information authorized by this Chapter without asserting, in writing, a privilege or other basis for such failure.

~~(j)~~ (k) Reinstatement

"Reinstatement" means the termination of disbarment, resignation, suspension, ~~or~~ inactive status, ~~and the termination of~~ or any exclusion to practice law in this State pursuant to an Order entered under Rule 19-751 or 19-752.

~~(k)~~ (l) Serious Crime

"Serious crime means ~~a crime that is in at least one of the following categories:~~ (1) a felony under Maryland law; (2) a crime committed in another State or under federal law that would have been a felony under Maryland law had the crime been committed in Maryland or in violation of Maryland law, and (3) a crime under federal law or the law of any State that is punishable by imprisonment for three years or more.

~~(l)~~ (m) State

"State" means (1) a state, possession, territory, or commonwealth of the United States or (2) the District of Columbia.

~~(m)~~ (n) Statement of Charges

"Statement of charges" means the document ~~that alleges professional misconduct or incapacity and initiates disciplinary or remedial proceedings against an attorney~~ filed by Bar Counsel pursuant to Rule ~~16-741~~ 19-718.

~~(n)~~ (o) Suspension

"Suspension" means the temporary ~~or indefinite~~ termination of the privilege to practice law, either for a fixed period or indefinitely and, when applied to an attorney not admitted by the Court of Appeals to practice law, means the temporary or indefinite exclusion from the admission to or the exercise of any privilege to practice law in this State.

~~(o)~~ (p) Warning

"Warning" means a notice that warns an attorney about future misconduct.

Source: This Rule is derived ~~in part~~ from former Rule 16-701 ~~(BV1) and is in part new~~ (2013).

Rule 19-701 was accompanied by the following Reporter's note.

Proposed Rule 19-701 contains definitions.

In section (a), the definition of attorney is expanded to include an individual who is seeking reinstatement pursuant to the Rules.

Section (c), which defines Client Protection Fund, is new.

> Current Rule 16-701 (f) defines incapacity, in part, as an inability to render effective legal service due to dependence upon "an intoxicant or drug." Proposed section (g) includes an express reference to dependence upon "alcohol, or one or more drugs or other intoxicants."
>
> The remaining definitions are carried forward, with stylistic changes, from current Rule 16-701.

The Chair explained that in section (a) of Rule 16-701, language had been added to the definition of the word "attorney." The new language was: "an individual who is seeking reinstatement pursuant to Rules 19-751 or 19-752 following the imposition of discipline or inactive status." The purpose of this was to allow the use of the word "attorney" throughout these Rules instead of using different terms. Section (c), the definition of "Client Protection Fund," was new. It avoids having to state throughout the Rules "Client Protection Fund of the Bar of Maryland." In the definition of the term "incapacity" in section (g), the language "alcohol or one or more drugs or other" had been added before the word "intoxicants." The added language was more specific as to the kinds of intoxicants referred to. No substantive change was intended. Some of the strikeouts in sections (i),(j), (k), and (l) only indicated that the language was moved to the Rule that pertains to it. No change had been made. The rest of the changes were stylistic.

Mr. Grossman commented that he had gotten some correspondence recently that related to the definition of the

word "attorney." In prosecuting an attorney who was not a member of the Maryland bar and who had been practicing immigration law, Bar Counsel did not charge the attorney with the unauthorized practice of law. The case has been pending in the Court of Appeals for a number of years. In the meantime, the attorney had been disbarred in Virginia, the only jurisdiction in which he had been licensed. The situation was unusual, because the individual was not even an attorney under any definition. Should the definition of the term "attorney" be tailored to include a person who has a license to practice law somewhere? Mr. Grossman had filed a motion to dismiss the case on the ground that it was moot. He admitted that such a case happening once in 35 years is somewhat unusual. Mr. Carbine remarked that it would run afoul of the part of the definition of the term "attorney" in section (a) of Rule 19-701 that provides that an attorney is someone who is seeking reinstatement. The Chair asked if language should be added to the second sentence of section (a) rather than to the first sentence.

Judge Weatherly asked if holding oneself out as a practicing attorney would cover the person Mr. Grossman had described. The Chair observed that someone who is practicing only immigration law is practicing law in this State but is not subject to the jurisdiction of the Court of Appeals. Mr. Grossman said that the attorney he had referred to was acting appropriately at the beginning, but if he was holding himself out as a practicing attorney but had no license whatsoever, Mr. Grossman would either

seek an injunction to prevent him from practicing or ask the State's Attorney to prosecute him. Rule 19-701 does not apply to this situation. It applies to people who have licenses to practice law. He had seen people practicing immigration law with no licenses whatsoever. Those people are not subject to the disciplinary process. Bar Counsel either asks for an injunction or for a criminal prosecution.

The Reporter inquired if the person Mr. Grossman had referred to was still trying to practice law. Mr. Grossman responded that he was not after his recent November, 2012 disbarment in Virginia. Mr. Zarbin asked about the usefulness of an advisory statement. If Virginia reinstates this attorney, Maryland could lose the opportunity to keep him from practicing in Maryland. Mr. Grossman said that this attorney cannot practice in Maryland, because he is not a member of the bar. If he was reinstated in Virginia, he still could not practice in Maryland absent the usual safeguards. He could come back to Maryland indicating that he had been reinstated in Virginia and ask to practice *pro hac vice* or in any other way that a non-Maryland attorney could practice.

The Chair commented that another gap exists to circumvent this situation. A disciplinary proceeding may be instituted against an attorney who has been admitted in Maryland, but never practiced here and is disbarred or suspended from the practice of law in another state. Why would this not cover this situation? Mr. Grossman said that he brought up this issue even though it

happened only once. The only alternative that he could see was to add to section (a) of Rule 19-701 the language, "or is licensed in any jurisdiction or in another jurisdiction" if the Committee felt it was appropriate. He would rather not take up the time of the Committee to address a situation that arises once in every 35 years. The Chair noted that the language suggested by Mr. Grossman could be added to the second sentence of section (a). Judge Mosley asked whether there is a mechanism to look into whether someone has been the object of a complaint if the person is licensed in Virginia, and after a certain period of time applies to practice *pro hac vice* in Maryland, or the person decides to take the Maryland bar examination to obtain admission.

Mr. Grossman responded that this attorney that he had referred to would have to disclose the difficulties that he had in Virginia. It will be interesting to see how the court decides his motion. His expectation was that the court would dismiss the case, and the attorney would remain disbarred in Virginia and not be able to practice in Maryland absent the safeguards that would otherwise be applied.

Mr. Grossman expressed his concern as to how the definition applies to someone who has no license to practice law anywhere but who did have one previously. The Reporter said that the definition seemed to be appropriate. It means an individual, not admitted in Maryland, but who engages in the practice of law in this State or holds himself or herself out as practicing law in this State. There is no jurisdiction over anyone else. Mr.

Grossman responded that if only that definition is considered, it would actually apply to non-attorneys, and he and his colleagues had never applied it that way. Mr. Zarbin added that it could refer to someone who is fraudulently pretending to be an attorney. Mr. Grossman said that they did not view it that way. That person would be committing a criminal act, and Mr. Grossman would go after the person other than through the disciplinary process.

The Reporter expressed the opinion that the wording of the definition was broad enough to cover those people who are fraudulently pretending to be an attorney. Mr. Zarbin remarked that Mr. Grossman's point was that the definition in section (a) of Rule 19-701 covers anyone whether the person is licensed in Maryland or not. If someone is not licensed in Maryland, the definition could refer to a plumber. Mr. Grossman's office does not prosecute plumbers. They prosecute people who are attorneys either in Maryland or in some other state. The Reporter observed that Bar Counsel has jurisdiction to be able to handle this if he chose to. Mr. Grossman noted that this is only for injunctions. The Chair pointed out that the attorney being discussed who had now already been disbarred in Virginia has the same status as a plumber, so the attorney is covered by Rule 19-701. Mr. Grossman added that the attorney is not presently practicing in Maryland, so Mr. Grossman would not be able to get an injunction. The Court of Appeals could at most disbar him in Maryland, but there is no reason to disbar him, since he is not an attorney.

By consensus, the Committee approved Rule 19-701 as presented.

The Chair presented Rule 19-702, Attorney Grievance Commission, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-702. ATTORNEY GRIEVANCE COMMISSION

(a) Creation and Composition

There is an Attorney Grievance Commission which shall consist of 12 members appointed by the Court of Appeals. Nine members shall be attorneys and three members shall not be attorneys.

(b) Term

Subject to section (f) of this Rule, the term of each member is three years. The terms of the members shall be staggered so that the terms of three attorney members and one non-attorney member expire each year.

(c) Compensation

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

(d) Chair and Vice Chair

The Court of Appeals shall designate one attorney member as the Chair of the Commission and one attorney member as the Vice Chair. In the absence or disability of

the Chair or upon an express delegation of authority by the Chair, the Vice Chair shall have the authority and perform the duties of the Chair.

(e) Executive Secretary

The Commission may select an attorney as Executive Secretary. The Executive Secretary shall serve at the pleasure of the Commission and receive the compensation set forth in the budget of the Commission. As directed by the Commission, the Executive Secretary shall (1) receive documents that are filed with the Commission and maintain the records of the Commission, (2) prepare the agenda of meetings of the Commission and before each meeting send to each Commission member a copy of the agenda and meeting materials, (3) serve as in-house counsel to the Commission, (4) serve as liaison to the Chair of the Peer Review Committee, and (5) have such other administrative powers and duties assigned by the Commission.

(f) Removal

The Court of Appeals may remove a member of the Commission at any time.

(g) Quorum

The presence of seven members of the Commission constitutes a quorum for the transaction of business. The concurrence of seven members is required for all actions taken by the Commission other than adjournment of a meeting for lack of a quorum.

(h) Powers and Duties

The Commission has the powers and duties to:

(1) recommend to the Court of Appeals the adoption of procedural and administrative guidelines and policies consistent with these Rules;

(2) employ and prescribe the compensation

of the Executive Secretary;

(3) with the approval of the Court of Appeals, appoint Bar Counsel;

(4) supervise the activities of Bar Counsel;

(5) authorize Bar Counsel to employ attorneys, investigators, and staff personnel and to prescribe their compensation;

(6) appoint special counsel as the need arises;

(7) appoint members of the Peer Review Committee, designate the Chair and one or more Vice Chairs, and remove any member for cause;

(8) employ and prescribe the compensation of personnel to assist the Chair of the Peer Review Committee;

(9) exercise the authority granted in the Rules in this Chapter with respect to the approval or disapproval of (A) the dismissal of a complaint or Statement of Charges, (B) the termination of a complaint with or without a warning, (C) a Conditional Diversion Agreement, (D) a reprimand, or (E) the filing of a Petition for Disciplinary or Remedial Action;

(10) grant or deny any requests for extensions of time permitted under the Rules of this Chapter or delegate to the Chair of the Commission the authority to grant or deny such requests;

(11) authorize the issuance of subpoenas in accordance with these Rules;

(12) perform the duties required by Title ~~16~~ 19, Chapter ~~600~~ 400 (Attorney Trust Accounts);

(13) administer the Disciplinary Fund;

(14) submit not later than September 1 of each year a report to the Court of Appeals

accounting for the Disciplinary Fund, evaluating the effectiveness of the disciplinary system, and recommending any changes; and

(15) submit annually to the State Court Administrator for review and approval by the Court of Appeals a proposed budget for the disciplinary system.

(i) Effect of Chair's Decisions

When a request for action under this Chapter is subject to the approval of the Chair of the Commission, the Chair's approval of the request is final and shall be reported to the Commission. If the Chair denies the request or refers it to the Commission for action, the Commission shall act upon the request at its next meeting.

Source: This Rule is derived from former ~~Rules 16-702 a, b, and c (BV2 a, b, and c), and 16-703 (BV3)~~ Rule 16-711 (2013).

Rule 19-702 was accompanied by the following Reporter's note.

Proposed Rule 19-702, Attorney Grievance Commission, is current Rule 16-711. The Rules in Title 16, Chapter 600 have been renumbered. The reference to those Rules in subsection (h)(12) has been changed to reflect the renumbering.

The Chair told the Committee that no changes had been made to Rule 19-702.

By consensus, the Committee approved Rule 19-702 as presented.

The Chair presented Rule 19-703, Bar Counsel, for the Committee's consideration.

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-703. BAR COUNSEL

(a) Appointment

Subject to approval by the Court of Appeals, the Commission shall appoint an attorney as Bar Counsel. Before appointing Bar Counsel, the Commission shall notify bar associations and the general public of the vacancy and consider any recommendations that are timely submitted. Bar Counsel shall serve at the pleasure of the Commission and shall receive the compensation set forth in the budget of the Commission.

(b) Powers and Duties

Subject to the supervision and approval, if required, of the Commission, Bar Counsel has the powers and duties to:

(1) investigate professional misconduct or incapacity on the part of an attorney;

(2) issue subpoenas as provided by Rule ~~16-732~~ 19-712;

(3) enter into and implement Conditional Diversion Agreements, issue notices, and administer warnings and reprimands;

(4) file statements of charges, participate in proceedings before Peer Review Panels, and prosecute all disciplinary and remedial proceedings;

(5) file and prosecute petitions for disciplinary and remedial actions in the name of the Commission;

(6) monitor and enforce compliance with all disciplinary and remedial orders of the Court of Appeals;

(7) investigate petitions for reinstatement and applications for

resignation from the practice of law and represent the Commission in those proceedings;

(8) initiate, intervene in, and prosecute actions to enjoin the unauthorized practice of law;

(9) employ attorneys, investigators, and staff personnel as authorized by the Commission at the compensation set forth in the Commission's budget;

(10) discharge any employee;

(11) maintain dockets and records of all papers filed in disciplinary or remedial proceedings;

(12) make reports to the Commission; and

(13) perform other duties prescribed by the Commission, this Chapter, and the Rules in Title ~~16~~ 19, Chapter ~~600~~ 400 (Attorney Trust Accounts).

Source: This Rule is derived from former Rule ~~16-704 (BV4)~~ 16-712 (2013).

Rule 19-703 was accompanied by the following Reporter's note.

Proposed Rule 19-703, Bar Counsel, is current Rule 16-712. As a matter of style, the words "on the part of an attorney" are added to subsection (b)(1). The Rules in Title 16 have been renumbered. The reference in subsection (b)(2) is changed to reflect the renumbering.

The Chair said that some cross references had been corrected in Rule 19-703, but no substantive changes had been made.

By consensus, the Committee approved Rule 19-703 as presented.

The Chair presented Rule 19-704, Peer Review Committee, for

the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-704. PEER REVIEW COMMITTEE

(a) Creation

There is a Peer Review Committee, the members of which are appointed to serve on Peer Review Panels pursuant to Rule ~~16-742~~ 19-719.

(b) Composition

The Peer Review Committee consists of the number of ~~persons~~ individuals in each circuit that the Commission determines is necessary to conduct the volume of peer review proceedings. Of the number of members determined for each circuit, one-third shall be residents of that circuit who are not attorneys and the remainder shall be attorneys who maintain offices for the practice of law within that circuit.

(c) ~~Persons~~ Individuals Ineligible for Appointment as ~~a Lawyer~~ an Attorney Member

The Commission may not appoint as ~~a lawyer~~ an attorney member to the Peer Review Committee a ~~person~~ individual who:

(1) is not admitted by the Court of Appeals to practice law in Maryland;

(2) has not actively and lawfully engaged in the practice of law in Maryland for at least five years;

(3) is a judge of a court of record;

(4) is the subject of a pending statement of charges or petition for disciplinary or

remedial action; or

(5) was ever disbarred or suspended by the Court of Appeals or by a disciplinary body or court of the United States or any State.

(d) ~~Persons~~ Individuals Ineligible for Appointment as a ~~Non-lawyer~~ Non-attorney Member

The Commission may not appoint as a ~~non-lawyer~~ non-attorney member to the Peer Review Committee ~~a person~~ an individual who:

(1) has been convicted of a serious crime and the conviction has not been reversed or vacated; or

(2) is the complainant in a pending matter against an attorney under the Rules in this Chapter.

(e) Procedure for Appointment

Before appointing members of the Peer Review Committee, the Commission shall notify bar associations and the general public in the appropriate circuit and consider any applications and recommendations that are timely submitted. The Commission shall prepare a brief notice informing attorneys how they may apply to serve on the Peer Review Committee and deliver the notice to the Trustees of the Client Protection Fund of the Bar of Maryland, who at least once a year shall send a copy of the notice to each attorney who is required to pay an annual fee to the Fund.

(f) Term

The term of each member is two years. The Commission may extend the term of any member assigned to a Peer Review Panel until the completion of a pending matter. A member may be reappointed.

(g) Chair and Vice Chair

The Commission shall designate one

attorney member of the Peer Review Committee as Chair and one or more attorney members as Vice Chairs. In the absence or disability of the Chair or upon express delegation of authority by the Chair, the Vice Chair shall have the authority and perform the duties of the Chair.

(h) Compensation

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

(i) Removal

The Commission may remove a member of the Peer Review Committee for cause.

Source: This Rule is ~~new~~ derived from former Rule 16-713 (2013).

Rule 19-704 was accompanied by the following Reporter's note.

Proposed Rule 19-704, Peer Review Committee, is carried forward from current Rule 16-713. As a matter of style, the word "attorney" replaces the word "lawyer." In section (a), the reference to the Rule regarding Peer Review Panels is changed to reflect the renumbering of the Rules in current Title 16.

The Chair noted that Rule 19-704 had style changes, including changing the word "person" to the word "individual," and the word "lawyer" to the word "attorney." The Rule had no changes of substance.

By consensus, the Committee approved Rule 19-704 as presented.

The Chair presented Rule 19-705, Disciplinary Fund, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-705. DISCIPLINARY FUND

(a) Establishment; Nature

There is a Disciplinary Fund ~~to which, as a condition precedent to the practice of law, each attorney shall pay annually an amount prescribed by the Court of Appeals. The amount shall be in addition to and paid by the same date as other sums required to be paid pursuant to Rule 16-811~~. The ~~Disciplinary~~ Fund is created and administered pursuant to the Constitutional authority of the Court of Appeals to regulate the practice of law in the State of Maryland and to implement and enforce the Maryland Lawyers' Rules of Professional Conduct adopted by the Court. The Fund consists entirely of contributions made by ~~lawyers as a condition of their right to practice law in Maryland~~ attorneys pursuant to section (b) of this Rule and income from those contributions. ~~The principal and income of the Fund shall be~~ It is dedicated ~~exclusively~~ entirely to the purposes established by the Rules in this Title.

~~(a)~~ (b) Payment by Attorneys

As a condition precedent to the practice of law, each attorney shall pay annually ~~to the Fund the sum that the~~ an amount prescribed by the Court of Appeals ~~prescribes~~. The ~~sum~~ amount shall be ~~paid~~ in addition to and paid by the same date as other sums required to be paid pursuant to ~~Rule 16-811~~ the Client Protection Fund by Rule 19-605.

~~(b)~~ (c) Collection and Disbursement ~~of Disciplinary Fund~~

The treasurer of the Client Protection Fund of the Bar of Maryland shall collect and remit to the Commission the sums paid by attorneys to the Disciplinary Fund.

~~(c)~~ (d) Audit

~~There shall be~~ The Commission shall direct annually an independent audit of the Disciplinary Fund. The expense of the audit shall be paid out of the Fund.

~~(d)~~ (e) Enforcement

Enforcement of payment of annual assessments of attorneys pursuant to this Rule is governed by the provisions of Rule ~~16-811 (g)~~ 19-606.

Source: ~~This Rule is derived from former Rule 16-702 d (BV2 d) and 16-703 b (vii) (BV3 b (vii)).~~ Section (a) of this Rule is new. The balance of the Rule is derived from former Rule 16-714 (2013).

Rule 19-705 was accompanied by the following Reporter's note.

Proposed Rule 19-705, Disciplinary Fund, is derived from current Rule 16-714. Stylistic changes are made.

The Chair told the Committee that Rule 19-705 was basically the same as the current Rule. Mr. Hein referred to the last sentence of section (b) of Rule 19-705, noting that the wording did not seem right. The Chair agreed, and he suggested that the wording should be: "... paid to the Client Protection Fund pursuant to Rule 19-605." By consensus, the Committee agreed to this change.

By consensus, the Committee approved Rule 19-705 as amended.

The Chair presented Rule 19-706, Sanctions and Remedies, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-706. SANCTIONS AND REMEDIES ~~FOR MISCONDUCT OR INCAPACITY~~

(a) For Professional Misconduct

~~One or more of the following sanctions or remedies may be imposed upon an attorney for professional misconduct~~ An attorney who is found to have committed professional misconduct is subject to the following sanctions and remedies:

(1) disbarment by the Court of Appeals;

(2) suspension, for a fixed period or indefinitely, by the Court of Appeals;

(3) reprimand by the Court of Appeals or, with the attorney's consent, by the Commission;

(4) conditional diversion in accordance with a Conditional Diversion Agreement ~~entered into pursuant to Rule 16-736; and~~; or

(5) termination of a disciplinary ~~or remedial~~ proceeding ~~accompanied by~~ with or without a warning ~~pursuant to Rule 16-735 (b)~~.

(b) For Incapacity

~~One of the following remedies may be imposed upon an attorney for incapacity~~ An attorney who is found to have an incapacity is subject to the following:

(1) placement on inactive status, subject to further order of the Court~~,~~ of Appeals; ~~or~~

(2) conditional diversion in accordance with a Conditional Diversion Agreement ~~entered pursuant to Rule 16-736.~~; or

(3) termination of a remedial proceeding with or without a warning.

~~(c) Conditions~~

~~An order, decision, or agreement that imposes a disciplinary sanction upon an attorney or places an attorney on inactive status may include one or more specified conditions, as authorized by Rules 16-736, 16-760, and 16-781.~~

Source: This Rule is ~~new~~ derived from former Rule 16-721 (2013).

Rule 19-706 was accompanied by the following Reporter's note.

Proposed Rule 19-706, Sanctions and Remedies, is derived from current Rule 16-721. The changes in section (a) are mostly stylistic, although the "and" following subsection (a)(4) is changed to "or." Language is added to subsection (a)(5) to permit the termination of a disciplinary proceeding with or without a warning. Subsection (b)(3) is new and addresses the termination of a remedial proceedings with or without a warning. Section (c) of current Rule 16-721 is not carried forward because it is redundant.

The Chair said that in subsection (a)(2) of Rule 19-706, the language "for a fixed period or indefinitely" was added as a style change, because a suspension can be for either of these. In subsection (a)(4), the word "and" was changed to the word "or." The Chair expressed some doubts about this change, because

all of these sanctions and remedies cannot be imposed together. Current Rule 16-721 has the word "and."

Mr. Brault inquired why a warning is issued to an attorney who is found to have an incapacity. This was covered in subsection (b)(3). Mr. Grossman responded that he supposed that one could find that there was misconduct and there was incapacity, and if the two were associated, a warning might be appropriate. The Chair noted that the current Rule in subsection (a)(5) read: "termination of a disciplinary or remedial proceeding accompanied by a warning pursuant to Rule 16-735 (b)." The part of the Rule addressing incapacity was moved to a separate section of Rule 19-706, section (b). Subsection (b)(3) read: "termination of a remedial proceeding with or without a warning." The choice of giving a warning would be discretionary, not mandatory.

The Chair asked whether Mr. Grossman looked at a remedial proceeding as being entirely co-extensive with incapacity, or whether it could be something other than incapacity, and be remedial rather than disciplinary. Mr. Grossman replied that he had been the author of the phrase, and it means something broader than incapacity. For instance, it could refer to issues with office management. In response to Mr. Brault's comment, Mr. Grossman said that there are no remedial proceedings per se. Even conditional diversion agreements, which could be considered as remedial, never end with a warning; they end with a termination upon completion of the terms.

The Chair recalled that the thought behind Rule 19-706 was that if an attorney's problem is an incapacity, even if what triggered the proceeding was a violation of one of the ethical rules, that was different than discipline, where the attorney is being punished. There are some differences in confidentiality in remedial or incapacity cases. Mr. Grossman said that the terms of a conditional diversion agreement are secret, but the fact that a conditional diversion agreement has been entered into is public. The warning is always secret, except as to a complainant, but even the terms of the warning are secret as to that person. A warning has a greater level of confidentiality than a conditional diversion agreement. The Chair commented that if an attorney's problem is that he or she is not taking medications that have been prescribed for that person, and as a result is not performing in the proper way, Mr. Grossman may regard this as an incapacity, but there is a warning that comes with any remedy, which is that the attorney has to take his or her medications.

Mr. Grossman responded that he and his colleagues only perceive warnings to be issued for violations of the Rules of Professional Conduct. If the fact that this individual did not take medication that caused there to be a violation, the warning would be for the violation, assuming that it was not appropriate to give a conditional diversion agreement or to prosecute fully for the violations even associated with the incapacity. If someone's incapacity causes him or her to fail to communicate

with a client, Mr. Grossman and his colleagues could prosecute the attorney and seek an inactive status kind of result. The Chair asked if Mr. Grossman would ever issue a warning. Mr. Grossman responded that usually that is not the way he and his colleagues perceive what warnings are for. In the "Administrative and Procedural Guidelines" of the AGC, when the Peer Review Panel decides to issue a warning, Guideline 6.6 requires the panel to specify what rule is being violated.

The Chair remarked that if Mr. Grossman thought that there is no occasion in which he would want to issue a warning attached to an incapacity, then the words "with or" could be deleted from subsection (b)(3) of Rule 19-706, so that it would read: "termination of a remedial proceeding without a warning." The Reporter pointed out that the current Rule does not have the language of subsection (b)(3). Mr. Hein said that he and his colleagues had never initiated a remedial proceeding as such without it being in conjunction with a disciplinary proceeding. They would never issue a warning directly for an incapacity-related issue; it would only be for professional misconduct.

The Reporter asked if the representatives from the AGC approved of the Rule as it had been presented, with two options if an incapacity is found. Section (b) of current Rule 16-721, Sanctions and Remedies for Misconduct or Incapacity, provides that if an incapacity is found, two options exist. Mr. Grossman asked whether the current Rule permits the filing of a petition with the Court of Appeals, which would cover incapacity. This is

what he and his colleagues do now when they cannot get an individual to conform to the RPC because of the person's incapacity. He assumed the proposed or present Rules would permit this. The Chair responded affirmatively. Mr. Grossman said that this would be all that is necessary. He did not see the need for subsection (b)(3) of proposed Rule 19-706. The Chair pointed out that termination of the proceeding is an option. He added that Mr. Grossman seemed to be questioning about having a warning.

The Chair asked if a period should be added in subsection (b)(3) after the words "remedial proceeding," so that the language "with or without a warning" would be deleted. Mr. Sykes remarked that a warning is not required, but it would not hurt to keep in the language "with or without a warning." Mr. Grossman commented that leaving this language in will motivate people to ask for warnings. The Chair said that there is no problem with removing the language providing for warnings, but he asked Mr. Grossman if wanted the option of terminating the proceeding. Mr. Grossman answered affirmatively. The Chair suggested that subsection (b)(3) end with the word "proceeding," and the Committee agreed by consensus to this suggestion.

Mr. Sullivan referred to the Chair's question about whether in section (a) of Rule 19-706, the conjunction at the end of subsection (a)(4) should be the word "and" or the word "or." The Chair had implied that the change from the word "and" to the word "or" is more than stylistic. This raises the likelihood

that someone will make an argument. Mr. Sullivan suggested that the language at the beginning of section (a) should be "...is subject to one or more of the following sanctions and remedies...". This would counter any argument that there can be only one of the sanctions and remedies. The word at the end of subsection (a)(4) would be "and." Mr. Grossman said that an attorney could be subject to more than one of the sanctions and remedies. By consensus the Committee approved Mr. Sullivan's suggested change.

By consensus, the Committee approved Rule 19-706 as amended.

The Chair presented Rule 19-707, Confidentiality, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-707. CONFIDENTIALITY

(a) ~~Confidentiality of~~ Peer Review Meetings

~~All persons present at a peer review meeting shall maintain the confidentiality of all speech, writing, and conduct made as part of the meeting and may not disclose or be compelled to disclose the speech, writing, or conduct in any judicial, administrative, or other proceeding.~~

(1) Confidentiality Generally

All communications, whether written or oral, and all non-criminal conduct made or occurring at a meeting of a peer review panel are confidential and not open to public

disclosure or inspection. Except as otherwise expressly permitted in this Rule, individuals present at the meeting shall maintain that confidentiality and may not disclose or be compelled to disclose such communications or conduct in any judicial, administrative, or other proceeding.

(2) Privilege

~~Speech, writing, or~~ Communications and conduct that ~~is~~ are confidential under this Rule ~~is~~ are privileged and are not subject to discovery, but information that is otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use or occurrence at ~~the~~ a peer review meeting.

(b) Other Confidential ~~Matters~~ Material

Except as otherwise provided in ~~these Rules~~ this Rule, the ~~following~~ records and proceedings listed in this section and the contents of those records and proceedings are (i) confidential and not open to public inspection ~~and their contents~~ and (ii) may not be ~~revealed~~ disclosed by Bar Counsel, the staff and investigators of the Office of Bar Counsel, any member of the Commission, the staff of the Commission, ~~Bar Counsel,~~ ~~members of~~ the Peer Review Committee, ~~or~~ any attorney involved in the proceeding, or, in any civil action or proceeding, by the complainant or an attorney for the complainant:

(1) the records of an investigation by Bar Counsel, including the existence and content of any complaint or response, until Bar Counsel files a petition for disciplinary or remedial action pursuant to Rule 19-721;

(2) the records and proceedings of a Peer Review Panel;

(3) information that is the subject of a protective order;

~~(5)~~ (4) the contents of a prior private reprimand or Bar Counsel reprimand pursuant to the Attorney Disciplinary Rules in effect

prior to July 1, 2001, but the fact that a private or Bar Counsel reprimand was issued and the facts underlying the reprimand may be disclosed to a Peer Review Panel in a proceeding against the attorney alleging similar misconduct;

Committee note: Disclosure under subsection (b)(4) of this Rule is not dependent upon a finding of relevance under Rule 19-720 (c)(1).

~~(4)~~ (5) the contents of a warning issued by the Commission ~~pursuant to Rule 16-735 (b), but the fact that a warning was issued shall be disclosed to the complainant~~ as provided in Rule 19-715 (d);

~~Committee note: The peer review panel is not required to find that information disclosed under subsection (b)(5) is relevant under Rule 16-743 (c)(1).~~

(6) the contents of a Conditional Diversion Agreement ~~entered into pursuant to Rule 16-736, but the fact that an attorney has signed such an agreement shall be public~~ as provided in Rule 19-716 (j);

(7) the records and proceedings of the Commission on matters that are confidential under this Rule;

(8) a Petition for Disciplinary or Remedial Action based solely on the alleged incapacity of an attorney and records and proceedings, other than proceedings in the Court of Appeals, on that petition; and

(9) a petition for an audit of an attorney's accounts filed pursuant to Rule ~~16-722~~ 19-731 and records and proceedings, other than proceedings in the Court of Appeals, on that petition.

(c) Public Proceedings and Records

The following records and proceedings are public and open to inspection:

(1) except as otherwise provided in

subsection (b)(8) of this Rule, a Petition for Disciplinary or Remedial Action, all proceedings on that petition, and all documents or other items admitted into evidence at any hearing on the petition;

(2) an affidavit filed pursuant to Rule ~~16-772~~ 19-736 that consents to discipline and an order that disbars, suspends, or reprimands the attorney by consent;

(3) a reprimand issued by the Commission pursuant to Rule ~~16-737~~ 19-717; and

(4) except as otherwise provided by order of the Court of Appeals, all proceedings under this Chapter in the Court of Appeals.

(d) Required Disclosures by Bar Counsel

(1) Reprimand by Commission

If an attorney is reprimanded by the Commission, Bar Counsel shall notify the Clerk of the Court of Appeals.

(2) Conviction of a Serious Crime

If Bar Counsel has received and verified information that an attorney has been convicted of a serious crime, Bar Counsel shall notify the Commission and the Clerk of the Court of Appeals.

(e) Required Disclosures by Clerk of the Court of Appeals

If an attorney resigns or is reprimanded, convicted of a serious crime, or, by order of the Court of Appeals, disbarred, suspended, reinstated, or transferred to inactive status, the Clerk of the Court of Appeals of Maryland shall notify the National Lawyer Regulatory Data Bank of the American Bar Association and the disciplinary authority of every other jurisdiction in which the attorney is admitted to practice. In addition, the Clerk shall notify the State Court Administrator of each order of the court by which an attorney is disbarred, suspended, reinstated, or

transferred to inactive status.

(f) Permitted Disclosures

(1) Written Waiver of Attorney

If the attorney has signed a written waiver of confidentiality, the Commission or Bar Counsel may disclose information to the extent permitted by the waiver.

(2) ~~In Preparation~~ To Investigate a Complaint; Prepare a Defense to a Complaint; Prepare for a Hearing

The parties to a disciplinary or remedial action may use confidential information other than the records and proceedings of a Peer Review Panel to the extent reasonably necessary to investigate a complaint, prepare a defense to a complaint, or prepare for a public hearing in the action but shall preserve the confidentiality of the information in all other respects.

(3) Communications with Complainant

Upon request of a complainant, Bar Counsel may disclose to the complainant the status of an investigation and of any disciplinary or remedial proceedings resulting from information from the complainant.

(4) Requests by Authorities

Upon receiving a request that complies with this subsection, the Commission or Bar Counsel may disclose the pendency, subject matter, status, and disposition of disciplinary or remedial proceedings involving an attorney or former attorney that did not result in dismissal of a complaint. The request must be made in writing by a judicial nominating commission, a bar admission authority, the President of the United States, the Governor of a state, ~~territory, or district of the United States,~~ or a committee of the General Assembly of Maryland or of the United States Congress. The requesting entity must represent that it

is considering the nomination, appointment, confirmation, approval, or admission to practice of the attorney~~,~~ or former attorney, and that the information will be treated as confidential and without the consent of the attorney ~~may~~ will not be copied or disclosed to anyone other than the requesting entity.

(5) Request by Client Protection Fund

Upon written request by the Client Protection Fund, Bar Counsel or the Commission may permit an authorized officer of the Fund to review and copy specific records relating to an attorney that are relevant to a claim pending before the Fund. Unless the Court orders otherwise, the Fund shall maintain the confidentiality of any records it has reviewed or copied.

~~(5)~~ (6) Explanatory Statements

The Chair of the Commission may issue a brief explanatory statement necessary to correct any public misperception about actual or possible proceedings.

~~(6)~~ (7) ~~Subpoena or~~ Court Order or Grand Jury Subpoena

~~If satisfied that an attorney has received prior notice and an opportunity to object or move for a protective order,~~ Bar Counsel ~~may~~ shall comply with ~~a subpoena or~~ an order of a court or a subpoena issued by a duly constituted grand jury of this State or the United States to produce records and disclose confidential information concerning the attorney.

~~(7)~~ (8) ~~Information Involving Criminal Activity~~ Law Enforcement Officials

With the approval of the Chair of the Commission, Bar Counsel may provide to law enforcement and prosecuting officials information involving criminal activity~~, including information requested by a subpoena from a grand jury pursuant to Rule 4-643~~.

~~(8)~~ (9) Other Disciplinary Authorities

With the approval of the Chair of the Commission, Bar Counsel may provide to the disciplinary authority of any other jurisdiction in which an attorney is admitted to practice records and other confidential information concerning the attorney.

~~(9)~~ (10) Summarized Information

In order to improve the administration of justice, the Commission and Bar Counsel may publish reports and summaries of confidential investigations, charges, and disciplinary or remedial proceedings, provided that the identity of attorneys, complainants, and witnesses is not revealed.

Source: This Rule is derived ~~in part~~ from former Rule ~~16-708 (BV8) and in part new~~ 16-723 (2013).

Rule 19-707 was accompanied by the following Reporter's note.

Proposed Rule 19-707, Confidentiality, is derived from current Rule 16-723.

The rewriting of section (a) is principally a matter of style, with no change in substance intended. However, subsection (a)(1) is rewritten to more directly declare that conduct at a meeting of the peer review panel is confidential and not open to public inspection. Language is added to subsection (a)(1) in order to provide an exception to confidentiality for criminal conduct that occurs at a peer review meeting, such as an assault on a member of the panel.

Language is added to subsection (b)(1) to clarify that the records of an investigation of Bar Counsel are confidential unless and until a petition for discipline or remedial action is filed in the Court of Appeals.

Subsections (b)(5) and (b)(6) do not include the language in current Rule 16-723 (b)(4) and (b)(6) that provides more detail

about the confidentiality of warnings and Confidential Diversion Agreements. That language has been transferred to proposed Rules 19-714 (d) and 19-715 (j).

Subsection (f)(5) is new. It permits the Client Protection Fund ("Fund") to review and copy records relating to an attorney that are relevant to claims pending before the Fund. Any use by the Fund shall remain confidential, subject to court order.

The changes to subsections (f)(7) and (f)(8) are intended to require Bar Counsel to comply with grand jury subpoenas, but to retain discretion and require the Chair of the Commission's approval with respect to disclosures to the police and prosecutors.

The remaining changes are stylistic.

The Chair said that the changes to Rule 19-707 were mostly stylistic and were for clarification. A revised version of the Rule was handed out at today's meeting, because what was in the meeting materials in section (b) was not well-written and was confusing. Section (b) had been corrected.

The Chair noted that subsection (f)(5) of Rule 19-707 was new. It was a somewhat substantive change, because it had been unclear to what extent under the rule addressing confidentiality, Bar Counsel or the Commission can allow the Client Protection Fund to see some of their records when it is necessary to evaluate a claim. What this means is that the entire file pertaining to an attorney will not be turned over, but Bar Counsel or the Commission are permitted on original request to allow an authorized person from the Client Protection Fund to review and copy specific records that are germane to the claim.

This is the only major change to Rule 19-707.

By consensus, the Committee approved Rule 19-707 as it was presented in the handout version.

The Chair presented Rule 19-708, Service of Papers on Attorney, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-708. SERVICE OF PAPERS ON ATTORNEY

(a) Statement of Charges

A copy of a Statement of Charges filed pursuant to Rule ~~16-741~~ 19-718 shall be served on an attorney in the manner prescribed by Rule 2-121. If after reasonable efforts the attorney cannot be served personally, service may be made upon the employee designated by the Client Protection Fund ~~of the Bar of Maryland~~ pursuant to Rule ~~16-811 c 1 (x)~~ 19-604 (a)(12), who shall be deemed the attorney's agent for receipt of service. The Fund's employee shall send, by both certified mail and ordinary mail, a copy of the papers so served to the attorney at the address maintained in the Fund's records and to any other address provided by Bar Counsel.

(b) Service of Other Papers

Except as otherwise provided in this Chapter, other notices and papers may be served on an attorney in the manner provided by Rule 1-321 for service of papers after an original pleading.

Committee note: The attorney's address contained in the records of the Client Protection Fund of the Bar of Maryland may be

the attorney's last known address.

Cross reference: See Rule ~~16-753~~ 19-721 concerning service of a Petition for Disciplinary or Remedial Action.

Source: This Rule is ~~in part~~ derived from former Rule ~~16-706 (BV6) and in part new~~ 16-724 (2013).

Rule 19-708 was accompanied by the following Reporter's note.

Proposed Rule 19-708, Service of Papers on Attorney, is current Rule 16-724. References to Rules which have been renumbered are changed.

The Chair explained that no substantive change had been made to Rule 19-708.

By consensus, the Committee approved Rule 19-708 as presented.

The Chair presented Rule 19-709, Costs, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-709. COSTS

(a) ~~Allowance and Allocation~~ Generally

Except as provided in ~~Rule 16-781 (n), and~~ in section (b) of this Rule or unless the Court of Appeals orders otherwise, the prevailing party in proceedings under this Chapter is entitled to costs. By order, the Court~~, by order,~~ may allocate costs among the

parties.

(b) Reinstatement Proceedings

In proceedings for reinstatement under Rules 19-751 or 19-752, the attorney shall pay all court costs and costs of investigation and other proceedings on the petition, including the costs of physical and mental examinations, transcripts, and other reasonable expenditures incurred by Bar Counsel that were necessary to evaluate the petition.

~~(b)~~ (c) Judgment

Costs of proceedings under this Chapter, including the costs of all transcripts, shall be ~~taxed~~ assessed by the Clerk of the Court of Appeals and included in the order as a judgment. On motion, the Court may review the action of the Clerk.

~~(c)~~ (d) Enforcement

Rule 8-611 applies to proceedings under this Chapter.

Source: This Rule is in part derived from former ~~Rule 16-715 (BV15) and in part new~~ Rule 16-761 (2013).

Rule 19-709 was accompanied by the following Reporter's note.

Proposed Rule 19-709, Costs, is derived from current Rule 16-761. Stylistic changes are made. The Subcommittee recommends addressing costs in one Rule.

The Chair told the Committee that the new language that was in section (b) of Rule 19-709 had been moved there from section (n) of current Rule 16-781, Reinstatement. The idea was to put all of the costs in one rule. It was not a substantive change.

Mr. Grossman referred to the language in section (b) that

read: "...that were necessary to evaluate the petition." His concern was that he and his colleagues would order a psychiatric evaluation and then afterwards the respondent attorney would not pay for it. Mr. Grossman suggested that the wording of the language in section (b) should be "...that are necessary to evaluate the petition." The Chair noted that there would not be a cost unless the examination had already been done.

Mr. Grossman remarked that if a petition is filed, and it is the belief of his office that a psychiatric evaluation is needed, which is then arranged but is not paid for, they are stuck with that bill. The way section (b) is worded, the attorney who is seeking reinstatement should pay, but no penalty exists for not paying. Mr. Sullivan asked if the problem would be solved if the language "that were necessary" was deleted. The Chair pointed out that if the attorney does not pay for the expenditures incurred by Bar Counsel for evaluating the attorney's petition for reinstatement, the attorney will not get reinstated. Mr. Carbine said that the attorney should pay whether or not he or she is reinstated.

Mr. Grossman explained that what happens is that a payment for $200.00 that is ostensibly for investigation is made to Bar Counsel. Then there is also a payment made to the Court of Appeals as a cost. The attorney may state in the petition that he or she is impecunious and unable to pay any of the other costs beyond the $200, and the attorney asks to be reinstated despite this inability to pay. The Court of Appeals may very well decide

that under these circumstances, they will permit the reinstatement. The psychiatric evaluation may have come back clean, and there may have been no violation of the RPC. Mr. Grossman asked what the point of the Rule was unless it provides that payment of expenditures is a condition precedent to reinstatement. The Chair noted that this would require more of a change than simply changing the word "were" to the word "are." Mr. Grossman agreed, explaining that as he had thought about this, he would ask for this more sweeping change.

The Reporter suggested that section (b) could read as follows: "...and other reasonable expenditures necessary to evaluate the petition." The language "incurred by Bar Counsel that were" would be deleted. The Chair commented that someone may question whether the expenditures were really necessary. By consensus, the Committee approved the Reporter's suggested change.

By consensus, the Committee approved Rule 19-709 as amended.

The Chair noted that there is no Rule 19-710.

The Chair presented Rule 19-711, Complaint; Investigation by Bar Counsel, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS,

RESIGNATION

PART 2. ADMINISTRATIVE PROCEDURES

Rule 19-711. COMPLAINT; INVESTIGATION BY BAR COUNSEL

(a) ~~Complaints~~ Who May Initiate

~~A complaint alleging that an attorney has engaged in professional misconduct or is incapacitated shall be in writing and sent to Bar Counsel. Any written communication that includes the name and address of the person making the communication and states facts which, if true, would constitute professional misconduct by or demonstrate incapacity of an attorney constitutes a complaint. Bar Counsel also may initiate a complaint based on information from any other sources.~~

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 written 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 ~~person~~ 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 every complaint that is not facially frivolous or unfounded.

(2) If Bar Counsel concludes that the complaint is ~~either frivolous or unfounded~~ without merit or does not allege facts which, if true, would demonstrate either professional misconduct or incapacity, Bar Counsel shall dismiss the complaint and notify the complainant of the dismissal. Otherwise, Bar Counsel shall (A) open a file on the complaint, (B) acknowledge receipt of the complaint 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 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.

(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 ~~16-724~~ 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 ~~16-771, 16-773, or 16-774~~ 19-737, 19-738, or 19-739.

(d) Time for Completing Investigation

(1) Generally

Unless the time is extended ~~by the Commission for good cause~~ pursuant to subsection (d)(2) of this Rule, Bar Counsel shall complete an investigation within 90 days after opening the file on the complaint.

(2) Extension

~~Upon written request by Bar Counsel establishing good cause for an extension for a specified period, the Commission may grant one or more extensions.~~

(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 this section, the Commission may take any action appropriate under the circumstances, including dismissal of the complaint and termination of the investigation.

Source: This Rule is ~~new~~ derived from former Rule 16-731 (2013).

Rule 19-711 was accompanied by the following Reporter's note.

Proposed Rule 19-711, Complaint; Investigation by Bar Counsel, is derived from current Rule 16-731. Stylistic changes are made.

The Chair referred to the new language in section (a) of Rule 19-711. He commented that the language in the third sentence of section (a) which read, "that ...is in writing" could

be dropped, because the communication is a written one. Or the word "written" in the same sentence could be dropped. It is not needed twice in section (a). By consensus, the Committee approved the change to eliminate the word "written" from the third sentence of section (a). The Chair noted that the rest of the changes are stylistic.

By consensus, the Committee approved Rule 19-711 as amended.

The Chair presented Rule 19-712, Investigative Subpoena, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-712. INVESTIGATIVE SUBPOENA

(a) Approval and Issuance

(1) The Chair of the Commission may authorize Bar Counsel to issue a subpoena to compel the attendance of witnesses and the production of designated documents or other tangible things at a time and place specified in the subpoena if the Chair finds that (A) the subpoena is necessary to and in furtherance of an investigation being conducted by Bar Counsel pursuant to Rule ~~16-731~~ 19-711 or (B) the subpoena has been requested by a disciplinary authority of another jurisdiction pursuant to the law of that jurisdiction for use in a disciplinary or remedial proceeding in that jurisdiction to determine alleged professional misconduct or incapacity of ~~a lawyer~~ an attorney subject to the jurisdiction of that disciplinary authority.

(2) Upon approval, Bar Counsel may issue

the subpoena.

(b) Contents

A subpoena shall comply with the requirements of Rule 2-510 (c), except that to the extent practicable, a subpoena shall not identify the attorney under investigation. A subpoena to compel attendance of a witness shall include or be accompanied by a notice that the witness (1) has the right to consult with an attorney with respect to the assertion of a privilege or any other matter pertaining to the subpoena and (2) may file a motion for judicial relief under Rule 2-510.

(c) Service

Except for service upon an attorney in accordance with Rule ~~16-724~~ 19-708 (b), a subpoena shall be served in accordance with Rule 2-510. Promptly after service of a subpoena on a ~~person~~ individual other than the attorney under investigation and in addition to giving any other notice required by law, Bar Counsel shall serve a copy of the subpoena on the attorney under investigation.

Cross reference: For examples of other notice required by law, see Code, Financial Institutions Article, §1-304, concerning notice to depositors of subpoenas for financial records; Code, Health General Article, §4-306 concerning disclosure of medical records, and Code, Health General Article, §4-307, concerning notice of a request for issuance of compulsory process seeking medical records related to mental health services.

(d) Objection

The person served with the subpoena or the attorney under investigation may file a motion in the circuit court for the county in which the subpoena was served for any order permitted by Rule 2-510 (e). The motion shall be filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance.

(e) Enforcement

On the motion of Bar Counsel, the court may enforce compliance with the subpoena.

(f) Confidentiality

Any paper filed in court with respect to a subpoena shall be sealed upon filing and shall be open to inspection only by order of the court. A hearing before the court on any motion shall be on the record and shall be conducted out of the presence of all ~~persons~~ individuals other than Bar Counsel, the attorney, and those ~~persons~~ individuals whose presence the court deems necessary.

(g) Recording of Statements

~~Everything said by the witness at the time and place specified in the subpoena shall be contemporaneously recorded stenographically or electronically, and the witness shall be placed under oath.~~ All statements by the subpoenaed witness shall be under oath and shall be contemporaneously recorded stenographically or electronically.

Source: This Rule is ~~new~~ derived from former Rule 16-732 (2013).

Rule 19-712 was accompanied by the following Reporter's note.

Proposed Rule 19-712, Investigative Subpoena, is derived from current Rule 16-732. Stylistic changes are made.

The Chair told the Committee that no substantive change had been made to Rule 19-712.

By consensus, the Committee approved Rule 19-712 as presented.

The Chair presented Rule 19-713, Perpetuation of Evidence

Before Petition for Disciplinary or Remedial Action, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-713. PERPETUATION OF EVIDENCE BEFORE PETITION FOR DISCIPLINARY OR REMEDIAL ACTION

Before a Petition for Disciplinary or Remedial Action is filed, Bar Counsel or an attorney who is or may be the subject of an investigation by Bar Counsel may perpetuate testimony or other evidence relevant to a claim or defense that may be asserted in the expected action. The perpetuation of evidence shall be governed by Rule 2-404 and the issuance of subpoenas and protective orders shall be governed by Rules 2-510 and 2-403. The Commission shall perform the functions that the court performs under those Rules.

Source: This Rule is ~~new~~ derived from former Rule 16-733 (2013).

Rule 19-713 was accompanied by the following Reporter's note.

Proposed Rule 19-713, Perpetuation of Evidence Before Petition for Disciplinary or Remedial Action, is derived form current Rule 16-733.

The Chair said that no change had been made to Rule 19-713. By consensus, the Committee approved Rule 19-713 as presented.

The Chair presented Rule 19-714, Action by Bar Counsel Upon Completion of Investigation, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS,

RESIGNATION

Rule 19-714. ~~PROCEDURE~~ ACTION BY BAR COUNSEL UPON COMPLETION OF INVESTIGATION

Upon completion of an investigation, Bar Counsel shall ~~take one of the following actions~~:

(a) recommend to the Commission dismissal of the complaint or termination of the proceeding without ~~discipline~~ disciplinary or remedial action, with or without a warning, in accordance with Rule ~~16-735~~ 19-715;

(b) recommend to the Commission approval of a Conditional Diversion Agreement ~~signed by Bar Counsel and the attorney~~ in accordance with Rule ~~16-736~~ 19-716;

(c) recommend to the Commission a reprimand in accordance with Rule ~~16-737~~ 19-717;

(d) file with the Commission a Statement of Charges ~~with an election for peer review~~ in accordance with Rule ~~16-741~~ 19-718; or

(e) recommend to the Commission the immediate filing of a Petition for Disciplinary or Remedial Action, with or without collateral remedial proceedings, in accordance with Rules ~~16-771, 16-773, or 16-774~~ 19-737, 19-738, or 19-739.

Source: This Rule is ~~new~~ derived from former Rule 16-734 (2013).

Rule 19-714 was accompanied by the following Reporter's note.

Proposed Rule 19-714, Action by Bar

Counsel Upon Completion of Investigation, is derived from current Rule 16-734. The changes are essentially stylistic. The change to section (a) is to add a reference to remedial action. The language deleted in sections (b) and (d) is deleted as unnecessary as it is covered in the Rules referenced therein.

The Chair noted that no substantive changes had been made to Rule 19-714. By consensus, the Committee approved Rule 19-714 as presented.

The Chair presented Rule 19-715, Dismissal of Complaint; Termination of Disciplinary or Remedial Proceeding, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-715. DISMISSAL ~~OR OTHER TERMINATION~~ OF COMPLAINT; TERMINATION OF DISCIPLINARY OR REMEDIAL PROCEEDING

(a) ~~Dismissal or Termination~~ Recommendation by Bar Counsel or Peer Review Panel

~~(1)~~ Bar Counsel, upon completion of an investigation, ~~Bar Counsel~~ or~~, after~~ a Peer Review Panel ~~meeting, the Peer review Panel~~, after a meeting of the Panel, may recommend to the Commission that:

~~(A)~~ (1) ~~the~~ a complaint be dismissed because ~~Bar Counsel or the Panel has concluded that~~ the evidence fails to show that the attorney has engaged in professional misconduct or is incapacitated; or

~~(B)~~ (2) ~~the~~ a disciplinary or remedial

proceeding be terminated, with or without a warning, because (A) ~~Bar Counsel or the Panel has concluded that~~ any professional misconduct on the part of the attorney ~~(i)~~ was not sufficiently serious to warrant discipline and ~~(ii)~~ is not likely to be repeated, or (B) that any incapacity on the part of the attorney is not sufficiently serious or long-lasting to warrant remedial action or, if resolved, is not likely to recur.

(b) Action by Commission

~~(2)~~ If satisfied with the recommendation of Bar Counsel or the Peer Review Panel, the Commission shall dismiss the complaint or ~~otherwise~~ terminate the disciplinary or remedial proceeding, as appropriate. If ~~Bar Counsel or the Panel has recommended~~ the recommendation includes a warning, the matter shall proceed as provided in section ~~(b)~~ (c) of this Rule.

~~(b)~~ (c) Termination Accompanied by Warning

(1) Recommendation by Bar Counsel or Peer Review Panel

~~(1) If Bar Counsel or the Panel concludes that the attorney may have engaged in some professional misconduct, that the conduct was not sufficiently serious to warrant discipline, but that a specific warning to the attorney would be helpful to ensure that the conduct is not repeated, Bar Counsel or the Panel may recommend that the termination be accompanied by a warning against repetition.~~ Bar Counsel or the Peer Review Panel may recommend to the Commission that the termination of a disciplinary or remedial proceeding be accompanied by a warning upon their respective conclusion that such a warning would be helpful to ensure that (A) the conduct that led to the proceeding is not repeated or (B) in the case of an incapacity, the attorney will take all necessary and practicable steps to decrease the risk of a recurrence of the incapacity.

(2) Action by Commission

~~If satisfied with the recommendation, the Commission shall proceed in accordance with subsection (b)(2) of this Rule and, if the warning is not rejected, accompany the termination of the disciplinary or remedial proceeding with a warning. A warning does not constitute discipline, but the complainant shall be notified that termination of the proceeding was accompanied by a warning against repetition of the conduct.~~

(A) If satisfied that termination of the disciplinary or remedial proceeding should be accompanied by a warning, the Commission shall mail to the attorney a notice that states (i) that on or after 30 days from the date of the notice, the Commission intends to terminate the disciplinary or remedial proceeding and accompany the termination with a warning, (ii) the content of the proposed warning, and (iii) that the attorney may reject the proposed warning by filing a written rejection with the Commission no later than 25 days after the date of the notice.

(B) If the warning is not timely rejected, the Commission shall issue the warning when it dismisses the disciplinary or remedial proceeding.

(C) If the warning is timely rejected, the warning shall not be issued, but Bar Counsel or the Commission may take any other action permitted under this Chapter.

~~(2) At least 30 days before a warning is issued, the Commission shall mail to the attorney a notice that states the date on which it intends to issue the warning and the content of the warning. No later than five days before the intended date of issuance of the warning, the attorney may reject the warning by filing a written rejection with the Commission. If the warning is not rejected, the Commission shall issue it on or after the date stated in the initial notice to the attorney. If the warning is rejected, it shall not be issued, and Bar Counsel or the Commission may take any other action~~

~~permitted under this Chapter. Neither the fact that a warning was proposed or rejected nor the contents of a warning that was not issued may be admitted into evidence.~~

(3) Nature and Effect of Warning

A warning does not constitute discipline.

~~(c)~~ (d) ~~Effect of Dismissal or Termination~~ Disclosure of Termination or Warning

(1) Disclosure of Dismissal or Termination

(A) Except as provided in subsection ~~(c)~~ (d)(2) of this Rule, a dismissal or a termination under this Rule, with or without a warning, shall not be disclosed by the Commission or Bar Counsel in response to any request for information as to whether an attorney has been the subject of a disciplinary or remedial proceeding.

(B) The nature and existence of a proceeding terminated under this Rule, including any investigation by Bar Counsel that led to the proceeding, need not be disclosed by an attorney in response to a request for information as to whether the attorney has been the subject of a disciplinary or remedial proceeding.

(2) Disclosure of Warning

(A) The fact that a warning was issued in conjunction with the termination of a complaint shall be disclosed to the complainant~~, and~~.

(B) The fact that a warning was issued and the facts underlying the warning may be disclosed in a subsequent proceeding against the attorney when relevant to a complaint alleging similar ~~misconduct~~ conduct by the attorney.

(C) Neither the fact that a warning was proposed or rejected nor the contents of a warning that was not issued ~~may be admitted~~

~~into evidence~~ is admissible into evidence in any judicial or administrative proceeding.

Source: This Rule is ~~new~~ derived from former Rule 16-735 (2013).

Rule 19-715 was accompanied by the following Reporter's note.

Proposed Rule 19-715, Dismissal of Complaint; Termination of Disciplinary or Remedial Proceeding, is derived from current Rule 16-735.

Current Rule 16-735 (a)(1)(B) states that a disciplinary or remedial proceeding may be terminated if the professional misconduct is not serious enough to warrant discipline and is not likely to be repeated. A parallel provision, which addresses termination of a remedial action that is based on an attorney's incapacity, is added to Rule 19-715 (a)(2).

Section (c) is rewritten to clarify the circumstances under which a warning may be useful or practicable in a remedial action based on an incapacity. The new language states that the attorney may be required to take certain physician-prescribed medication or seek therapy.

The language from current Rule 16-735 (b)(2) is not carried forward because it is considered unnecessary.

The remaining changes are stylistic.

The Chair told the Committee that the changes to Rule 19-715 were mostly stylistic, but in subsection (a)(2), one of the problems that had arisen was that some rules did not take account of incapacity of an attorney, and subsection (a)(2) of Rule 19-715 was one of them. In subsection (a)(2), part (B) was added to

address this gap. Subsection (c)(1)(B) deals with an attorney who has an incapacity as opposed to an attorney who is subject to only disciplinary procedures. Judge Price noted that subsection (a)(2) has the language that had been taken out of Rule 19-706 (b)(3), which was "with or without a warning." The Chair pointed out that this language is needed for the disciplinary proceeding. The language should apply to only subsection (a)(2)(A), but not to subsection (a)(2)(B). This can be redrafted later. The other Chapter 700 Rules will have to be checked to see where the warning appears.

The Chair noted that the rest of the changes to Rule 19-715 were stylistic.

By consensus, the Committee approved Rule 19-715, subject to subsection (a)(2) being amended.

The Chair presented Rule 19-716, Conditional Diversion Agreement, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-716. CONDITIONAL DIVERSION AGREEMENT

(a) When Appropriate

Upon completing an investigation, Bar Counsel may agree to a Conditional Diversion Agreement if Bar Counsel concludes that:

(1) the attorney committed professional

misconduct or is incapacitated;

(2) the professional misconduct or incapacity was not the result of any wilful or dishonest conduct and did not involve conduct that could be the basis for an immediate Petition for Disciplinary or Remedial Action pursuant to Rules ~~16-771~~ 19-737, ~~16-773~~ 19-738, or ~~16-774~~ 19-739;

(3) the cause or basis of the professional misconduct or incapacity is subject to remediation or resolution through alternative programs or mechanisms, including (A) medical, psychological, or other professional treatment, counseling, or assistance, (B) appropriate educational courses or programs, (C) mentoring or monitoring services, or (D) dispute resolution programs; and

(4) the public interest and the welfare of the attorney's clients and prospective clients will not be harmed if, instead of the matter proceeding immediately with a disciplinary or remedial proceeding, the attorney agrees to and complies with specific measures that, if pursued, will remedy the immediate problem and likely prevent any recurrence of it.

Committee note: Examples of conduct that may be susceptible to conditional diversion include conduct arising from (A) unfamiliarity with proper methods of law office management, record-keeping, or accounting, (B) unfamiliarity with particular areas of law or legal procedure, (C) negligent management of attorney trust accounts or other financial matters, (D) negligent failure to maintain proper communication with clients, (E) negligent failure to provide proper supervision of employees, or (F) emotional stress or crisis or abuse of alcohol or other drugs.

(b) Voluntary Nature of Agreement; Effect of Rejection or Disapproval

(1) Voluntary Nature

Neither Bar Counsel nor ~~an~~ the attorney is ~~required~~ under any obligation to propose or enter into a Conditional Diversion Agreement. ~~The Agreement shall state that the attorney voluntarily consents to its terms and promises to pay all expenses reasonably incurred in connection with its performance and enforcement~~.

(2) Effect of Rejection or Disapproval

If a Conditional Diversion Agreement is proposed and rejected or if a signed Agreement is not approved by the Commission, Bar Counsel may take any other action permitted under this Chapter. Neither the fact that an Agreement was proposed, rejected, or not approved nor the contents of the Agreement may be admitted into evidence.

(c) Terms of ~~Conditional Diversion~~ Agreement

(1) In Writing and Signed

A Conditional Diversion Agreement shall be in writing and signed by Bar Counsel, the attorney, and any monitor designated in the Agreement.

(2) Required Provisions

The agreement shall:

(A) recite the basis for it, as set forth in section (a) of this Rule~~.~~; ~~By signing the Agreement, the attorney (A) acknowledges that the attorney has engaged in conduct that constitutes professional misconduct or is currently incapacitated, and (B) warrants that the attorney has not concealed from or misrepresented to Bar Counsel any material facts pertaining to the attorney's conduct or the Agreement.~~

~~(3) The Agreement shall state the particular course of remedial action that the attorney agrees to follow and a time for the performance or completion of that action. The Agreement is expressly conditioned on the attorney's not engaging in any further~~

~~conduct that would constitute professional misconduct and~~

(B) state that the attorney voluntarily consents to its terms and promises to pay all expenses reasonably incurred in connection with its performance and enforcement;

(C) contain an acknowledgment by the attorney that the attorney (i) has engaged in conduct that constitutes professional misconduct, or (ii) is currently incapacitated, and a warranty that the attorney has not concealed from or misrepresented to Bar Counsel any material fact pertaining to the attorney's conduct or status as incapacitated or to the Agreement;

(D) state the particular course of remedial action that the attorney agrees to follow and a time for performance or completion of that action;

(E) provide for a stay of any disciplinary or remedial proceeding pending satisfactory performance by the attorney; and

(F) state that it is expressly conditioned on (i) the attorney's not engaging in any further conduct that would constitute professional misconduct, or, (ii) non-recurrence of the nature or severity of the incapacity.

(3) Permissive Provisions

The agreement may:

(A) provide for any program or corrective action appropriate under the circumstances, including:

~~(A)~~ (i) mediation or binding arbitration of a fee dispute;

~~(B)~~ (ii) restitution of unearned or excessive fees in a stipulated amount;

~~(C)~~ (iii) a public apology to designated ~~individuals~~ persons;

~~(D)~~ (iv) law office management assistance, including temporary or continuing monitoring, mentoring, accounting, bookkeeping, financial, or other professional assistance, and completion of specific educational programs dealing with law office management;

~~(E)~~ (v) completion of specific legal education courses or curricula, including courses in legal ethics and professional responsibility;

~~(F)~~ (vi) an agreement not to practice in specific areas of the law ~~(i)~~ (a) unless the attorney associates himself or herself with one or more other attorneys who are proficient in those areas, or ~~(ii)~~ (b) until the attorney has successfully completed a designated course of study to improve the attorney's proficiency in those areas;

~~(G)~~ (vii) one or more specific courses of treatment for emotional distress, mental disorder or disability, ~~or~~ dependence on ~~alcohol or other drugs; and~~ alcohol, drugs or other intoxicant;

~~(H)~~ (viii) a stipulated number of hours of pro bono legal services; or

(ix) a reprimand to be issued upon the successful termination of a Conditional Diversion Agreement. The text of the reprimand shall be agreed upon and attached to the Agreement as a separate document; and

Committee note: The text of the Conditional Diversion Agreement must be separate from the text of the reprimand because the contents of the Agreement are confidential, whereas the contents of the reprimand are public. See Rules 19-716 (j) and 19-717.

~~(4) The Agreement shall provide for a stay of any disciplinary or remedial proceeding pending satisfactory performance by the attorney. The Agreement may designate either a private monitor engaged at the attorney's expense or Bar Counsel to supervise performance and compliance. The~~

~~Agreement shall authorize the monitor to request and receive all information and inspect any records necessary to verify compliance and, if a private monitor is selected, to report any violation or noncompliance to Bar Counsel. The Agreement shall specify the fees of any private monitor and the method and frequency of payment of those fees.~~

(B) designate either a private monitor engaged at the attorney's expense or Bar Counsel to supervise performance and compliance with the terms and conditions of the agreement.

(4) If Monitor Designated

(A) If the agreement designates Bar Counsel or a private monitor pursuant to subsection (c)(3)(B) of this Rule, the agreement shall authorize Bar Counsel or the monitor to request and receive all information and inspect any records necessary to verify compliance.

(B) If a private monitor is designated, the agreement shall specify the fees of the monitor and the method and frequency of payment of the fees and shall direct the monitor promptly to report any violation or noncompliance to Bar Counsel.

(d) ~~Approval by~~ Submission to Commission

A Conditional Diversion Agreement is not ~~valid~~ effective until approved by the Commission. Upon signing the Agreement, Bar Counsel and the attorney shall submit to the Commission the Agreement, any explanatory material ~~that~~ they believe relevant, and any further information that the Commission requests.

(e) Action by Commission

(1) Generally

After consideration, the Commission may:

~~(1)~~ (A) approve the Agreement if satisfied that it is reasonable and in the public interest;

~~(2)~~ (B) disapprove the Agreement if not convinced that it is reasonable and in the public interest; or

~~(3)~~ (C) recommend amendments to the Agreement as a condition of approval~~, which the parties may accept or reject~~.

(2) Upon Commission Recommendations

The parties may accept or reject the Commission's proposed amendments. If Bar Counsel and the attorney accept the proposed amendments, they shall notify the Commission of the acceptance, and the Commission shall ~~then~~ approve the Agreement as amended. If either party rejects a proposed amendment, the Agreement shall be deemed disapproved by the Commission.

(f) Effect of Agreement

Approval by the Commission of a Conditional Diversion Agreement does not constitute discipline.

~~(e)~~ (g) Amendment of Agreement

A Conditional Diversion Agreement may be amended from time to time. An amendment shall be in a writing signed by Bar Counsel and the attorney and approved by the Commission.

~~(f)~~ (h) Revocation of Agreement

(1) Declaration of Proposed Default

Bar Counsel may declare a proposed default on a Conditional Diversion Agreement if Bar Counsel determines that the attorney (A) engaged in further professional misconduct while subject to the agreement, (B) wilfully misrepresented or concealed material facts during the negotiation of the Agreement that induced Bar Counsel to recommend approval of the Agreement, or (C)

has failed in a material way to comply with the Agreement. Bar Counsel shall give written notice to the attorney of the proposed default and afford the attorney a reasonable opportunity to refute the determination.

(2) Petition

If the attorney fails to refute the charge or to offer an explanation or proposed remedy satisfactory to Bar Counsel, Bar Counsel shall file a petition with the Commission to revoke the Agreement and serve a copy of the petition on the attorney. The attorney may file a written response with the Commission within 15 days after service of the petition. The Commission may act upon the petition and response or may request the parties to supply additional information, in writing or in person.

(3) Action by Commission

If the Commission concludes that the attorney is in material default of the Agreement, it shall revoke the Agreement, revoke the stay of the disciplinary or remedial proceeding and any reprimand, and direct Bar Counsel to proceed in accordance with Rule ~~16-751~~ 19-721, or as otherwise authorized by the Rules in this Chapter.

(4) Default

An attorney who is in default of a Conditional Diversion Agreement is not entitled to an additional peer review process under Rule 19-720.

~~(g)~~ (i) Satisfaction of Agreement

If Bar Counsel determines that the attorney has complied in full with the requirements of the Agreement and that the disciplinary or remedial proceeding should be terminated, Bar Counsel shall inform the Commission and request that the disciplinary or remedial proceeding be terminated. If satisfied with Bar Counsel's recommendation, the Commission shall terminate the disciplinary or remedial proceeding.

~~(h)~~ (j) ~~Effect of Agreement~~ Confidentiality

(1) Fact that Approved Agreement was Signed

~~(1) Approval by the Commission of a Conditional Diversion Agreement does not constitute discipline.~~

~~(2) Except as provided in subsections (h)(4) and (h)(5) of this Rule, the contents of the Agreement are confidential and may not be disclosed.~~

(A) The fact that an attorney has signed a Conditional Diversion Agreement approved by the Commission is public.

~~(3)~~ (B) Upon approval of an Agreement by the Commission, Bar Counsel shall inform the complainant (i) that such an Agreement has been entered into and approved, (ii) that the disciplinary or remedial proceeding has been stayed in favor of the Agreement, ~~and~~ (iii) that, if the attorney complies with the Agreement, the proceeding will be terminated, and (iv) of the potential for and consequences to the attorney of noncompliance. ~~The complainant shall also be notified of the potential for and consequences of noncompliance. Except to the extent that the Agreement requires the transfer of property to the complainant or other communication with the complainant, the terms of the Agreement shall not be disclosed.~~

(2) Contents of Agreement

(A) Except as provided in subsections (j)(2)(B), (C), and (D) of this Rule, the contents of a Conditional Diversion Agreement are confidential and may not be disclosed.

(B) If the Agreement requires payment or the transfer of property to the complainant by the attorney or other communication with the complainant by the attorney, Bar Counsel shall inform the complainant of those requirements, but not of any other terms of the Agreement.

~~(4)~~ (C) Upon revocation of an Agreement pursuant to section ~~(f)~~ (h) of this Rule, the contents of the Agreement ~~lose their confidentiality and~~ may be disclosed in any ensuing disciplinary or remedial proceeding.

~~(5)~~ (D) The contents of ~~an~~ a Conditional Diversion Agreement may be disclosed in a subsequent proceeding against the attorney ~~when~~ if relevant to a subsequent complaint based on similar misconduct or incapacity.

Source: This Rule is ~~new~~ derived from former Rule 16-736 (2013).

Rule 19-716 was accompanied by the following Reporter's note.

Proposed Rule 19-716, Conditional Diversion Agreement, is derived from current Rule 16-736.

Subsection (c)(3)(viii) is amended to include an express reference to dependence upon "other intoxicants" in addition to alcohol and drugs.

Language is added to subsection (c)(3)(viii) to make clear that the Agreement may require the attorney to undergo "one or more" course of treatment for emotional or mental disorders or disabilities, or dependence on alcohol, drugs, or "other intoxicants."

Subsection (c)(3)(ix) and the accompanying Committee note are new. Subsection (c)(3)(ix) allows a Conditional Diversion Agreement ("Agreement") to provide for the issuance of a reprimand upon the successful termination of the Agreement. The text of the reprimand must be agreed upon and attached as a separate document because, as the Committee note explains, the contents of the Agreement are confidential, but the contents of a reprimand are public.

In order to make clear that the

Commission must revoke any reprimand if the attorney is in material default of the Agreement, the language "and any reprimand" is added to subsection (h)(3).

Subsection (h)(4) is new. It provides that an attorney who is in default of an Agreement is not entitled to have an additional peer review process.

Subsections (j)(1) and (j)(2) make clear that, although the contents of the Agreement are confidential, the fact that an Agreement was signed is public.

Specifically, subsection (j)(1)(B)(iv) is added to require Bar Counsel, after the Agreement has been approved by the Commission, to inform the complainant of the potential for and consequences to the attorney for noncompliance with the Agreement. Subsection (j)(2)(B) is added to provide a limited exception to the confidentiality of the contents of the Agreement. If the Agreement requires the attorney to pay or transfer property to the complainant, or to communicate with the complainant, Bar Counsel shall inform the complainant of those requirements. Subsection (j)(2)(C) is amended to make clear that if an Agreement is revoked, its contents may be disclosed in any ensuing disciplinary or remedial proceeding, but do not lose their confidentiality generally. Language is added to subsection (j)(2)(D) to permit disclosure of the contents of an Agreement in a subsequent proceeding if relevant to a subsequent complaint that involves the same incapacity.

Most of the changes in Rule 19-716 involved restyling, but there were some more substantive changes. In subsection (b)(1), the stricken language had just been moved to subsection (c)(2)(B). In subsection (c)(3)(A)(vii), the word "intoxicant" was added, so that it conforms to the language in Rule 19-701

(g). Subsection (c)(3)(A)(ix) has a change. Under the current Rule, the reprimand is part of the conditional diversion agreement. Bar Counsel had asked that this be dealt with separately, because the conditional diversion agreement is confidential, but the reprimand is not. Another reason to separate these two is that if the conditional diversion agreement is violated, there may not be a reprimand; the matter may go directly to a petition for disciplinary action. If there is going to be a reprimand, it is addressed separately in subsection (c)(3)(A)(ix). This is after the conditional diversion agreement is completed.

Mr. Brault remarked that he had spoken with Mr. Grossman about the addition of subsection (c)(3)(A)(ix). The reason that they both favor adding it is that from the standpoint of representing attorneys in grievance cases, there are going to be more conditional diversion agreements. Whoever represents the attorney can persuade Bar Counsel to agree to a conditional diversion agreement and then to a reprimand, which avoids a further proceeding. The matter is finalized, and it is more attractive to the attorney being disciplined. Mr. Grossman added that it also solves a longstanding problem. Reprimands could have conditions, but there had been no way to enforce them. With the addition of the new provision, there can be a reprimand, and the conditions can be enforced as well.

The Chair noted that subsection (g)(4) is new. It provides that an attorney in default of a conditional diversion agreement

is not entitled to the peer review process. Subsection (j)(1)(B)(iv) is new. It adds to the conditional diversion agreement advice to the attorney of the potential for and consequences of noncompliance, so there is no misunderstanding about it. Subsection (j)(2)(B) is new. It was suggested by either Bar Counsel or the Commission. Bar Counsel shall inform the complainant if the conditional diversion agreement requires payment or the transfer of property to the complainant, but Bar Counsel shall not inform the complainant of any other terms of the agreement. The Chair said that subsection (j)(2)(D) provided that the contents of a conditional diversion agreement may be disclosed in a subsequent proceeding against the attorney if relevant to a subsequent complaint based on misconduct. A complaint based on incapacity has been added.

By consensus, the Committee approved Rule 19-716 as presented.

The Chair presented Rule 19-717, Reprimand by Commission, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-717. REPRIMAND BY COMMISSION

(a) Scope

This Rule does not apply to a reprimand that is to be issued upon successful

termination of a Conditional Diversion Agreement.

Cross reference: See Rule 19-716 (c)(3)(ix).

~~(a)~~ (b) Offer

(1) Service on Attorney

If Bar Counsel determines after completion of an investigation, or the Peer Review Panel determines after a Panel meeting, that an attorney has engaged in professional misconduct and that the appropriate sanction for the misconduct is a reprimand, Bar Counsel or the Panel shall serve on the attorney a written offer of a reprimand and a waiver of further disciplinary or remedial proceedings that is contingent upon acceptance of the reprimand by the attorney and approval of the reprimand by the Commission.

(2) Content

The offer shall include the text of the proposed reprimand, the date when the offer will expire, a contingent waiver of further disciplinary or remedial proceedings, and advice that the offer, if accepted, is subject to approval by the Commission. The text of the proposed reprimand shall summarize the misconduct for which the reprimand is to be imposed and include a reference to any rule, statute, or other law allegedly violated by the attorney.

~~(b)~~ (c) Response

The attorney may accept the offer by signing the stipulation, endorsing the proposed reprimand, and delivering both documents to Bar Counsel or the Panel within the time stated in the notice or otherwise agreed to by Bar Counsel or the Panel. The attorney may (1) reject the offer expressly or by declining to return the documents timely, or (2) propose amendments to the proposed reprimand, which Bar Counsel or the Panel may accept, reject, or negotiate.

~~(c)~~ (d) ~~Action by~~ Submission to Commission

If the attorney agrees to ~~a~~ the proposed reprimand, Bar Counsel or the Panel shall submit the proposed reprimand to the Commission for approval~~. Bar Counsel or the attorney may submit also~~, together with any explanatory material that ~~either~~ the attorney or Bar Counsel believes relevant and ~~shall submit~~ any further ~~material~~ information that the Commission requests.

(e) Action by Commission

~~Upon the submission, the Commission may take any of the following actions:~~

(1) Generally

After consideration, the Commission may:

~~(1)~~ (A) approve the reprimand, if satisfied that it is appropriate under the circumstances, in which event Bar Counsel shall promptly administer the reprimand to the attorney and terminate the disciplinary or remedial proceeding~~.~~;

~~(3)~~ (B) ~~the Commission may~~ disapprove the reprimand, if not satisfied that it is appropriate under the circumstances and direct Bar Counsel to proceed in another manner~~.~~; or

~~(2)~~ (C) ~~the Commission may~~ recommend amendments to the reprimand as a condition of approval~~, which the parties may accept or reject~~.

(2) Upon Commission Recommendations

The parties may accept or reject the Commission's proposed amendments. If the parties accept the amendments, they shall notify the Commission of the acceptance, and the Commission shall then approve the reprimand. If either party rejects a proposed amendment, the reprimand shall be deemed disapproved by the Commission.

~~(d)~~ (f) Effect of Rejection or Disapproval

If a reprimand is proposed and rejected or if a reprimand to which the parties have stipulated is not approved by the Commission, the proceeding shall resume as if no reprimand had been proposed, and neither the fact that a reprimand was proposed, rejected, or not approved nor the contents of the reprimand and any stipulation may be admitted into evidence.

~~(e)~~ (g) Effect of Reprimand

A reprimand constitutes discipline.

Source: This Rule is ~~new~~ derived from former Rule 16-737 (2013).

Rule 19-717 was accompanied by the following Reporter's note.

Proposed Rule 19-717, Reprimand by Commission, is derived from current Rule 16-737. Section (a) is new. It provides that the Rule does not apply to a reprimand to be issued upon the completion of a Conditional Diversion Agreement. A cross reference is added to Rule 19-716 (c)(3)(ix), which addresses such reprimands.

The remaining changes are stylistic.

The Chair said that section (a) of Rule 19-717 was new. It provided that Rule 19-717 does not apply to a reprimand that is attached to a conditional diversion agreement, because the procedure there is different, and it is covered in Rule 19-716 (c)(3)(ix).

By consensus, the Committee approved Rule 19-717 as presented.

The Chair presented Rule 19-718, Statement of Charges, for

the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-718. STATEMENT OF CHARGES

(a) Filing ~~of Statement of Charges~~

~~(1)~~ Upon completion of an investigation, Bar Counsel shall file with the Commission a Statement of Charges if Bar Counsel determines that:

~~(A)~~ (1) the attorney ~~either~~ engaged in conduct constituting professional misconduct or is incapacitated;

~~(B)~~ (2) the professional misconduct or ~~the~~ incapacity does not warrant an immediate Petition for Disciplinary or Remedial Action;

~~(C)~~ (3) a Conditional Diversion Agreement ~~is either~~ is not appropriate under the circumstances ~~or the parties were unable to agree on one~~; and

~~(D)~~ (4) a reprimand is ~~either~~ not appropriate under the circumstances or a proposed reprimand (i) ~~one~~ was offered and rejected by the attorney~~,~~ or (ii) ~~a proposed reprimand~~ was disapproved by the Commission and Bar Counsel was directed to file a Statement of Charges.

~~(2) Bar Counsel shall include with the Statement of Charges a fair summary of the evidence developed through the investigation, including any response that the attorney sent to Bar Counsel regarding the matter.~~

(b) Content

The Statement of Charges shall be in writing and:

(1) in clear and specific language, inform the attorney of all professional misconduct charged;

(2) contain a reference to each Rule of the Maryland Lawyers' Rules of Professional Conduct allegedly violated; and

(3) include or be accompanied by a fair summary of the evidence developed through the investigation, including any response that the attorney sent to Bar Counsel regarding the matter.

~~(b)~~ (c) Service ~~of Statement of Charges~~; Peer Review

Bar Counsel shall serve on the attorney and send to the Chair of the Peer Review Committee a copy of the Statement of Charges, together with the supporting documentation filed pursuant to ~~subsection (a)(2)~~ section (b) of this Rule. The matter shall then proceed in accordance with Rules ~~16-742 and 16-743~~ 19-719 and 19-720.

Cross reference: See Rule ~~16-724~~ 19-708 (a) concerning service of the Statement of Charges on the attorney.

Source: This Rule is ~~new~~ derived from former Rule 16-741 (2013).

Rule 19-718 was accompanied by the following Reporter's note.

Proposed Rule 19-718, Statement of Charges, is derived from current Rule 16-741. Section (b), which outlines the required content of the Statement of Charges, is new. It incorporates into the Rule requirements articulated in case law. *See Bar Ass'n of Balt. v. Cockrell*, 270 Md. 686, 692-93 (1974).

The Chair told the Committee that section (b) of Rule 19-718 was new, but it was taken from case law. The thought was that since the Court of Appeals, in the case cited in the Reporter's

note, *Bar Ass'n of Balt. v. Cockrell*, 270 Md. 686. 692-93 (1974), requires that the statement of charges has to be very specific, this should be put into Rule 19-718.

By consensus, the Committee approved Rule 19-718 as presented.

The Chair presented Rule 19-719, Peer Review Panel, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-719. PEER REVIEW PANEL

(a) Appointment

Within 30 days after receiving a copy of a Statement of Charges filed with the Commission, the Chair of the Peer Review Committee shall (1) appoint a Peer Review Panel, (2) notify the Commission, Bar Counsel, and the attorney of the appointment of the Panel and the names and addresses of its members, (3) send to the members of the Panel a copy of the Statement of Charges and the supporting material filed by Bar Counsel with the Commission, and (4) in accordance with Rule ~~16-743 (b)~~ 19-720 (b), schedule a meeting of the Peer Review Panel.

(b) Composition of Panel

(1) The Peer Review Panel shall consist of at least three members of the Peer Review Committee.

(2) A majority of the members of the Panel shall be attorneys, but at least one member shall not be an attorney.

(3) If practicable, the Chair shall appoint to the Panel members from the circuit in which the attorney who is the subject of the charges has an office for the practice of law or, if there is no such office, the circuit in which the last known address of the attorney, as reflected on the records of the Client Protection Fund ~~of the Bar of Maryland~~, is located.

(c) Panel Chair

The Chair of the Peer Review Committee shall appoint an attorney member of the Panel as the Panel Chair.

(d) Removal and Recusal of Members

The Chair of the Peer Review Committee may remove a member of the Peer Review Panel for cause. A member of a Peer Review Panel shall not participate in any proceeding in which the member's impartiality might reasonably be questioned. A member who is required to recuse or who cannot attend the Peer Review meeting shall immediately notify the Chair of the Peer Review Committee, who shall promptly appoint another member.

(e) Quorum

The presence of any three members of the Peer Review Panel constitutes a quorum, whether or not a non-attorney member is present. With the consent of the Panel members who are present, Bar Counsel and the attorney may waive the quorum requirement. The concurrence of a majority of the members present is necessary to a recommendation to the Commission.

Source: This Rule is ~~new~~ derived from former Rule 16-742 (2013).

Rule 19-719 was accompanied by the following Reporter's note.

Proposed Rule 19-719, Peer Review Panel, is derived from current Rule 16-742. Stylistic changes are made.

The Chair said that no substantive changes had been made to Rule 19-719.

By consensus, the Committee approved Rule 19-719 as presented.

The Chair presented Rule 19-720, Peer Review Process, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-720. PEER REVIEW PROCESS

(a) Purpose ~~of Peer Review Process~~

The purpose of the peer review process is for the Peer Review Panel to consider the Statement of Charges and all relevant information offered by Bar Counsel and the attorney concerning it and to determine (1) whether the Statement of Charges has a substantial basis and there is reason to believe that the attorney has committed professional misconduct or is incapacitated, and, if so, (2) whether a Petition for Disciplinary or Remedial Action should be filed or some other disposition is appropriate. The peer review process is not intended to be an adversarial one and it is not the function of Peer Review Panels to hold evidentiary hearings, adjudicate facts, or write full opinions or reports.

Committee note: If a Peer Review Panel concludes that the complaint has a substantial basis indicating the need for some remedy, some behavioral or operational changes on the part of the ~~lawyer~~ attorney, or some discipline short of suspension or disbarment, part of the peer review process can be an attempt through both evaluative and

facilitative dialogue, (A) to effectuate directly or suggest a mechanism for effecting an amicable resolution of the existing dispute between the ~~lawyer~~ attorney and the complainant, and (B) to encourage the ~~lawyer~~ attorney to recognize any deficiencies on his or her part that led to the problem and take appropriate remedial steps to address those deficiencies. The goal, in this setting, is not to punish or stigmatize the ~~lawyer~~ attorney or to create a fear that any admission of deficiency will result in substantial harm, but rather to create an ambience for a constructive solution. The objective views of two fellow ~~lawyers~~ attorneys and a lay person, expressed in the form of advice and opinion rather than in the form of adjudication, may assist the ~~lawyer~~ attorney (and the complainant) to retreat from confrontational positions and look at the problem more realistically.

(b) Scheduling of Meeting; Notice to Attorney

(1) The Chair of the Peer Review Committee, after consultation with the members of the Peer Review Panel, Bar Counsel, and the attorney, shall schedule a meeting of the Panel.

(2) If, without substantial justification, the attorney does not agree to schedule a meeting within the time provided in subsection (b)(5) of this Rule, the Chair may recommend to the Commission that the peer review process be terminated. If the Commission terminates the peer review process pursuant to this subsection, the Commission may take any action that could be recommended by the Peer Review Panel under section (e) of this Rule.

(3) The Chair shall notify Bar Counsel, the attorney, and each complainant of the time, place, and purpose of the meeting and invite their attendance.

(4) The notice to the attorney shall inform the attorney of the attorney's right to respond in writing to the Statement of

Charges by filing a written response with the Commission and sending a copy of it to Bar Counsel and each member of the Peer Review Panel at least ten days before the scheduled meeting.

(5) Unless the time is extended by the Commission, the meeting shall occur within 60 days after appointment of the Panel.

(c) Meeting

(1) The Peer Review Panel shall conduct the meeting in an informal manner. It shall allow Bar Counsel, the attorney, and each complainant to explain their positions and offer such supporting information as the Panel finds relevant. Upon request of Bar Counsel or the attorney, the Panel may, but need not, hear from any other ~~person~~ individual. The Panel is not bound by any rules of evidence, but shall respect lawful privileges. The Panel may exclude a complainant after listening to the complainant's statement and, as a mediative technique, may consult separately with Bar Counsel or the attorney. The Panel may meet in private to deliberate.

(2) If the Panel determines that the Statement of Charges has a substantial basis and that there is reason to believe that the attorney has committed professional misconduct or is incapacitated, the Panel may (A) conclude the meeting and make an appropriate recommendation to the Commission or (B) inform the parties of its determination and allow the attorney an opportunity to consider a reprimand or a Conditional Diversion Agreement.

(3) The Panel may schedule one or more further meetings, but, unless the time is extended by the Commission, it shall make a recommendation to the Commission within 90 days after appointment of the Panel. If a recommendation is not made within that time or any extension granted by the Commission, the peer review process shall be terminated and the Commission may take any action that could be recommended by the Peer Review Panel

under section (e) of this Rule.

(d) Ex Parte Communications

Except for administrative communications with the Chair of the Peer Review Committee and as allowed under subsection (c)(1) of this Rule as part of the peer review meeting process, no member of the Panel shall participate in an ex parte communication concerning the substance of the Statement of Charges with Bar Counsel, the attorney, the complainant, or any other person.

(e) Recommendation of ~~Peer Review~~ Panel

(1) Agreed Upon Recommendation

(A) If Bar Counsel, ~~and~~ the attorney, and the Panel agree upon a recommended disposition, the ~~Peer Review~~ Panel shall transmit the recommendation to the Commission.

(B) If ~~a Peer Review~~ the Panel determines that the attorney committed professional misconduct~~,~~ or is incapacitated~~,~~ and that the parties should ~~enter into~~ consider a Conditional Diversion Agreement, the Panel shall orally advise the parties of that determination and afford them ~~an~~ the opportunity to consider and enter into ~~a Conditional Diversion~~ such an Agreement in accordance with Rule ~~16-736~~ 19-716. If an Agreement is reached, the Conditional Diversion Agreement shall be the Panel's recommended disposition.

(2) If No Agreement

If there is no agreed-upon recommendation under subsection (e)(1) of this Rule, the Panel shall transmit to the Commission an independent recommendation, not subject to the approval of Bar Counsel, and shall accompany its recommendation with a brief explanatory statement. The Panel's recommendation shall be one of the following:

(A) the filing of a Petition for

Disciplinary or Remedial Action;

(B) a reprimand in accordance with Rule ~~16-737~~ 19-717;

(C) dismissal of the complaint or termination of the proceeding without discipline, but with a warning, in accordance with Rule ~~16-735~~ 19-715 (c); or

(D) dismissal of the complaint or termination of the proceeding without discipline and without a warning, in accordance with Rule ~~16-735~~ 19-715.

(f) Action by Commission

The Commission may:

(1) direct Bar Counsel to file a Petition for Disciplinary or Remedial Action~~,~~;

(2) take any action on the Panel's recommendation that the Commission ~~may~~ could take on a similar recommendation made by Bar Counsel under Rule ~~16-734,~~ 19-714; or

(3) dismiss the Statement of Charges and terminate the proceeding.

Source: This Rule is ~~new~~ derived from former Rule 16-743 (2013).

Rule 19-720 was accompanied by the following Reporter's note.

Proposed Rule 19-720, Peer Review Process, is derived from current Rule 16-743. Stylistic changes are made.

The Chair told the Committee that the only change to Rule 19-720 was in subsection (e)(1). The panel as well as Bar Counsel and the attorney have to agree to a recommended disposition, so this has been added to that provision.

By consensus, the Committee approved Rule 19-720 as

presented.

The Chair presented Rule 19-721, Petition for Disciplinary or Remedial Action, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

PART 3. PROCEEDINGS ON PETITION FOR DISCIPLINARY OR REMEDIAL ACTION

Rule 19-721. PETITION FOR DISCIPLINARY OR REMEDIAL ACTION

(a) Commencement of ~~Disciplinary or Remedial~~ Action

(1) Upon Approval or Direction of the Commission

Upon approval or direction of the Commission, Bar Counsel, on behalf of the Commission, shall file a Petition for Disciplinary or Remedial Action in the Court of Appeals.

(2) Conviction of Crime; Reciprocal Action

If authorized by Rule ~~16-771 (b) or 16-773 (b)~~ 19-737 or 19-738, Bar Counsel, on behalf of the Commission, may file a Petition for Disciplinary or Remedial Action in the Court of Appeals without prior approval of the Commission. ~~Bar Counsel promptly shall notify the commission of the filing.~~ On review, the Commission ~~on review~~ may direct the withdrawal of a petition ~~that was~~ filed pursuant to this subsection, in which event, Bar Counsel shall withdraw the petition.

Cross reference: See Rule ~~16-723~~ 19-707 (b)(8) concerning confidentiality of a

petition to place an incapacitated attorney on inactive status.

~~(b) Parties~~

~~The petition shall be filed in the name of the Commission, which shall be called the petitioner. The attorney shall be called the respondent.~~

~~(c)~~ (b) Form of Petition

The Commission shall be the petitioner. The attorney shall be the respondent. The petition shall be sufficiently clear and specific to inform the ~~respondent~~ attorney of any professional misconduct charged and the basis of any allegation that the ~~respondent~~ attorney is incapacitated and should be placed on inactive status.

Source: This Rule is derived ~~in part from former Rules 16-709 (BV9) and 16-711 b 2 (BV11 b 2) and is in part new~~ from former Rule 16-751 (2013).

Rule 19-721 was accompanied by the following Reporter's note.

Proposed Rule 19-721, Petition for Disciplinary or Remedial Action, is derived from current Rule 16-751. Language is deleted that requires the Commission to be called the petitioner and the attorney to be called the respondent. Stylistic changes are made.

The Chair said that some clarifying language had been added to Rule 19-721, but it was not anything of substance. It is a fact that when Bar Counsel files a petition, it is on behalf of the Attorney Grievance Commission, and the Commission is regarded as the petitioner.

By consensus, the Committee approved Rule 19-721 as

presented.

The Chair presented Rule 19-722, Order Designating Judge and Clerk, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-722. ORDER DESIGNATING JUDGE AND CLERK

(a) Order

Upon the filing of a Petition for Disciplinary or Remedial Action, the Court of Appeals may enter an order designating (1) a judge of any circuit court to hear the action, and (2) the clerk responsible for maintaining the record. The order of designation shall require the judge, not later than 15 days after the date on which an answer is due, and after consultation with Bar Counsel and the attorney, to enter a scheduling order. The scheduling order shall define ~~defining~~ the extent of discovery and ~~setting~~ set dates for the completion of discovery, designation of experts, the filing of motions, and a hearing on the petition. Subject to Rule 19-727 (a) and (e) and for good cause, the judge may amend the scheduling order.

(b) Service ~~of Petition and Order~~

Upon entry of an order under section (a) of this Rule, the clerk of the Court of Appeals shall send two copies to Bar Counsel. Bar Counsel shall serve a copy of the order and a copy of the petition on the respondent. The copies shall be served in accordance with Rule ~~16-753~~ 19-723 or as otherwise ordered by the Court of Appeals.

(c) Motion to Amend Order Designating Judge

> Within 15 days after the respondent has been served, either party may file a motion in accordance with Rule 8-431 requesting that the Court of Appeals designate another judge. The motion shall not stay the time for filing an answer to the petition.
>
> Source: This Rule is derived from former ~~Rules 16-709 b (BV9 b), 16-709 e 1 (BV9 e 1) and 16-710 c (BV10 c)~~ Rule 16-752 (2013).

Rule 19-722 was accompanied by the following Reporter's note.

> Proposed Rule 19-722, Order Designating Judge and Clerk, is derived from current Rule 16-752.
>
> Current Rule 16-752 requires the entry of a scheduling order setting time limits for the completion of discovery, the filing of motions, and a hearing. There are no Rules that specifically authorize an amendment to the scheduling order. Presumably, if another judge is designated pursuant to current Rule 16-752 (c) (proposed Rule 19-722 (c)), the new judge could enter a superceding scheduling order. Current Rule 16-757 (a) puts a limit on any scheduling order by requiring completion of the hearing within 120 days after service of the petition unless extended by the Court of Appeals. Language is added to proposed Rule 19-722 (a) in order to permit amendments to the scheduling order, subject to the 120-day requirement.
>
> The remaining changes are stylistic.

The Chair pointed out that Rule 19-722 had some clarifying changes that were explained in the Reporter's note. Current Rule 16-752 requires the entry of a scheduling order setting time limits for the completion of discovery, the filing of motions, and a hearing. No rule specifically authorizes an amendment to the scheduling order. If another judge is designated pursuant to

Rule 16-752 (c), which is section (c) of Rule 19-722, the new judge could enter a superseding scheduling order. Section (a) of the current Rule puts a limit on any scheduling order by requiring completion of the hearing within 120 days after service of the petition unless extended by the Court of Appeals. Language is proposed to be added to Rule 19-722 (a) to permit amendments to the scheduling order, subject to the 120-day requirement.

The Chair said that the other changes to Rule 19-722 were stylistic.

By consensus, the Committee approved Rule 19-722 as presented.

The Chair presented Rule 19-723, Service of Petition and Order, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-723. SERVICE OF PETITION AND ORDER

(a) Generally

A copy of a Petition for Disciplinary or Remedial Action filed pursuant to Rule ~~16-751,~~ 19-721 and the order of the Court of Appeals ~~designating a judge~~ entered pursuant to Rule ~~16-752,~~ 19-722 shall be served on ~~an~~ the attorney in the manner prescribed in Rule 2-121, or in any other manner directed by the Court of Appeals.

(b) Alternative Service

If after reasonable efforts the attorney cannot be served personally, service may be made ~~upon~~ on the attorney by serving the employee designated by the Client Protection Fund ~~of the Bar of Maryland~~ pursuant to Rule ~~16-811 c 1 (x)~~ 19-604, who shall be deemed the attorney's agent for receipt of service. The ~~Fund's~~ employee promptly shall (1) send, by ~~both~~ certified and ordinary mail, a copy of the papers so served to the attorney at the attorney's address maintained in the Fund's records and to any other address provided by Bar Counsel, and (2) file a certificate of the mailing with the clerk and send a copy of the certificate to Bar Counsel.

Source: This Rule is in part derived from former Rule ~~16-709 (BV9) and in part new~~ 16-753 (2013).

Rule 16-723 was accompanied by the following Reporter's note.

Proposed Rule 19-723, Service of Petition and Order, is derived from current Rule 16-753. Language is added to section (b) to require the employee of the Client Protection Fund responsible for receiving service for the attorney to "promptly" send the papers to the attorney, to file a certificate of mailing with the clerk, and to send a copy of the certificate to Bar Counsel.

Stylistic changes are made.

The Chair told the Committee that Rule 19-723 had no substantive changes.

By consensus, the Committee approved Rule 19-723 as presented.

The Chair presented Rule 19-724, Answer, for the Committee's consideration.

Rule 19-724. ANSWER

(a) Timing~~; Contents~~

~~Within 15 days after being served with the petition, unless a different time is ordered, the~~ The ~~respondent~~ attorney shall file with the designated clerk and serve on ~~the petitioner~~ Bar Counsel an answer to the petition ~~and serve a copy on the petitioner. Sections (c) and (e) of Rule 2-323 apply to the answer.~~:

(1) if the petition and order were served pursuant to Rule 19-723 (a), within 15 days after service;

(2) if the petition and order were served pursuant to Rule 19-723 (b), within 15 days after a copy of the petition and order was mailed to the attorney by the employee of the Client Protection Fund; or

(3) by such other time specified by the Court of Appeals.

(b) Content and Scope

(1) Generally

Defenses and objections to the petition, including insufficiency of service, shall be stated in the answer and not by preliminary motion.

~~(b) Procedural Defects~~ (2) Limited Scope

It is not a defense or ground for objection to a petition that procedural defects may have occurred during disciplinary or remedial proceedings prior to the filing of the petition.

(c) Failure to Answer

If the time for filing an answer has expired and the ~~respondent~~ attorney has failed to file an answer in accordance with section (a) of this Rule, the court shall treat the failure as a default, and the provisions of Rule 2-613 shall apply.

Source: This Rule is derived from former ~~Rules 16-709 e (BV9 e) and 16-710 b (BV10 b) and is in part new~~ Rule 16-754 (2013).

Rule 19-724 was accompanied by the following Reporter's note.

Proposed Rule 19-724, Answer, is derived from current Rule 16-754. Subsection (a)(2) is designed to start the 15 days from the time the Client Protection Fund employee mails the papers to the attorney. Otherwise, the attorney may have fewer than 15 days to file an answer. Subsection (a)(3) clarifies that an alternative time must be set by the Court of Appeals. The current Rule is silent regarding who may specify such an alternative time.

The remaining changes are stylistic.

The Chair noted that subsection (a)(2) of Rule 19-724 was new. If the petition is to be served through the Client Protection Fund, then it may take a few days for them to serve the petition. The attorney should not lose any part of the 15 days to respond. This was why subsection (a)(2) had been added.

By consensus, the Committee approved Rule 19-724 as presented.

The Chair presented Rule 19-725, Pleadings; Motions; Amendments, for the Committee's consideration.

Rule 19-725. PLEADINGS; MOTIONS; AMENDMENTS ~~TO PLEADINGS~~

(a) Pleadings

Except as provided in section (b) of this Rule or otherwise expressly permitted by these Rules or ordered by the Court of Appeals, the only pleadings permitted in an action for Disciplinary or Remedial Action are the petition and an answer.

(b) Amendments

~~A party~~ Bar Counsel may amend a petition ~~or~~ and the attorney may amend an answer in accordance with the applicable provisions of Rule 2-341.

(c) Motions

Motions dealing with discovery, pre-hearing procedural matters, or matters arising at the hearing conducted pursuant to Rule 19-727 are permissible and shall comply with applicable provisions of Rule 2-311. Motions to dismiss the proceeding are not permitted.

Committee note: Proceedings on a Petition for Disciplinary or Remedial Action are conducted pursuant to the original jurisdiction of the Court of Appeals to regulate the practice of law and are not the place for collateral actions or such things as counterclaims. Moreover, because the authority of the circuit court judge designated by the Court of Appeals pursuant to Rule 19-722 is limited to taking evidence and making findings of fact and proposed conclusions of law, that judge is not empowered to dismiss a petition. Defenses to

the petition may be raised in the answer and may be addressed by the designated judge, but only the Court of Appeals has authority to dismiss all or part of a petition.

Source: ~~This Rule is new.~~ Sections (a) and (c) of this Rule are new. Section (b) is derived from former Rule 16-755 (2013).

Rule 19-725 was accompanied by the following Reporter's note.

> Section (b) of proposed Rule 19-725, Pleadings; Motions; Amendments, is carried forward from current Rule 16-755. Stylistic changes are made.
>
> Section (a), Pleadings, section (c), Motions, and the Committee note following section (c) are new. Sections (a) and (c) are added to make clear that, although certain motions are permissible in proceedings for disciplinary or remedial action (such as motions dealing with discovery), motions to dismiss, collateral actions, and counterclaims are not permissible in the proceedings. The Committee note explains that motions to dismiss and collateral actions are not permitted because proceedings for disciplinary or remedial action are conducted pursuant to the power of the Court of Appeals to regulate the practice of law, and because a circuit court does not have the authority to dismiss the proceeding.

The Chair said that no substantive changes had been made to Rule 19-725, but it incorporates case law. There have been some situations where the attorney would like to file a counterclaim or a cross claim. Rule 19-725 clarifies that the only pleadings allowed are the petition and an answer. Section (c) clarifies that motions to dismiss are not allowed, because this is an

original action in the Court of Appeals. In a sense, the circuit court judge, is acting as a hearing examiner. Motions to dismiss have been filed in these cases.

By consensus, the Committee approved Rule 19-725 as presented.

The Chair presented Rule 19-726, Discovery, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-726. DISCOVERY

After a Petition for Disciplinary or Remedial Action has been filed, discovery is governed by Title 2, Chapter 400, subject to any scheduling order entered pursuant to Rule ~~16-752 (a)~~ 19-722.

Source: This Rule is derived from former Rule ~~16-710 a (BV10 a)~~ 16-756 (2013).

Rule 19-726 was accompanied by the following Reporter's note.

Proposed Rule 19-726, Discovery, is derived from current Rule 16-756. The references to the current Rules to reflect the proposed renumbering of those Rules.

The Chair told the Committee that no changes had been made to Rule 19-726.

By consensus, the Committee approved Rule 19-726 as presented.

The Chair presented Rule 19-727, Judicial Hearing, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-727. JUDICIAL HEARING

(a) Evidence and Procedure Generally

Except as otherwise provided by the Rules in this Chapter, ~~T~~the hearing of a disciplinary or remedial action is governed by the rules of evidence and procedure applicable to a ~~court~~ non-jury trial in a civil action ~~tried~~ in a circuit court. ~~Unless extended by the Court of Appeals, the hearing shall be completed within 120 days after service on the respondent of the order designating a judge.~~

(b) Certain Evidence Allowed

(1) Before the conclusion of the hearing, the judge may permit any complainant to testify, subject to cross-examination, regarding the effect of the alleged misconduct or incapacity.

(2) ~~A respondent~~ The attorney may offer, or the judge may inquire regarding, evidence otherwise admissible of any remedial action undertaken by the attorney relevant to the allegations of misconduct or incapacity. Bar Counsel may respond to any evidence of remedial action.

~~(b)~~ (c) Burdens of Proof

~~The petitioner~~ Bar Counsel has the burden of proving the averments of the petition by clear and convincing evidence. ~~A respondent who~~ If the attorney asserts an affirmative defense or a matter of mitigation

or extenuation, the attorney has the burden of proving the defense or matter by a preponderance of the evidence.

~~(c)~~ (d) Findings and Conclusions

The judge shall prepare and file ~~or dictate into the record~~ a written statement ~~of the judge's findings of fact, including~~ which shall contain: (1) ~~findings as to any evidence regarding remedial action, and conclusions of law. If dictated into the record, the statement shall be promptly transcribed.~~ findings of fact and conclusions of law as to each charge; (2) findings as to any remedial action taken by the attorney; and (3) findings as to any aggravating or mitigating circumstances that exist. Unless the time is extended by the Court of Appeals, the ~~written or transcribed~~ statement shall be filed with the clerk responsible for the record no later than 45 days after the conclusion of the hearing. The clerks shall mail a copy of the statement to each party.

(e) Time for Completion

Unless extended by the Court of Appeals, the hearing shall be completed within 120 days after service on the attorney of the order entered under Rule 19-722.

~~(d)~~ (f) Transcript

~~The petitioner~~ Bar Counsel shall cause a transcript of the hearing to be prepared and included in the record.

~~(e)~~ (g) Transmittal of Record

Unless a different time is ordered by the Court of Appeals, the clerk shall transmit the record to the Court of Appeals within 15 days after the statement of findings and conclusions is filed.

Source: This Rule is derived from former ~~Rules 16-710 d (BV10 d) and 16-711 a and b 1 (BV11 a and b 1)~~ Rule 16-757 (2013).

Rule 19-727 was accompanied by the following Reporter's note.

> Proposed Rule 19-727, Judicial Hearing, is derived from current Rule 16-757. Because clear and detailed findings of fact and conclusions of law are required with respect to each charge in the petition, the amendment to section (d) requires a written statement and deletes the alternative of an extemporaneous reading of those findings of fact and conclusions of law into the record. Stylistic changes are made.

The Chair explained that the only substantive change to Rule 19-727 was in section (d). It deleted the ability of the hearing judge to extemporaneously read into the record findings of fact. The Court of Appeals had requested that the findings and conclusions be in writing. Sometimes a number of findings have to be made, and some are dependent on one another. When the judge tries to read the findings into the record, there have been too many instances in which the judge missed something, added something that should not have been there, or made inconsistent findings. For these cases, the Court of Appeals wanted the judge to take time and put the findings and conclusions in writing.

By consensus, the Committee approved Rule 19-727 as presented.

The Chair presented Rule 19-728, Post-hearing Proceedings, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS,

RESIGNATION

Rule 19-728. POST-HEARING PROCEEDINGS

(a) Notice of the Filing of the Record

Upon receiving the record, the Clerk of the Court of Appeals shall notify the parties that the record has been filed.

(b) Exceptions; Recommendations

Within 15 days after service of the notice required by section (a) of this Rule, each party may file (1) exceptions to the findings and conclusions of the hearing judge and (2) recommendations concerning the appropriate disposition under Rule ~~16-759 (c)~~ 19-729 (c).

(c) Response

Within 15 days after service of exceptions or recommendations, the adverse party may file a response.

(d) Form

The parties shall file eight copies of any exceptions, recommendations, and responses. The copies shall conform to the requirements of Rule 8-112.

Source: This Rule is derived ~~in part from former Rule 16-711 (BV11) and is in part new~~ from former Rule 16-758 (2013).

Rule 19-728 was accompanied by the following Reporter's note.

Proposed Rule 19-728, Post-Hearing Proceedings, is derived from current Rule 16-758. Because the Rules in Title 16, Chapter 700 have been proposed to be renumbered, the reference in section (b) to one of those Rules has been changed to reflect the renumbering.

The Chair said that Rule 19-728 had no substantive changes.

By consensus, the Committee approved Rule 19-728 as presented.

The Chair presented Rule 19-729, Proceedings in Court of Appeals, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-729. ~~DISPOSITION~~ PROCEEDINGS IN COURT OF APPEALS

(a) Oral Argument

The Court shall set a date for oral argument, unless oral argument is waived by the parties. Oral argument shall be conducted in accordance with Rule 8-522.

(b) Review by Court of Appeals

(1) Conclusions of Law

The Court of Appeals shall review de novo the circuit court judge's conclusions of law.

(2) Findings of Fact

(A) If No Exceptions are Filed

If no exceptions are filed, the Court may treat the findings of fact as established ~~for the purpose of determining appropriate sanctions, if any~~.

(B) If Exceptions are Filed

If exceptions are filed, the Court of Appeals shall determine whether the findings of fact have been proven by the requisite standard of proof set out in Rule ~~16-757 (b)~~ 19-727 (c). The Court may confine its review to the findings of fact challenged by the exceptions. The Court shall give due

regard to the opportunity of the hearing judge to assess the credibility of witnesses.

(c) Disposition

The Court of Appeals may order (1) disbarment, (2) suspension, (3) reprimand, (4) inactive status, (5) dismissal of the disciplinary or remedial action, or (6) a remand for further proceedings.

(d) Decision

The decision of the Court of Appeals is final. The decision shall be evidenced by an order which the clerk shall certify under the seal of the Court. The order may be accompanied by an opinion.
Source: This Rule is derived ~~in part from former Rule 16-711 (BV11) and is in part new~~ from former Rule 16-759 (2013).

Rule 19-729 was accompanied by the following Reporter's note.

Proposed Rule 19-729, Proceedings in Court of Appeals, is derived from current Rule 16-759. Section (b) of current Rule 16-759, Review by Court of Appeals, authorizes the Court to treat findings of fact as established "for the purpose of determining appropriate sanctions, if any." The quoted language is deleted because findings of fact also may be relevant to determine whether the attorney committed the misconduct. Stylistic changes are made.

The Chair noted that language was deleted in subsection (b)(2)(A) of Rule 19-729, because it was limiting language that was inappropriate. Findings of fact, even if there are no exceptions, could be looked at for reasons other than determining appropriate sanctions. The findings may be inconsistent.

By consensus, the Committee approved Rule 19-729 as

presented.

The Chair presented Rule 19-731, Audit of Attorney Accounts and Records, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

PART 4. SPECIAL PROCEEDINGS

Rule 19-731. AUDIT OF ATTORNEY ACCOUNTS AND RECORDS

(a) Action for Audit

Bar Counsel or the Trustees of the Client Protection Fund ~~of the Bar of Maryland~~ may file a petition requesting an audit of the accounts and records that an attorney is required by law or Rule to maintain. The petition may be filed in the circuit court in any county where the attorney resides or has an office for the practice of law. If the attorney has no established office and the attorney's residence is unknown, the petition may be filed in any circuit court.

(b) Petition

The petition shall state the facts showing that an audit is necessary and shall request the appointment of a Certified Public Accountant to conduct the audit. ~~Proceedings under this Rule shall be sealed and stamped "confidential" at the time of filing, and the docket entries shall not divulge the name or otherwise identify the attorney against whom the petition is filed.~~

(c) Caption

The petition and all subsequent pleadings and papers filed in the action

shall contain a caption, "In re: Application for Audit of an Attorney's Accounts and Records."

(d) Show Cause Order; Service

The court shall enter an order giving the attorney notice of the action and directing the attorney to show cause on or before a stated date why an audit should not be conducted as requested. The order and the petition shall be served in the manner that the court directs so as to preserve the confidentiality of the action.

(e) Response to Petition

The attorney may file a response to the petition and show cause order not later than the date stated in the order or, if no date is stated, within five days after being served.

(f) Order Directing Audit

After considering the petition and any response and upon a finding of good cause, the court may order any of the accounts and records required by law or Rule to be maintained by the attorney to be audited by a Certified Public Accountant designated in the order. The order directing the audit shall expressly require that the audit be conducted and a report be made in a manner that preserves the confidentiality of the proceedings and the attorney's confidential relation with the attorney's clients.

(g) Finality of Order

An order granting or denying a petition for an audit is a final order for purposes of appeal.

(h) Duty of Clerk to Preserve Confidentiality

The clerk shall maintain a separate docket with an index for proceedings under this Rule. <u>The docket entries shall not identify the attorney against whom the</u>

petition is filed. Pleadings and other papers filed in the proceedings shall be stamped "confidential" and sealed in accordance with Rule ~~16-723 (b)(9)~~ 19-707 (b)(9) at the time they are filed. The docket, index, and papers in the proceedings shall not be open to inspection by any person, including the parties, except upon order of court after reasonable notice and for good cause shown.

(i) Cost of Audit

Upon completion of the audit, the court may order all or part of the costs of the audit and of the proceeding to be paid by any party to the proceeding, but costs shall not be assessed against the attorney if the audit fails to disclose any irregularity.

(j) Remedy Not Exclusive

Neither this Rule nor any proceeding under this Rule precludes any other remedy or cause of action while the audit is pending or thereafter.

Source: This Rule is ~~in part derived from former Rule 16-718 (BV18) and in part new~~ derived from former Rule 16-722 (2013).

Rule 19-731 was accompanied by the following Reporter's note.

Proposed Rule 19-731, Audit of Attorney Accounts and Records, is derived from current Rule 16-722. Language in section (b) regarding confidentiality has been deleted because confidentiality with respect to audits is addressed in proposed Rule 19-707 (b)(9). Stylistic changes are made.

The Chair said that no substantive change had been made to Rule 19-731. The deletion of language in section (b) is covered in section (h).

By consensus, the Committee approved Rule 19-731 as

presented.

The Chair presented Rule 19-732, Injunction; Expedited Action, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-732. INJUNCTION; EXPEDITED ~~DISCIPLINARY OR REMEDIAL~~ ACTION

(a) Authority to Seek Injunction ~~to Prevent Serious Harm~~

~~(1) Authority of Commission~~

Upon receiving information that an attorney is engaging in professional misconduct or has an incapacity and poses an immediate threat of causing ~~(A)~~ (1) death or substantial bodily harm to another, ~~(B)~~ (2) substantial injury to the financial interest or property of another, or ~~(C)~~ (3) substantial harm to the administration of justice, Bar Counsel, with the approval of the Chair of the Commission, may apply in accordance with the provisions of Title 15, Chapter 500 for appropriate injunctive relief against the attorney. The relief sought may include restricting the attorney's practice of law, limiting or prohibiting withdrawals from any account in any financial institution, and limiting or prohibiting transfers of funds or property.

Committee note: Except as otherwise provided in this Rule, Rules 15-501 through 15-505, the rules relating to temporary restraining orders and injunctions, apply. The appealability of injunctions under this Rule is governed by Code, Courts Article, §12-303.

Cross reference: See Rule ~~16-777~~ 19-734 for the right of Bar Counsel to request the

appointment of a conservator when an attorney no longer can practice.

~~(2)~~ (b) Parties

The action for injunction shall be brought in the name of the Commission against the attorney whose conduct is alleged to be causing or threatening the harm and against any other person alleged to be assisting or acting in concert with the attorney.

~~(3)~~ (c) Effect of Investigation or Disciplinary or Remedial Proceeding

A court may not delay or deny an injunction solely because misconduct is or may become the subject of an investigation under Rule ~~16-731~~ 19-711 or the basis for a Statement of Charges under Rule ~~16-741~~ 19-718.

~~(4)~~ (d) Order Granting Injunction

In addition to meeting the requirements of Rule 15-502 (e), an order granting a preliminary or permanent injunction ~~pursuant to~~ under this section shall include specific findings by a preponderance of the evidence that the attorney has engaged in the professional misconduct or has the incapacity alleged and poses the threat alleged in the complaint. A bond shall not be required except in exceptional circumstances.

~~(5)~~ (e) Service ~~of Injunction~~ on Financial Institution

An order granting an injunction under this section that limits or prohibits withdrawals from any account or that limits or prohibits ~~transfers~~ a transfer of funds or property is effective against any financial institution upon which it is served from the time of service.

~~(b)~~ (f) Expedited Disciplinary or Remedial Action

(1) Filing of Petition

When an injunction ~~has~~ is issued ~~in accordance with~~ pursuant to this Rule, ~~and regardless of~~ notwithstanding any pending appeal or motion to modify or dissolve the injunction, Bar Counsel shall immediately ~~commence an action against the attorney by filing in the Court of Appeals~~ file a Petition for Disciplinary or Remedial Action pursuant to Rule ~~16-751~~ 19-721. A certified copy of the order granting the injunction shall be attached to the petition.

(2) Action on Petition

The action shall proceed in accordance with Rules ~~16-751~~ 19-721 through ~~16-761~~ 19-729 and Rules 19-741 through 19-744, to the extent applicable. The Court of Appeals may assign the petition for hearing to the judge who granted the injunction.

Source: This Rule is ~~new~~ derived from former Rule 16-776 (2013).

Rule 19-732 was accompanied by the following Reporter's note.

Proposed Rule 19-732, Injunction; Expedited Action, is derived from current Rule 16-776. Section (a), Authority to Seek Injunction, and (d), Order Granting Injunction, have been amended to include attorneys who have incapacities along with those who have engaged in professional misconduct. Stylistic changes are made.

The Chair pointed out that in Rule 19-732, the incapacity of an attorney had been added as a reason for Bar Counsel to apply for injunctive relief. This was the only change to Rule 19-732.

By consensus, the Committee approved Rule 19-732 as presented.

The Chair presented Rule 19-733, Referral from Child Support Enforcement Administration, for the Committee's consideration.

Rule 19-733. REFERRAL FROM CHILD SUPPORT ENFORCEMENT ADMINISTRATION

(a) Referral

The Commission promptly shall transmit to Bar Counsel a referral from the Child Support Enforcement Administration pursuant to Code, Family Law Article, §10-119.3 (e)(3) and direct Bar Counsel to file a Petition for Disciplinary or Remedial Action in the Court of Appeals pursuant to Rule ~~16-751 (a)(1)~~ 19-721 (a)(1). A copy of the Administration's referral shall be attached to the Petition, and a copy of the Petition and notice shall be served on the attorney in accordance with Rule ~~16-753~~ 19-723.

Committee note: The procedures set out in Code, Family Law Article, §10-119.3 (f)(1), (2), and (3) are completed before the referral to the Attorney Grievance Commission.

(b) Show Cause Order

When a petition and notice of referral have been filed, the Court of Appeals shall order that Bar Counsel and the attorney, within 15 days from the date of the order, show cause in writing why the attorney should not be suspended from the practice of law.

(c) Action by the Court of Appeals

Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may enter an order: (1) immediately and indefinitely suspending the attorney from the practice of law, (2) designating a judge pursuant to Rule ~~16-752~~ 19-722 to hold a hearing in accordance with

Rule ~~16-757~~ 19-727, or (3) containing any other appropriate provisions. The provisions of ~~Rule 16-760~~ Rules 19-741 through 19-744, as applicable, apply to an order under this section that suspends an attorney.

(d) Presumptive Effect of Referral

A referral from the Child Support Enforcement Administration to the Attorney Grievance Commission is presumptive evidence that the attorney falls within the criteria specified in Code, Family Law Article, §10-119.3 (e)(1), but the introduction of such evidence does not preclude Bar Counsel or the attorney from introducing additional evidence or otherwise showing cause why no suspension should be imposed.

(e) Termination of Suspension

(1) On Notification by the Child Support Enforcement Administration

Upon notification by the Child Support Enforcement Administration that the attorney has complied with the provisions of Code, Family Law Article, §10-119.3 (j), the Court of Appeals shall order the attorney reinstated to the practice of law, unless other grounds exist for the suspension to remain in effect.

(2) On Verified Petition by Attorney

In the absence of a notification by the Child Support Enforcement Administration pursuant to subsection (e)(1) of this Rule, the attorney may file with the Court of Appeals a verified petition for reinstatement. The petition shall allege under oath that (A) the attorney is in compliance with the provisions of Code, Family Law Article, §10-119.3 (j) and is not currently in arrears in the payment of child support, (B) at least 15 days prior to filing the verified petition, the attorney gave written notice of those facts to the Child Support Enforcement Administration and requested that the Child Support Enforcement Administration notify the Court, (C) the

Child Support Enforcement Administration has failed or refused to file such a notification, and (D) the attorney is entitled to be reinstated. All relevant documents shall be attached to the petition as exhibits. A copy of the petition and exhibits shall be served on Bar Counsel, who shall file an answer within 15 days after service. Upon consideration of the petition and answer, the Court of Appeals may enter an order reinstating the attorney, an order denying the petition, or any other appropriate order.

(f) Other Disciplinary Proceedings

Proceedings under this Rule shall not preclude (1) the use of the facts underlying the referral from the Child Support Enforcement Administration when relevant to a pending or subsequent disciplinary proceeding against the attorney or (2) prosecution of a disciplinary action based upon a pattern of conduct adverse to the administration of justice.

Source: This Rule is ~~new~~ derived from former Rule 16-778 (2013).

Rule 19-733 was accompanied by the following Reporter's note.

Proposed Rule 19-733, Referral from Child Support Enforcement Administration, is derived from current Rule 16-778. References to Rules which are proposed to be renumbered are changed.

The Chair said that the only change to Rule 19-733 was a change to the various rule references within the Rule. By consensus, the Committee approved Rule 19-733 as presented.

The Chair presented Rule 19-734, Conservator of Client Matters, for the Committee's consideration.

Rule 19-734. CONSERVATOR OF CLIENT MATTERS

(a) Appointment; When Authorized; Service

If (1) an attorney dies, disappears, ~~or~~ has been disbarred, suspended, or placed on inactive status, or has abandoned the practice of law, (2) there are open client matters, and (3) and ~~no~~ there is not known to exist any personal representative, partner, or other ~~responsible party~~ individual who is willing to conduct and capable of conducting the ~~former~~ attorney's client affairs ~~is known to exist~~, Bar Counsel may file a petition requesting the appointment of a conservator to inventory the attorney's files and to take other appropriate action to protect the attorney's clients. The petition shall be served on the attorney in accordance with Rule 2-121.

(b) Petition and Order

The petition to appoint a conservator may be filed in the circuit court in any county in which the attorney maintained an office for the practice of law. Upon such proof of the facts as the court may require, the court may enter an order appointing an attorney approved by Bar Counsel to serve as conservator subject to further order of the court.

(c) Inventory

Promptly upon accepting the appointment, the conservator shall take possession and prepare an inventory of the ~~former~~ attorney's files, take control of the attorney's trust and business accounts, review the files and accounts, identify open matters, and note the matters requiring

action.

(d) Disposition of Files

With the consent of the client or the approval of the court, the conservator may assist the client in finding new counsel, assume responsibility for specific matters, or refer the client's open matters to attorneys willing to handle them.

(e) Sale of Law Practice

With the approval of the court, the conservator may sell the attorney's law practice in accordance with Rule ~~1.17~~ 19-301.17 of the Maryland Lawyers' Rules of Professional Conduct.

(f) Compensation

(1) Entitlement

The conservator ~~shall be~~ is entitled to periodic payment from the attorney's assets or estate for reasonable hourly attorney's fees and reimbursement for expenditures reasonably incurred in carrying out the order of appointment.

(2) Motion for Judgment

Upon verified motion served ~~upon~~ on the attorney at the attorney's last known address or, if the attorney is deceased, upon the personal representative of the attorney, the court may order payment to the conservator and enter judgment against the attorney or personal representative for the reasonable fees and expenses of the conservator.

(3) Payment from Disciplinary Fund

If the conservator is unable to obtain full payment within one year after entry of judgment, the Commission ~~in its sole discretion~~ may authorize payment from the Disciplinary Fund in an amount not exceeding the amount of the judgment that remains unsatisfied. If payment is made from the

Disciplinary Fund, the conservator shall assign the judgment to the Commission for the benefit of the Disciplinary Fund.

(g) Confidentiality

A conservator shall not disclose any information contained in a client's file without the consent of the client, except as necessary to carry out the order of appointment.

Source: This Rule is ~~in part derived from former Rule 16-717 (BV17) and in part new~~ derived from former Rule 16-777 (2013).

Rule 19-734 was accompanied by the following Reporter's note.

Proposed Rule 19-734, Conservator of Client Matters, is derived from current Rule 16-777. A provision is added to section (a) regarding service of a petition requesting the appointment of a conservator. Stylistic changes are made.

The Chair noted that Rule 19-734 had clarifying changes and also a provision for service on the attorney, which was not in the current Rule. Mr. Grossman said that he had a problem with Rule 19-734. An attorney who is completely disabled, but is not on inactive status, should also be covered by Rule 19-734. It is important to protect the attorney's clients. This situation has happened. In one instance, the attorney was close to death but was not on inactive status.

The Chair commented that other parts of the Rule would have to be changed as well, because Rule 19-734 limits the situation to where the attorney dies, disappears, has been disbarred, suspended, or placed on inactive status, or has abandoned the

practice of law, and there are open client matters where there is no one known to exist to address those matters. Mr. Grossman suggested adding the language "or is incapacitated" to subsection (a)(1) of Rule 19-734. He preferred that the Rule be more explicit. Being disabled is not necessarily the same as abandoning the practice of law. In one case, the attorney came to Bar Counsel for help.

The Reporter pointed out that there are many degrees of being incapacitated. Judge Weatherly remarked that an attorney who has had a heart attack may later return to the practice of law. The Chair commented that Rule 19-734 allows someone to file a petition. Mr. Grossman said that one case involved an attorney, who had been incapacitated and then recovered. Mr. Grossman terminated the conservatorship, and the attorney went back into practice. The Chair added that there is some expense involved, because the attorney has to pay the costs associated with the conservatorship. The Chair asked if anyone objected to adding the language "or is incapacitated" to subsection (a)(1) of Rule 19-734.

Mr. Brault asked whether instead of the language in subsection (a)(1) that read: "placed on inactive status," the language "is on inactive status" could be substituted. Mr. Grossman answered negatively, explaining that sometimes the attorney is not on inactive status. Mr. Brault inquired if the language "is on active status" would cover court-ordered or involuntary placement on inactive status. Mr. Grossman responded

that it is a two-step process. It is court-ordered, but someone may not be in a condition to agree to be put on inactive status. The Court of Appeals had recently asked Mr. Grossman whether the Court could take the petition, because it was not clear whether the attorney was capable of understanding what it was that he or she was signing. Yet the person was not involuntarily committed. Adding incapacity would solve the problem. By consensus, the Committee agreed to add the language "or is incapacitated" to subsection (a)(1) of Rule 19-734.

Mr. Grossman remarked that Rule 19-734 had a problem with service. The Chair inquired if Mr. Grossman preferred that the attorney not be served. Mr. Grossman replied that obviously, if there is a claim of incapacity, someone can be served, but not when the person is dead or has disappeared. When attorneys disappear, the clients often have close contact with people in Mr. Grossman's office, who will send an investigator to find out where the attorney is. If the client files are in jeopardy, Mr. Grossman and his colleagues will take action under Rule 19-734. Mr. Grossman could not remember the last time he knew of an attorney who had disappeared.

Mr. Brault asked if Mr. Grossman serves the Client Protection Fund for disappearing attorneys. Mr. Grossman answered that the Fund would be served in a discipline case, but not in a conservator case. Mr. Brault asked if the Fund could be served in a case under Rule 19-734. Mr. Grossman answered affirmatively. If the case were served under Rule 2-121,

Process-Service-In personam, rather than service under Rule 19-734, the Client Protection Fund would not be served, it would be the attorney himself or herself.

The Chair inquired whether Mr. Grossman would want to serve the Client Protection Fund in all cases if the attorney is able to be served. Mr. Grossman answered that it would depend on the attorney. It is rare when he or his colleagues do a conservatorship where the attorney is alive and/or able to be located. In those situations where the attorney is not able to be located, the Rules provide that the Client Protection Fund can be served. He clarified that he and his colleagues do not look to do this, but the Rules require it, so that other people who are closer to the attorney and may be able to act as a conservator can be found.

The Chair pointed out that the conservatorship is outside of the normal attorney grievance process. Bar Counsel would petition the circuit court for a conservatorship. Someone would have to be served. Mr. Brault noted that under Rule 2-121, the person to be served is designated. That person can be the Client Protection Fund, the personal representative of the estate, etc. It does not have to be the attorney. Mr. Grossman remarked that in most of these cases, the attorney cannot be served.

Mr. Brault asked if the word "attorney" should be removed from the last sentence of section (a). Judge Pierson pointed out that Rule 2-121 has a number of escape hatches and provisions for substituted service and for service in such manner as the court

may determine is reasonable. Section (a) of Rule 19-734 can simply refer to service under Rule 2-121. Mr. Brault said that the word "attorney" should be taken out of the last sentence of section (a), because in the conservator cases Mr. Brault had handled, the attorney had already died.

Judge Pierson commented that if incapacity is added to subsection (a)(1) of Rule 19-734 and service on the attorney is taken out, often the attorney is incapacitated, and a conservator will be appointed without a hearing, because the Rule does not require a hearing or a responsive pleading. He expressed the view that there should be some modicum of due process for the incapacitated attorney before he or she is placed under a conservatorship. Mr. Brault said that he had helped draft the Rule, and he understood its purpose was to protect the client. It was not designed to protect the attorney. He had a case where the attorney who was the subject of the conservatorship had died. There were two file cabinets full of client files, and the attorney had been stealing money from the clients. Mr. Brault and his colleagues had to intervene quickly and protect the clients. Mr. Brault expressed the opinion that the emphasis of Rule 19-734 was not on due process.

Judge Price commented that due process is still necessary. It is important to comply with the service rules. The Chair noted that the assumption was that the conservatorship is a case filed in circuit court. All of the rules addressing hearings in any equity court would apply. It is not necessary to state those

principles in the Attorney Discipline Rules. Mr. Sullivan observed that subsection (a)(3) already has alternative service built into it. Service on the attorney may be made by serving the employee designated by the Client Protection Fund as provided for in proposed Rule 19-723. Current Rule 16-724, Service of Papers on Attorney, as it is written now, would allow for this mode of alternative service, which is not in Rule 2-121.

Judge Price said that the Committee had added incapacity to Rule 19-734, which changes the entire tenor of the Rule. Judge Pierson added that the term "incapacity" is very broad. Mr. Grossman commented that the term "incapacity" was defined in section (g) of proposed Rule 19-701. In the few cases his office has had involving incapacity, they set forth more evidence in addition to what the nature of the incapacity was, and if there is service on that attorney, he or she can argue against being designated as incapacitated.

The Chair asked Mr. Grossman if he would approve of taking out the language "on the attorney" from the last sentence in section (a) of Rule 19-734. Mr. Grossman replied affirmatively. The Chair said that the sentence would read: "The petition shall be served in accordance with Rule 2-121." The Reporter expressed the view that this was vague. Mr. Brault expressed the opinion that the change was a good solution. By consensus, the Committee agreed to the deletion of the language "on the attorney."

By consensus the Committee approved Rule 19-734 as amended.

The Chair presented Rule 19-735, Resignation of Attorney,

for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-735. RESIGNATION OF ATTORNEY

(a) Application

An application to resign from the practice of law in this State shall be submitted in writing under oath to the Court of Appeals, with a copy to Bar Counsel. The application shall state that the resignation is not being offered to avoid disciplinary action and that the attorney has no knowledge of any pending investigation, action, or proceedings in any jurisdiction involving allegations of professional misconduct by the attorney.

(b) When Attorney May Not Resign

An attorney may not resign while the attorney is the subject of a disciplinary investigation, action, or proceeding involving allegations of professional misconduct. An application to resign does not prevent or stay any disciplinary action or proceeding against the attorney.

(c) Procedure

Upon receiving a copy of the application submitted in accordance with section (a) of this Rule, Bar Counsel shall investigate the application and file a response with the Clerk of the Court.

(d) Order of the Court of Appeals

The Court of Appeals shall enter an order accepting or denying the resignation. A resignation is effective only upon entry of an order accepting it.

(e) Duty of Clerk

When the Court enters an order accepting an attorney's resignation, the Clerk of the Court of Appeals shall strike the name of the attorney from the register of attorneys in that Court and shall certify that fact to the Trustees of the Client Protection Fund of the Bar of Maryland and the clerks of all courts in this State. The Clerk shall give any notice required by Rule ~~16-723 (e)~~ 19-707 (e).

(f) Effect of Resignation

An attorney may not practice law in this State after entry of an order accepting the attorney's resignation.

(g) Motion to Vacate

On motion of Bar Counsel, the Court may vacate or modify the order ~~in a case of~~ if there has been intrinsic or extrinsic fraud.

Source: This Rule is ~~in part derived from former Rules 16-712 (BV12) and 16-713 a (BV13 a) and in part new~~ derived from former Rule 16-775 (2013).

Rule 19-735 was accompanied by the following Reporter's note.

Proposed Rule 19-735, Resignation of Attorney, is derived from current Rule 16-775. Stylistic changes are made.

The Chair told the Committee that no substantive change had been made to Rule 19-735.

By consensus, the Committee approved Rule 19-735 as presented.

The Chair presented Rule 19-736, Consent to Discipline or Inactive Status, for the Committee's consideration.

Rule 19-736. CONSENT TO DISCIPLINE OR INACTIVE STATUS

(a) General Requirement

An attorney may consent to discipline or placement on inactive status in accordance with this Rule.

(b) Consent to Discipline for Misconduct

(1) Joint Petition

An attorney may consent to disbarment or other discipline by joining with Bar Counsel in a petition for an order disbarring the attorney, suspending the attorney from the practice of law, or reprimanding the attorney. The petition shall be signed by the attorney and Bar Counsel and filed in the Court of Appeals. If a suspension is requested, the petition shall state whether the suspension should be indefinite or for a stated period and shall set forth any conditions that the parties agree should be imposed. If a reprimand is requested, the petition shall state the proposed text of the reprimand and any conditions.

(2) Affidavit Required

A joint petition filed under subsection (b)(1) of this Rule shall be accompanied by an affidavit by the attorney that certifies that the attorney:

(A) is aware that an investigation or proceeding is currently pending involving allegations of professional misconduct, the nature of which shall be specifically set forth;

(B) knows that if a hearing were to be held, sufficient evidence could be produced to sustain the allegations of misconduct;

(C) consents to the disbarment or other discipline stated in the petition;

(D) gives the consent freely and voluntarily without coercion or duress;

(E) is aware of the effects of the disbarment or other discipline to which the attorney is consenting; and

(F) agrees to comply with Rule ~~16-760~~ 19-742 and any conditions stated in the petition that the Court of Appeals may impose.

(3) Order of the Court of Appeals

Upon the filing of the joint petition and the affidavit, the Court of Appeals may enter an order, signed by the Chief Judge or a judge designated by the Chief Judge, disbarring the attorney by consent from the practice of law in the State, suspending the attorney by consent from the practice of law, or reprimanding the attorney by consent and imposing any conditions stated in the petition. The provisions of Rule ~~16-760~~ 19-742 apply to an order entered under this subsection.

(c) Consent to Placement on Inactive Status

(1) Joint Petition

If competent to do so, ~~A~~an attorney may consent to placement on inactive status by joining with Bar Counsel in a petition for an order placing the attorney on inactive status. The petition shall be signed by the attorney and Bar Counsel and filed in the Court of Appeals. The petition shall state whether the inactive status should be indefinite or until the occurrence of a specified event and shall set forth any conditions that the parties agree should be imposed.

(2) Affidavit Required

A joint petition filed under subsection (c)(1) of this Rule shall be accompanied by an affidavit by the attorney that certifies that the attorney:

(A) understands and is competent to make the other certifications in this subsection;

~~(A)~~ (B) consents to the placement on inactive status;

~~(B)~~ (C) gives the consent freely and voluntarily without coercion or duress;

~~(C)~~ (D) is currently incapacitated and unable to render adequate legal service;

~~(D)~~ (E) knows that if a hearing were to be held, Bar Counsel would have the burden of proving by clear and convincing evidence that the attorney is so incapacitated as to require the attorney to be placed on inactive status;

~~(E)~~ (F) understands that being placed on inactive status, if ordered by the Court of Appeals, terminates the attorney's privilege to practice law in this State until otherwise ordered by the Court;

~~(F)~~ (G) agrees to comply with Rule ~~16-760~~ 19-744 and any conditions stated in the petition that the Court of Appeals may impose;

~~(G)~~ (H) understands that the attorney may not be reinstated to practice law unless the attorney is able to prove by a preponderance of the evidence that the attorney has regained the ability to render adequate legal services, that inactive status should be terminated, and that the attorney should be reinstated to active practice;

~~(H)~~ (I) has disclosed to Bar Counsel the name of every physician, other health care provider, and health care facility by whom or at which the attorney has been

examined, evaluated, or treated; and

~~(I)~~ (J) has furnished Bar Counsel with written consent to the release of such health care information and records as Bar Counsel has requested and waived any privilege as to such information and records.

(3) Order of the Court of Appeals

Upon the filing of the joint petition and affidavit, the Court of Appeals may enter an order, signed by the Chief Judge or a judge designated by the Chief Judge, placing the attorney on inactive status by consent pending further order of the Court and imposing any conditions stated in the petition. The provisions of Rule ~~16-760~~ 19-744 apply to an order entered under this section.

(d) Duty of Clerk

When an attorney has been disbarred, suspended, or placed on inactive status under this Rule, the Clerk of the Court of Appeals shall strike the name of the attorney from the register of attorneys in that Court and shall certify to the Trustees of the Client Protection Fund ~~of the Bar of Maryland~~ and the clerks of all courts in this State that the attorney's name has been so stricken.

(e) Effect of Denial

If the Court of Appeals denies a joint petition for discipline or inactive status, the investigation or disciplinary or remedial proceeding shall resume as if no consent had been given. Neither the joint petition nor the affidavit may be admitted in evidence.

Source: This Rule is ~~in part derived from former Rules 16-712 d (BV12 d) and 16-713 a (BV13 a) and in part new~~ derived from former Rule 16-772 (2013).

Rule 19-736 was accompanied by the following Reporter's note.

Proposed Rule 19-736, Consent to Discipline or Inactive Status, is derived from current Rule 16-772.

Language is added to subsection (c)(1) to ensure that an attorney may consent to placement on inactive status only if competent to do so. Language is added to subsection (c)(2) to require that an attorney who consents to be placed on inactive status certify that he or she understands and is competent to make the other certifications required in subsection (c)(2).

Stylistic changes are made.

The Chair pointed out that language had been added to subsection (c)(1) of Rule 19-736 providing that the attorney may be placed on inactive status if the attorney is competent to consent to it. Subsection (c)(2)(A) had been added, and it provides that the attorney signs an affidavit that he or she is competent to make the other certifications in the Rule.

By consensus, the Committee approved Rule 19-736 as presented.

The Chair presented Rule 19-737, Reciprocal Discipline or Inactive Status, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-737. RECIPROCAL DISCIPLINE OR INACTIVE STATUS

(a) Duty of Attorney

An attorney who in another jurisdiction (1) is disbarred, suspended, or otherwise disciplined, (2) resigns from the bar while disciplinary or remedial action is threatened or pending in that jurisdiction, or (3) is placed on inactive status based on incapacity shall inform Bar Counsel promptly of the discipline, resignation, or inactive status.

(b) Petition in Court of Appeals

Upon receiving and verifying information from any source that in another jurisdiction an attorney has been disciplined or placed on inactive status based on incapacity, Bar Counsel may file a Petition for Disciplinary or Remedial Action in the Court of Appeals pursuant to Rule ~~16-751 (a)(2)~~ 19-721 (a)(2). A certified copy of the disciplinary or remedial order shall be attached to the Petition, and a copy of the Petition and order shall be served on the attorney in accordance with Rule ~~16-753~~ 19-723.

(c) Show Cause Order

When a petition and certified copy of a disciplinary or remedial order have been filed, the Court of Appeals shall order that Bar Counsel and the attorney, within ~~15 days from the date of~~ the time specified in the order, show cause in writing based upon any of the grounds set forth in section (e) of this Rule why corresponding discipline or inactive status should not be imposed. A copy of the show cause order shall be served in accordance with Rule 19-723.

(d) Temporary Suspension of Attorney

When the petition and disciplinary or remedial order demonstrate that an attorney has been disbarred or is currently suspended from practice by final order of a court in another jurisdiction, the Court of Appeals may enter an order, effective immediately, suspending the attorney from the practice of law, pending further order of Court. The provisions of ~~Rule 16-760~~ Rules 19-742 or 19-

744, as applicable, apply to an order suspending an attorney under this section.

(e) Exceptional Circumstances

Reciprocal discipline shall not be ordered if Bar Counsel or the attorney demonstrates by clear and convincing evidence that:

(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) there was such infirmity of proof establishing the misconduct as to give rise to a clear conviction that the Court, consistent with its duty, cannot accept as final the determination of misconduct;

(3) the imposition of corresponding discipline would result in grave injustice;

(4) the conduct established does not constitute misconduct in this State or it warrants substantially different discipline in this State; or

(5) the reason for inactive status no longer exists.

(f) Action by Court of Appeals

Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may: (1) immediately impose corresponding discipline or inactive status; (2) ~~may~~ enter an order designating a judge pursuant to Rule ~~16-752~~ 19-722 to hold a hearing in accordance with Rule ~~16-757~~ 19-727; or (3) ~~may~~ enter any other appropriate order. The provisions of ~~Rule 16-760~~ Rules 19-742 or 19-744, as applicable, apply to an order under this section that disbars or suspends an attorney or that places the attorney on inactive status.

(g) Conclusive Effect of Adjudication

Except as provided in subsections (e)(1) and (e)(2) of this Rule, a final

adjudication in a disciplinary or remedial proceeding by another court, agency, or tribunal that an attorney has been guilty of professional misconduct or is incapacitated is conclusive evidence of that misconduct or incapacity in any proceeding under this Chapter. The introduction of such evidence does not preclude the Commission or Bar Counsel from introducing additional evidence or preclude the attorney from introducing evidence or otherwise showing cause why no discipline or lesser discipline should be imposed.

(h) Effect of Stay in Other Jurisdiction

If the other jurisdiction has stayed the discipline or inactive status, any proceedings under this Rule shall be deferred until the stay is no longer operative and the discipline or inactive status becomes effective.

Source: This Rule is ~~in part derived from former Rule 16-710 e (BV10 e) and in part new~~ derived from former Rule 16-773 (2013).

Rule 19-737 was accompanied by the following Reporter's note.

Proposed Rule 19-737, Reciprocal Discipline or Inactive Status, is derived from current Rule 16-773. Section (c), Show Cause Order, is to require that, within the time specified in the order, Bar Counsel and the attorney show cause why corresponding discipline or inactive status should not be imposed. A provision is added to section (c) requiring the show cause order be served in accordance with proposed Rule 19-723, Service of Petition and Order.

Stylistic changes are made.

The Chair said that no substantial change had been made to Rule 19-737.

By consensus, the Committee approved Rule 19-737 as presented.

The Chair presented Rule 19-738, Discipline on Conviction of Crime, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-738. ~~DISCIPLINARY OR REMEDIAL ACTION UPON~~ DISCIPLINE ON CONVICTION OF CRIME

(a) Definition

In this Rule, "conviction" includes acceptance by the court of a plea of nolo contendere.

~~(a)~~ (b) Duty of Attorney ~~Charged~~

An attorney charged with a serious crime in this State or any other jurisdiction shall promptly inform Bar Counsel in writing of ~~the criminal charge~~ (1) the filing of the charge, (2) any finding or verdict of guilty on such charge, and (3) the entry of a judgment of conviction on such charge. ~~Thereafter, the attorney shall promptly notify Bar Counsel of the final disposition of the charge in each court that exercises jurisdiction over the charge.~~

Cross reference: Rule ~~16-701 (k)~~ 19-701 (l).

~~(b)~~ (c) Petition ~~in Court of Appeals~~ Upon Conviction

(1) Generally

Upon receiving and verifying information from any source that an attorney has been convicted of a serious crime, Bar

Counsel may file a Petition for Disciplinary or Remedial Action ~~in the Court of Appeals~~ pursuant to Rule ~~16-751 (a)(2)~~ 19-721 (a)(2). The petition may be filed ~~whether the conviction resulted from a plea of guilty, nolo contendere, or a verdict after trial and~~ whether an appeal or any other post-conviction proceeding is pending.

(2) Contents

The petition shall allege the fact of the conviction and include a request that the attorney be suspended immediately from the practice of law. A certified copy of the judgment of conviction shall be attached to the petition and shall be prima facie evidence of the fact that the attorney was convicted of the crime charged.

~~(c)~~ (d) Temporary Suspension ~~of Attorney~~

Upon filing of the petition pursuant to section ~~(b)~~ (c) of this Rule, the Court of Appeals shall issue an order requiring the attorney to show cause within 15 days from the date of the order why the attorney should not be suspended immediately from the practice of law until the further order of the Court of Appeals. If, after consideration of the petition and the answer to the order to show cause, the Court of Appeals determines that the attorney has been convicted of a serious crime, the Court may enter an order suspending the attorney from the practice of law until final disposition of the disciplinary or remedial action. The Court of Appeals shall vacate the order and terminate the suspension if the conviction is reversed or vacated ~~at any stage of appellate or collateral review~~.

Cross reference: Rule ~~16-760~~ 19-742.

(e) Petition When Imposition of Sentence is Delayed

(1) Generally

Upon receiving and verifying information from any source that an attorney

has been found guilty of a serious crime but that sentencing has been delayed for a period of more than 30 days, Bar Counsel may file a Petition for Interim Disciplinary or Remedial Action. The petition may be filed whether a motion for new trial or other relief is pending.

(2) Contents

The petition shall allege the finding of guilt and the delay in sentencing and request that the attorney be suspended immediately from the practice of law pending the imposition of sentence and entry of a judgment of conviction. Bar Counsel shall attach to the petition a certified copy of the docket reflecting the finding of guilt, which shall be prima facie evidence that the attorney was found guilty of the crime charged.

(3) Interim Temporary Suspension

Upon the filing of the petition, the Court of Appeals shall issue an order requiring the attorney to show cause **[within 15 days from the date of the order] [within the time specified in the order]** why the attorney should not be suspended immediately from the practice of law, on an interim basis, until further order of the Court of Appeals. If, after consideration of the petition and any answer to the order to show cause, the Court of Appeals determines that the attorney was found guilty of a serious crime but that sentencing has been delayed for a period of more than 30 days, the Court may enter an order suspending the attorney from the practice of law on an interim basis pending further action by the trial court and further order of the Court of Appeals.

(4) Entry of Judgment of Conviction or Order for New Trial

Upon the imposition of sentence and entry of a judgment of conviction or upon the granting of a new trial by the trial court, Bar Counsel shall inform the Court of Appeals and attach a certified copy of the judgment

of conviction or order granting a new trial. If a judgment of conviction was entered, Bar Counsel may file a petition under section (c) of this Rule. The Court shall then proceed in accordance with section (d) of this Rule but may order that any interim suspension remain in effect pending disposition of the new petition. If the trial court has vacated the finding of guilt and granted a new trial, or if the attorney received probation before judgment, the Court of Appeals shall dismiss the petition for interim suspension and terminate any interim suspension that has been ordered.

~~(d)~~ (f) Statement of Charges

If the Court of Appeals denies a petition filed under section ~~(b)~~ (c) of this Rule, Bar Counsel may file a Statement of Charges under Rule ~~16-741~~ 19-718.

~~(e)~~ (g) Further Proceedings ~~on Petition~~

When a petition filed pursuant to section ~~(b)~~ (c) of this Rule alleges the conviction of a serious crime and the attorney denies the conviction, the Court of Appeals may enter an order designating a judge pursuant to Rule ~~16-752~~ 19-722 to hold a hearing in accordance with Rule ~~16-757~~ 19-727.

(1) No Appeal of Conviction

If the attorney does not appeal the conviction, the hearing shall be held within a reasonable time after the time for appeal has expired.

(2) Appeal of Conviction

If the attorney appeals the conviction, the hearing shall be delayed, except as provided in section ~~(f)~~ (g) of this Rule, until the completion of appellate review.

(A) If, after completion of appellate review, the conviction is reversed or vacated, the judge to whom the action is

assigned shall either dismiss the petition or hear the action on the basis of evidence other than the conviction.

(B) If, after the completion of appellate review, the conviction is not reversed or vacated, the hearing shall be held within a reasonable time after the mandate is issued.

(3) Effect of Incarceration

If the attorney is incarcerated as a result of the conviction, the hearing shall be delayed until the termination of incarceration unless the attorney requests an earlier hearing and makes all arrangements (including financial arrangements) to attend the hearing or waives the right to attend.

~~(f)~~ (h) Right to Earlier Hearing

If the hearing on the petition has been delayed under subsection ~~(e)~~ (f)(2) of this Rule and the attorney has been suspended from the practice of law under section ~~(c)~~ (d) of this Rule, the attorney may request that the judge to whom the action is assigned hold an earlier hearing, at which the conviction shall be considered a final judgment.

~~(g)~~ (i) Conclusive Effect of Final Conviction ~~of Crime~~

In any proceeding under this Chapter, a final judgment of any court of record convicting an attorney of a crime, whether the conviction resulted from acceptance by the court of a plea of guilty~~,~~ or nolo contendere, or a verdict after trial, is conclusive evidence of the guilt of the attorney of that crime. As used in this Rule, "final judgment" means a judgment as to which all rights to direct appellate review have been exhausted. The introduction of the judgment does not preclude the Commission or Bar Counsel from introducing additional evidence or the attorney from introducing evidence or otherwise showing cause why no discipline should be imposed.

Source: This Rule is ~~in part derived from former Rules 16-710 e (BV10 e) and 16-716 (BV16) and in part new~~ derived from former Rule 16-771 (2013).

Rule 19-738 was accompanied by the following Reporter's note.

Proposed Rule 19-738, Discipline on Conviction of Crime, is derived from current Rule 16-771.

Section (a) is new. It defines "conviction" to include the court's acceptance of a plea of nolo contendre. Language is added to section (b) that requires the attorney to notify Bar Counsel of the filing of the charge, any finding or verdict of guilty on the charge, and the entry of judgment on the charge. Current Rule 16-771 requires only that the attorney inform Bar Counsel of the charge and the final disposition of the charge.

Section (e) is new. If sentencing is delayed for more than 30 days Bar Counsel may file a petition for interim disciplinary or remedial action upon receiving information that an attorney has been found guilty of a serious crime. Under the current Rule, Bar Counsel cannot file a petition for disciplinary or remedial action until there is a judgment of conviction. The amendment is beneficial because it provides greater protection to the public by enjoining an attorney from practicing, on an interim basis, until a sentence is imposed.

Subsection (e)(2) outlines the contents of the petition. The petition must allege the finding of guilt, the delay in sentencing, and request that the attorney be suspended immediately, pending the imposition of a sentence and entry of a judgment of conviction. A certified copy of the docket reflecting the finding of guilt must be attached to the petition and shall serve as prima facie evidence that the attorney was found guilty of the crime charge.

> Subsection (e)(3) states that the Court of Appeals shall issue a show cause order upon the filing of a petition for interim disciplinary or remedial action. If, after considering the petition and any response to the show cause order, the Court determines that the attorney has been found guilty of a serious crime and sentencing has been delayed for more than 30 days, the Court may enter an order suspending the attorney on an interim basis.
>
> Subsection (e)(4) directs that, upon the imposition of sentence and entry of a judgment of conviction, or upon an order for a new trial, Bar Counsel shall inform the Court of Appeals and attach a certified copy of the judgment of conviction or order granting a new trial. If a judgment of conviction was entered, Bar Counsel shall file a petition upon conviction in accordance with section (c), and the Court shall proceed in accordance with section (d), Temporary Suspension, but may order that any interim suspension remain in effect pending disposition on the new petition. If a new trial is granted, or the attorney received probation before judgment, the Court shall dismiss the petition and terminate any suspension that has been ordered.
>
> Stylistic changes are made.

The Chair told the Committee that most of the changes to Rule 19-738 involved restyling and clarification. Section (e) was new and was added as a request from Bar Counsel. There was a case where, after a verdict of guilty was returned, the judge did not impose sentence for a long period of time. The question was whether Bar Counsel would be able to take any action, since there is no judgment of conviction until the attorney has been sentenced. Rule 19-738 builds in a procedure to address this. The Chair said that he was not sure how this was going to work.

The procedure would be that if there is a guilty verdict or acceptance of a plea of nolo contendere, and the judge defers sentence for a period of time or takes no action, an interim temporary suspension of the attorney would be available until either the attorney is sentenced, which would convert the suspension from interim to something more permanent, or the judge grants the attorney a new trial or a probation before judgment in which event there is no conviction, and the case is dismissed.

Judge Price remarked that she was confused about how conviction can be defined as a plea of nolo contendere. Whether the court accepts the plea, or strikes it and enters a probation before judgment, would that not be a conviction, because there was a plea of nolo? According to the definition in Rule 19-738, it appears that it would be a conviction. The Chair responded that when someone pleads nolo contendere, there is no conviction at all. There certainly would not be a conviction unless a sentence is imposed.

Judge Price pointed out that the language of section (a) of Rule 19-738 states: "... 'conviction' includes acceptance by the court of a plea of nolo contendere." Judge Pierson asked if this could be clarified by providing that a conviction included a judgment of conviction issued by the court upon an acceptance of a plea of nolo contendere. The Chair said that he recollected that when the judge accepts a plea of nolo contendere, there is no conviction. Judge Weatherly responded that a plea of nolo is a conviction.

The Reporter observed that someone pleading nolo contendere can be sentenced. Judge Weatherly added that the person is just not admitting to the facts. Judge Price noted that when someone gets a probation before judgment, the person has to be convicted first. The Chair said that the trier of fact has to find guilt. Judge Weatherly referred to *Alston v. State*, 425 Md. 326 (2012), which applies to what was being discussed.

The Chair asked Judge Pierson what his suggested addition was to Rule 19-738. Judge Pierson answered that he had thought that the point of section (a) of that Rule was to clarify that once the judgment is entered, the conviction would include a judgment that is entered on a plea of nolo contendere. The Rule should clarify that conviction applies only once a judgment of conviction is entered. His suggestion was that section (a) should read: "... 'conviction' includes a judgment of conviction entered upon acceptance by the court of a plea of nolo contendere." By consensus, the Committee approved this change.

The Chair drew the Committee's attention to subsection (e)(3), which had language that was bolded and bracketed. He asked them which, if either, of the two choices the Committee preferred. Mr. Brault responded that he preferred the language "within the time specified in the order." A court could specify five days. Mr. Zarbin commented that even worse would be the court stating that the attorney has to show cause within 15 days of the date of the order, but the clerk's office does not get the order out in five days, because the court file has to come back

from the judge. The Chair pointed out that this could happen with either one of the timing choices. The Chair inquired if the choice should be: "within the time specified in the order," and by consensus, the Committee agreed to this language for subsection (e)(3) of Rule 19-738.

By consensus, the Committee approved Rule 19-738 as amended.

The Chair presented Rule 19-739, Summary Placement on Inactive Status, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-739. SUMMARY PLACEMENT ON INACTIVE STATUS

(a) Grounds

An attorney may be placed summarily ~~placed~~ on inactive status for an indefinite period if the attorney has been judicially determined to be mentally incompetent or to require a guardian of the person for any of the reasons stated in Code, Estates and Trusts Article, §13-705 (b), or, in accordance with law, has been involuntarily admitted to a facility for inpatient care treatment of a mental disorder.

(b) Procedure

(1) Petition for Summary Placement; Confidentiality

With the approval of the Commission, Bar Counsel~~, with the approval of the Commission,~~ may file ~~in accordance with Rule 16-751~~ a petition to summarily place an attorney on inactive status in accordance

with Rule 19-721. The petition shall be supported by a certified copy of the judicial determination or involuntary admission. The petition and all other papers filed in the Court of Appeals shall be sealed and stamped "confidential" in accordance with Rule ~~16-723 (b)(8)~~ 19-707 (b)(8).

(2) Service

The petition and all papers filed with the petition shall be served upon the attorney in accordance with Rule ~~16-753~~ 19-723 and, in addition, upon any guardian of the person of the attorney and the director of any facility to which the attorney has been admitted. Proof of service shall be made in accordance with Rule 2-126.

(c) Order of the Court of Appeals

Upon consideration of the petition and any answer, the Court of Appeals may: (1) immediately place the attorney on inactive status for an indefinite period pending further order of the Court; (2) ~~may~~ enter an order designating a judge in accordance with Rule ~~16-752~~ 19-722 to hold a hearing in accordance with Rule ~~16-757~~ 19-727; or (3) ~~may~~ enter any other appropriate order. The provisions of Rule ~~16-760~~ 19-744 apply to an order that places an attorney on inactive status. Copies of the order shall be served upon Bar Counsel and each person named in the proof of service of the petition.

(d) Effect on Disciplinary or Remedial Proceeding

If a disciplinary or remedial proceeding for alleged misconduct is pending against the attorney, the entry of an order under this section shall stay the proceeding until the further order of the Court.

(e) Termination of Inactive Status

When an attorney who has been placed on inactive status under section (c) of this Rule is judicially determined to be competent or is judicially released after involuntary

admission, the Court of Appeals shall terminate the inactive status and either dismiss the petition or enter an order designating a judge in accordance with Rule ~~16-752~~ 19-722 to hold a hearing in accordance with Rule ~~16-757~~ 19-727.

Source: This Rule is ~~new~~ derived from former Rule 16-774 (2013).

Rule 19-739 was accompanied by the following Reporter's note.

Proposed Rule 19-739, Summary Placement on Inactive Status, is derived from current Rule 16-774. Stylistic changes are made.

The Chair told the Committee that no substantive changes had been made to Rule 19-739.

By consensus, the Committee approved Rule 19-739 as presented.

The Chair presented Rule 19-741, Disposition - Generally, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

PART 5. DISPOSITIONS BY COURT OF APPEALS

Rule 19-741. DISPOSITION - GENERALLY

(a) Oral Argument

Unless oral argument is waived by the parties, the Court shall set a date for oral argument. Oral argument shall be conducted

in accordance with Rule 8-522.

(b) Review by Court of Appeals

(1) Conclusions of Law

The Court of Appeals shall review de novo the circuit court judge's conclusions of law.

(2) Findings of Fact

(A) If No Exceptions are Filed

If no exceptions are filed, the Court may treat the findings of fact as established.

(B) If Exceptions are Filed

If exceptions are filed, the Court of Appeals shall determine whether the findings of fact have been proven by the requisite standard of proof set out in Rule ~~16-757 (b)~~ 19-727 (c). The Court may confine its review to the findings of fact challenged by the exceptions. The Court shall give due regard to the opportunity of the hearing judge to assess the credibility of witnesses.

(c) Disposition

(1) Generally

The Court of Appeals may order (1) disbarment, (2) suspension ~~for a fixed period or indefinitely~~, (3) a reprimand, (4) placement on inactive status, (5) dismissal of the disciplinary or remedial action, or (6) a remand for further proceedings.

(2) If Suspension Ordered

The court may order a suspension for a fixed period of time or indefinitely. An order for indefinite suspension may provide that the attorney may not seek reinstatement until the expiration of a specified period.

Cross reference: For reinstatement, including reinstatement following a

suspension for a fixed period, see Rules 19-751 and 19-752.

(d) Decision

The decision of the Court of Appeals is final. The decision shall be evidenced by an order which the clerk shall certify under the seal of the Court. The order may be accompanied by an opinion.

(e) Effective Date of Order

Unless otherwise stated in the order, an order providing for the disbarment, suspension, or reprimand of an attorney or the placement of an attorney on inactive status shall take effect upon its filing with the Clerk of the Court.

Source: This Rule is derived ~~in part from former Rule 16-711 (BV11) and is in part new~~ from former Rule 16-759 (2013).

Rule 19-741 was accompanied by the following Reporter's note.

Proposed Rule 19-741, Disposition - Generally, is derived from current Rule 16-759. Section (b) of current Rule 16-759, Review by Court of Appeals, authorizes the Court to treat findings of fact as established "for the purpose of determining appropriate sanctions, if any." The quoted language is proposed to be deleted because findings of fact also may be relevant to determine whether the attorney committed the misconduct.

Subsection (c)(2) is new and deals exclusively with suspension. It states that the Court may order a suspension for a fixed period or indefinitely. The order may provide that the attorney must wait until the expiration of a specified period before seeking reinstatement. A cross reference to the Rules regarding reinstatement is added.

Section (e) is new. It states that an order for disbarment, suspension, or

reprimand is effective upon filing with the Clerk of the Court, unless otherwise provided in the order.

Stylistic changes are made.

The Chair said that section (e) of Rule 19-741 makes the order providing for the discipline of the attorney effective upon the filing of the order with the clerk of the court. Current Rule 16-759 provides that the order is effective "immediately," the meaning of which is not clear.

By consensus, the Committee approved Rule 19-741 as presented.

The Chair presented Rule 19-742, Order of Disbarment or Suspension, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-742. ORDER ~~IMPOSING DISCIPLINE OR INACTIVE STATUS~~ OF DISBARMENT OR SUSPENSION

(a) Duties of Clerk

Upon the filing of an order of disbarment or suspension, the Clerk of the Court of Appeals shall (1) notify the attorney in writing by ordinary mail, and, if practicable, by electronic mail, (2) strike the name of the attorney from the register of attorneys in that Court, (3) certify that fact to the Trustees of the Client Protection Fund and to the clerks of all courts in this State, the U.S. District Court for the District of Maryland, the U.S. Court of Appeals for the 4th Circuit, and the U.S.

Supreme Court, and (4) give the notice required by Rule 19-707 (e).

(b) Effect of Order

Except as provided in section (c) of this Rule, after the effective date of an order of disbarment or suspension, an attorney may not:

(1) practice law or offer to practice law in this State, either directly or through ~~an attorney, officer, director, partner, trustee, agent, or employee~~ any other person;

(2) undertake any new representation of existing clients or any representation of new clients;

(3) solicit or procure any legal business or retainer for an attorney, whether or not for personal gain;

(4) share in any fees for legal services performed by another attorney, but may be compensated for the reasonable value of services rendered prior to the effective date of the order;

(5) use any business card, sign, advertisement, social networking media, website, or other form of communication suggesting that the attorney is entitled to practice law or maintain, alone or with another, an office for the practice of law; or

Committee note: Examples of social networking media include Facebook, Myspace, Twitter, and Linkedin.

(6) except for the limited purpose of complying with the requirements of section (c) of this Rule:

(A) occupy, share, or use office space in which an attorney practices law unless under circumstances clearly indicating to clients, prospective clients, and individuals who may visit the office that the attorney is not an attorney and is not permitted to

practice law; or

(B) use any stationery, bank account, checks, or labels on which the attorney's name appears as an attorney or in connection with any office for the practice of law.

(c) Affirmative Duties of Attorney

Unless the Court orders otherwise, an attorney who has been disbarred or suspended shall take the following actions:

(1) Requirements to be Completed Within 15 Days

Within 15 days after the effective date of the order, the attorney shall:

(A) conclude all client matters that can be concluded within that period;

(B) supply to Bar Counsel or an attorney designated by Bar Counsel pursuant to section (e) of this Rule (i) the names, addresses, and telephone numbers of all of the attorney's current clients and (ii) identify, by client name, tribunal, and docket reference, all client matters pending in any court or other tribunal or agency; and

(C) mail a letter giving notice of the order and of the effective date of the attorney's disbarment or suspension to (i) all of the attorney's current clients, (ii) counsel for each party and any self-represented party in all pending actions, proceedings, negotiations, or transactions, and (iii) each attorney with whom the attorney is associated in the practice of law.

Committee note: An attorney's current clients include persons who have hired the attorney on retainer. A person may be a current client even if the attorney was not actively performing any legal work for that person on the date of disbarment or suspension.

(2) Requirements to be Completed Promptly

and Within 30 Days

As soon as practicable but within 30 days after the effective date of the order, the attorney shall:

(A) take or cause to be taken, without charging any additional fee, any action immediately necessary to protect the interests of current clients which, as a practical matter, cannot otherwise be protected;

Committee note: The intent of subsection (c)(2)(A) of this Rule is to assure that existing clients are not unduly harmed by the attorney's immediate disbarment or suspension by requiring the attorney, during a brief grace period and without any additional fee, to deal with urgent matters necessary to protect the clients' interests, such things as requesting a postponement of closely impending hearings or trials or filing a paper in a pending case which, if not done prior to the client's practical ability to obtain other counsel, would result in significant harm to the client. *See Attorney Grievance v. Maignan*, 402 Md. 39 (2007). This is intended as a very narrow and time-limited exception to the prohibition against practicing law. Because the need for such action arises solely from the attorney's disbarment or suspension, the Rule prohibits the charging of a fee for those services.

(B) inform current clients, in writing, that the client may obtain another attorney, and that it may be necessary for the client to obtain another attorney depending upon the status of the client's case or legal matter.

(C) deliver to clients with pending matters all papers and other property to which the clients are entitled or notify the clients and any co-counsel of a suitable time and place to obtain the papers and property and call attention to any urgent need to obtain them;

(D) notify the disciplinary authority in each jurisdiction in which the attorney is

admitted to practice of the disciplinary sanction imposed by the Court of Appeals; and

(E) unless the attorney is suspended for a fixed period of time not exceeding one year, request the publisher of each telephone directory or law listing to remove each listing or reference that suggests that the attorney is eligible to practice law; **[request the attorney's name be removed from the law firm's website and letterhead;]** and remove any reference that the attorney is eligible to practice law from any **social networking profile.**

(3) Requirements to be Completed Within 30 Days

Within 30 days after the effective date of the order, the attorney shall:

(A) withdraw from all client matters; and

(B) file with Bar Counsel an affidavit that states or is accompanied by:

(i) the manner and extent to which the attorney has complied with the order and this Rule;

(ii) all actions taken by the attorney pursuant to subsection (b)(2)(A) and (B) of this Rule;

(iii) the names of all State and Federal jurisdictions in which and administrative agencies before which the attorney has been admitted to practice;

(iv) the residence and other addresses of the attorney to which future communications may be directed;

(v) the name and address of each insurer that provided malpractice insurance coverage to the attorney during the past five years, the policy number of each policy, and the inclusive dates of coverage; and

(vi) a copy of each letter sent pursuant to subsection (b)(1)(C) of this Rule.

(d) Duties of Bar Counsel

Bar Counsel shall enforce the order and the provisions of this Rule. Bar Counsel may designate an attorney to monitor compliance by the disbarred or suspended attorney and to receive the lists and copies of letters required by subsections (c)(1)(B) and (c)(2)(B) of this Rule.

(e) Conditions on Reinstatement

(1) Time for Application

In an order that disbars an attorney or suspends an attorney for an indefinite period, the Court may permit the attorney to apply for reinstatement after a minimum period of time specified in the Order.

(2) Other Conditions to or Upon Reinstatement

In an order of disbarment or suspension for an indefinite period entered under this Rule, the Court may require, as a condition precedent to reinstatement or as a condition of probation after reinstatement, one or more of the requirements set forth in Rule 19-752.

(f) Responsibility of Affiliated Attorneys

After the effective date of an order that disbars or suspends an attorney or places an attorney on inactive status, no attorney may assist the disbarred or suspended attorney in any activity that constitutes the practice of law or in any activity prohibited under section (a) of this Rule. Upon notice of the order, an attorney associated with the disbarred or suspended attorney as a partner, or member or shareholder of a law firm, shall take reasonable action to ensure compliance with this Rule. The law firm may give written notice to any client of the disbarred or

suspended attorney of that attorney's inability to practice law and of its willingness to represent the client with the client's consent.

(g) Non-admitted Attorney

(1) Duties of Clerk

On the effective date of an order by the Court of Appeals that disbars or suspends a non-admitted attorney, the Clerk of the Court of Appeals shall place the name of that attorney on a list maintained in that Court of non-admitted attorneys who are excluded from exercising in any manner the privilege of practicing law in the State. The Clerk also shall forward a copy of the order to the clerks of all courts in this State, including the U.S. District Court for the District of Maryland, the U.S. Court of Appeals for the 4th Circuit, and the U.S. Supreme Court, and to the State Court Administrator and the Board of Law Examiners to be maintained with the docket of out-of-state attorneys who are denied special admission to practice under the Rules Governing Admission to the Bar of Maryland. The Clerk shall give the notice required by Rule 19-707 (e).

(2) Effect of Order

After the effective date of an order entered under this section, the attorney may not practice law in this State and is disqualified from admission to the practice of law in this State.

(h) Modification of Order

Upon joint stipulation or verified motion filed by the ~~respondent~~ attorney, the Court of Appeals may reduce a period of suspension, waive a requirement or condition imposed by this Rule or by order, or otherwise modify an order entered under this Rule. Relief ~~shall~~ may be denied without a hearing unless it appears from the stipulation or from clear and convincing evidence submitted with the motion that the respondent is attempting in good faith to

comply with the order but that full and exact compliance has become impossible or will result in unreasonable hardship. If necessary to resolve a genuine issue of material fact, the Court may enter an order designating a judge in accordance with Rule ~~16-752~~ 19-722 to hold a hearing in accordance with Rule ~~16-757~~ 19-727.

(i) Sanctions for Violations

(1) Disciplinary or Remedial Action

Upon receiving information from any source that the attorney has violated sections (b) or (c) of this Rule or the order of the Court of Appeals, Bar Counsel shall investigate the matter. **I**n addition to any other remedy, Bar Counsel may file a Petition for Disciplinary or Remedial Action pursuant to Rule 19-721 based on the violation.

(2) Injunction

Upon receiving information from any source that the attorney is violating sections (b) or (c) of this Rule, Bar Counsel may institute or intervene in an action in any court with jurisdiction to enjoin the respondent from further violations.

(3) Contempt

If the attorney violates an order of the Court of Appeals, Bar Counsel may request the initiation of a proceeding for constructive criminal contempt pursuant to Rule 15-205 and may institute a proceeding for constructive civil contempt pursuant to Rule 15-206.

Source: This Rule is derived, in part, from former Rule 16-760 (2013).

Rule 19-742 was accompanied by the following Reporter's note.

Proposed Rule 19-742, Order of Disbarment or Suspension, is derived from

current Rule 16-760.

Current Rule 16-760 covers disbarments, suspensions, and placements on inactive status. Because placement on inactive status, even if triggered by conduct that may constitute a violation of the Maryland Lawyers' Rules of Professional Conduct, is based solely on an "incapacity" rather than a willful ethical violation, the implementation and consequences of such an order may differ from those of a disbarment or suspension. The incapacitated attorney may not be competent to perform the tasks required of a disbarred or suspended lawyer to effect a wind-up of pending client matters, and the conditions for readmission may also be different. For clarity, it is proposed to deal with an order placing an attorney on inactive status in a separate Rule (proposed Rule 19-744).

In order to eliminate some perceived ambiguities and redundancies, the provisions of the current Rule are reorganized and some language changes are proposed. Proposed Rule 19-742 and proposed Rule 19-744, which deals with inactive status, are drafted as total replacements of current Rule 16-760. A major part of the reorganization consists of combining current Rule 16-760 (c)(1) and (c)(2), Duties of Respondent, and (d), Effect of Order; Prohibited Acts.

Section (a) of proposed Rule 19-742 is derived from current Rule 16-760 (e). It adds the requirement that, upon the filing of an order of disbarment or suspension, the Clerk of the Court of Appeals notify the attorney in writing by mail, and if practicable, by electronic mail. It also adds the requirement that the Court notify the U.S. District Court for the District of Maryland, the U.S. Court of Appeals for the Fourth Circuit, and the U.S. Supreme Court.

Language is added to subsection (b)(5) that prohibits an attorney from using any social networking media to suggest that he or she is eligible to practice law. A Committee note following subsection (b)(5) is added

which lists examples of social networking media.

Subsection (b)(6), which is not articulated in the current Rule, is added to recognize that, in order to protect the interests of existing clients and to conclude client matters that must be concluded, a disbarred or suspended attorney may need to access files and other records maintained at the attorney's former law office and may need to use trust fund account checks in order to distribute client funds and close out the trust account.

The provisions of section (c) are taken from current Rule 16-760 (c), Duties of Respondent. Those duties and requirements have different effective dates and time deadlines. Some require completion "promptly," others require completion within 15 days or 30 days. Proposed section (c) reorganizes the requirements and duties based on when they take effect or must be completed. Because some of these requirements and duties may be unnecessary or impracticable when the attorney is suspended for a fixed, short period, the Rule provides the Court with flexibility in drafting its order.

A Committee note following subsection (c)(1) is added to make clear that a person may be considered a "current client" even if the attorney was not performing legal services for that person at the time of the disbarment or suspension. For example, a company that has hired an attorney on retainer to perform legal work as-needed may be considered a "current client" for purposes of section (c).

The language in subsection (c)(2)(A) and the accompanying Committee note state that the attorney must take any action immediately necessary to protect the interests of current clients, which could not otherwise be protected. This provision is important to ensure that urgent matters will not be ignored and that the attorney's clients will not be unfairly harmed by the disbarment or

suspension.

Subsection (c)(2)(B) requires the attorney to inform current clients that they may wish to obtain another attorney, and in fact, it may be necessary to obtain another attorney depending upon the status of the client's legal matter.

Section (e) provides for the conditions on reinstatement. Current Rule 16-760(h) specifies a number of conditions to reinstatement that the Court may include in an order. Current Rule 16-781 (g) also lists certain criteria for reinstatement. The Subcommittee decided that it may be more appropriate to list the conditions to reinstatement in the reinstatement Rules rather than in the disciplinary order. The Court may not know at the time it imposes discipline which conditions may be appropriate months or years later, and also may be guided by Bar Counsel's recommendations in the response to the attorney's petition for reinstatement. Therefore, the specific conditions and the section on monitors in current Rule 16-760 are moved to proposed Rule 19-752, Reinstatement - Other Suspension; Disbarment, Inactive Status; Resignation. However, section (e) preserves the right of the Court to include conditions in the disciplinary order should it choose to do so.

Stylistic changes are made.

The Chair observed that Rule 19-742 was derived from current Rule 16-760, but it had been completely rewritten. It separates inactive status from resignation, both of which are addressed in separate rules. Rule 19-742 had been written to try to clarify some ambiguities. In section (a), references to the "U.S. District Court for the District of Maryland," the "U.S. Court of Appeals for the 4th Circuit", and the "U.S. Supreme Court" have

been added. The clerk of the Court of Appeals certifies to those courts now that the attorney has been disbarred or suspended. This is not a change from current practice.

The Chair commented that subsection (b)(5) of Rule 19-742 provides that an attorney cannot use social networking websites to advertise his or her services, which is a new addition. Subsection (b)(6) provides that except for the limited purpose of complying with the requirements of section (c), the actions listed are prohibited. Some of the actions may have to be taken in order to comply with the rest of the Rule. Most of the actions listed in section (c) are in current Rule 16-760, but the time periods for the varying actions are mixed up. The idea was to separate out all of the actions that need to be taken immediately, all of the actions that need to be taken within 15 days after the effective date of the order, and all of the actions that need to be taken within 30 days of the order. This makes the procedure easier to follow than the way the Rule is worded now.

The Chair pointed out that much of sections (b) and (c) of Rule 19-742 is new. The problem with current Rule 16-760 is that it is not clear what attorneys can actually do. In one case, an attorney who represented a client in a criminal case, had a proceeding pending when he was suspended. The attorney appeared on behalf of the client at the proceeding, although the attorney was not permitted to do so. Rule 19-742 allows the attorney to take whatever actions are necessary to protect the client without

charging a fee. The theory is that the problem arises because of what the attorney had done, not because of what the client had done. The attorney has the duty to take the necessary steps to protect the client but not charge a fee. The Chair was not sure whether the Court of Appeals would agree to the new language. The problem is set out in *Attorney Grievance Commission v. Maignan*, 402 Md. 39 (2007).

The Chair said that in subsection (c)(2)(E) of Rule 19-742, the following language has been bracketed: "request the attorney's name be removed from the law firm's website and letterhead." The question was whether this language should be added in. The Chair inquired whether the law firm where the suspended attorney had worked would have to reprint all of its stationery. Mr. Grossman answered that subsection (b)(2)(E) applies only to those attorneys who have been suspended for a year or less. This provision is consistent with taking the attorney's name off of the law firm sign. Mr. Grossman expressed the view that there should be a reference in Rule 19-742 to the attorney's personal website. The attorney could be a solo practitioner with a website.

Mr. Zarbin commented that some attorneys, who do personal injury work and who have been disbarred or suspended for more than a year, would become highly paid paralegals. They would want to have their name on the website, because there would be name recognition. Mr. Grossman noted that Rule 5.3, Responsibilities Regarding Nonlawyer Assistants, addresses the

situation where the disbarred or suspended attorney works for another attorney. Rule 5.3 provides that the disbarred or suspended attorney cannot work for the law firm with which he or she had been associated. Mr. Zarbin commented that the attorney's name on the website could be noticeable. It is easy to remove names from a website.

The Chair asked if the Committee wanted to keep in the bracketed language, and the Committee answered affirmatively. The Chair inquired if the Committee wanted to add to the last part of the bracketed language the following language: "from the attorney's website, if any," so the language of subsection (c)(2)(E) would read "...; request the attorney's name be removed from the law firm's website and letterhead; and remove any reference that the attorney is eligible to practice law from the attorney's website, if any, and from any social networking profile." By consensus, the Committee approved this change.

Mr. Brault asked if removing the language "the law firm's" would accomplish the same goal. Then the language would refer to any website. The Chair pointed out that this language addresses a request that the attorney's name be removed. The obligation has to be placed on the attorney to remove the name from his or her own website. Mr. Brault suggested that the Rule could provide that the attorney's name be removed. This would cover any situation.

The Chair observed that the bracketed language is a request to the law firm. If the language suggested by Mr. Brault is

added to the next clause, it would be appropriate. By consensus, the Committee approved the following language for subsection (c)(2)(E) of Rule 19-742: "...request the attorney's name be removed from the law firm's website and letterhead; and remove any reference that the attorney is eligible to practice law from any website or social networking profile, regardless of whether the website or profile is that of the attorney individually or of a law firm or other group or entity."

Ms. Smith questioned whether Rule 19-742 should provide that MDEC (Maryland Electronic Courts) should be notified about the attorney's disbarment or suspension. The Chair replied that one of the MDEC Rules, Rule 20-104, User Registration, provides that the clerk of the Court of Appeals has to notify MDEC of any suspension or disbarment of an attorney. Ms. Smith inquired if a reference to this should be in Rule 19-742. The Chair pointed out that the attorney does not need to do anything as far as MDEC is concerned. Ms. Smith explained that she was referring to the clerk of the Court of Appeals being required to notify the circuit court clerk of the disbarment or suspension. The Chair reiterated that this is in Rule 20-104. The Reporter added that the clerk of the Court of Appeals notifies the State Court Administrator, who would then take the attorney off the registered user list.

Judge Weatherly commented that in subsection (c)(2)(E), all of the other actions that are being requested pertain to a third party, such as the publisher of a telephone directory and the law

firm. The last one, which is to remove any reference that the attorney is eligible to practice law from the website or any social networking profile, is something that the attorney would have to do. Would this latter one be better placed in the category of the attorney's obligation to take certain actions? This could be more towards the beginning of subsection (c)(2), where it lists the attorney's required actions. The Chair noted that the language referred to by Judge Weatherly is already in the part of the Rule pertaining to the attorney's actions. The attorney has to request that the law firm remove his or her name; the attorney alone cannot accomplish that result.

The Chair said that there were no further substantive changes in Rule 19-742, but it had completely been rewritten.

By consensus, the Committee approved Rule 19-742 as amended.

The Chair presented Rule 19-743, Order of Reprimand, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-743. ORDER OF REPRIMAND

(a) Accompanying Requirements

As part of a reprimand, the Court may require the attorney:

(1) to reimburse a client for any part of fees paid in advance for legal services that were not completed;

(2) to make restitution to a client for any other sum found to be due to the client;

(3) to pay all costs assessed by the order of reprimand;

(4) to issue a public apology to designated persons; and

(5) to take any other corrective action that the Court finds reasonable and appropriate.

(b) Content of Order

Unless accompanied by a reported opinion, an order that reprimands ~~the respondent~~ an attorney shall (1) summarize the misconduct for which the reprimand is imposed, (2) include specific reference to any rule or statute violated by the ~~respondent~~ attorney, and (3) state any requirements imposed ~~upon~~ on the ~~respondent~~ attorney pursuant to section (a) of this Rule. Upon the entry of an order that reprimands an attorney, the Clerk of the Court of Appeals shall give the notice required by Rule ~~16-723 (e)~~ 19-707 (e).

Source: This Rule is derived from former Rule 16-760 (b)(2013).

Rule 19-743 was accompanied by the following Reporter's note.

Proposed Rule 19-743, Order of Reprimand, is derived from current Rule 16-760 (b).

Current Rule 16-760 (b) permits the Court, in an order of reprimand, to impose any conditions stated in section (h) of that Rule. Section (h) characterizes those conditions as conditions precedent to reinstatement or conditions of probation after reinstatement, and it is proposed to move them to the reinstatement Rule because, generally, they do not seem to apply to a reprimand. Nonetheless, some of the conditions may be appropriate to be attached

as part of the reprimand itself. Section (a) of proposed Rule 19-743 provides for that.

Stylistic changes are made.

The Chair told the Committee that section (a) of Rule 19-743 lists only those requirements that would be applicable to a reprimand and not to anything else. This was the intent. The attorney would not have to take many of the actions that are listed in current Rule 16-760 (b).

By consensus, the Committee approved Rule 19-743 as presented.

The Chair presented Rule 19-744, Placement on Inactive Status, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-744. PLACEMENT ON INACTIVE STATUS

(a) Effect of Order

(1) Generally

After the effective date of an order placing an attorney on inactive status, the attorney (A) may not engage in any conduct prohibited to a disbarred or suspended attorney under Rule 19-742 (a), and (B) except as provided in subsection (a)(2) of this Rule, must perform the duties required by Rule 19-742 (c).

(2) If Attorney Unable to Comply with Rule 19-742 (c)

If, due to the nature or severity of the attorney's incapacity, the attorney is unable to perform the duties required by Rule 19-742 (c) and satisfactory arrangements have not been made for the performance of those duties, the Court of Appeals may (A) direct Bar Counsel to seek the appointment of a conservator pursuant to Rule 19-734, and (B) direct that the incapacitated attorney cooperate to the best of the attorney's ability with the conservator or other attorney.

Committee note: Because placement of an attorney on inactive status arises only from a finding of incapacity, as defined in Rule 19-701 (g), there may be a legitimate question of whether the attorney is competent to fulfill the winding up obligations set forth in Rule 19-742 (c). Unless another attorney capable of performing those duties has agreed to do so, Bar Counsel and the Court should give consideration to whether a conservator may need to be appointed to perform those duties.

(b) Duties of Clerk

Upon the filing of the order, the Clerk of the Court of Appeals shall take the actions specified in Rule 19-742 (a).

(c) Duties of Bar Counsel

Bar Counsel shall perform the duties specified in Rule 19-742 (d).

(d) Conditions on Reinstatement

In an order that places an attorney on inactive status, the Court may permit the attorney to apply for reinstatement after a minimum period of time and upon conditions specified in Rule 19-753.

(e) Other Provisions of Rule 19-742

The provisions of Rule 19-742 (f), (g), (h), and (i) shall apply with respect to an order entered under this Rule.

Source: This Rule is derived in part from former Rule 16-760 (2013).

Rule 19-744 was accompanied by the following Reporter's note.

> Proposed Rule 19-744, Placement on Inactive Status, is derived in part from current Rule 16-760. However, that Rule addresses discipline and inactive status, whereas the proposed Rule addresses inactive status only.
>
> Subsection (a)(2) and the accompanying Committee note address potential situations in which an attorney who has an incapacity may be unable to fulfill the winding up obligations set forth in proposed Rule 19-742 (c).

The Chair observed that Rule 19-744 created a new self-contained rule pertaining to inactive status. Subsection (a)(2) was new and addressed the problem of an attorney who is on inactive status because of mental incapacity. He or she may not be able to perform the required actions. The new language reflected this.

By consensus, the Committee approved Rule 19-744 as presented.

The Chair presented Rule 19-751, Reinstatement - Suspension Six Months or Less, and Rule 19-752, Reinstatement - Other Suspension; Disbarment; Inactive Status; Resignation, for the Committee's consideration.

PART 6. REINSTATEMENT

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

(a) Scope of Rule

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

(b) Reinstatement Not Automatic

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

(c) Petition for Reinstatement

(1) Requirement

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

(2) Timing

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

(3) Content

The petition shall state the effective date of the suspension and the asserted date of its completion, certify that

(A) the attorney has complied with Rule 19-742 and all requirements and conditions specified in the suspension order and (B) to the best of the attorney's knowledge, information, and belief, no complaints or disciplinary proceedings are currently pending against the attorney. The petition shall be accompanied by a copy of the Court's order imposing the suspension, any opinion that accompanied that order, and any filing fee prescribed by law.

(d) Review by Bar Counsel

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

(e) Action by Court of Appeals

(1) If No Timely Objection Filed

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

(2) If Timely Objection Filed

If Bar Counsel files a timely objection, the Clerk shall refer the matter to the full Court for its consideration. The Court may overrule Bar Counsel's objections and enter an Order of Reinstatement or set the matter for hearing.

(f) Effective Date of Reinstatement Order

An order that reinstates the petitioner may provide that it shall become effective immediately or on a date stated in the order. If no effective date is stated, the order shall take effect on the date that Bar Counsel gives written notice to the Clerk

of the Court of Appeals that the petitioner has complied with all applicable conditions to reinstatement.

(g) Duties of Clerk

(1) Generally

Promptly after the effective date of an order that reinstates a petitioner, the Clerk of the Court of Appeals shall give any notice required by Rule 16-723 (e).

(2) Attorney Admitted to Practice

Upon receiving a reinstatement notice authorized by section (e) of this Rule, or on the effective date of an order or notice that reinstates a petitioner admitted by the Court of Appeals to the practice of law, the Clerk of the Court of Appeals shall place the name of the petitioner on the register of attorneys in that Court and shall certify that fact to the Trustees of the Client Protection Fund of the Bar of Maryland and to the clerks of all courts in the State.

(3) Attorney not Admitted to Practice

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

(h) Motion to Vacate Reinstatement

Bar Counsel may file a motion to vacate an order that reinstates the petitioner if (1) the petitioner has failed to demonstrate substantial compliance with the order, including any condition of reinstatement imposed under Rule 16-760 (h) or section (j) of this Rule or (2) the

petition filed under section (a) of this Rule contains a false statement or omits a material fact, the petitioner knew the statement was false or the fact was omitted, and the true facts were not disclosed to Bar Counsel prior to entry of the order. The petitioner may file a verified response within 15 days after service of the motion, unless a different time is ordered. If there is a factual dispute to be resolved, the court may enter an order designating a judge in accordance with Rule 16-752 to hold a hearing. The judge shall allow reasonable time for the parties to prepare for the hearing and may authorize discovery pursuant to Rule 16-756. The applicable provisions of Rule 16-757 shall govern the hearing. The applicable provisions of Rules 16-758 and 16-759, except section (c) of Rule 16-759, shall govern any subsequent proceedings in the Court of Appeals. The Court may reimpose the discipline that was in effect when the order was entered or may impose additional or different discipline.

Source: This Rule is new.

Rule 19-751 was accompanied by the following Reporter's note.

Proposed Rule 19-751, Reinstatement - Suspension Six Months or Less, is new.

Per section (a), the Rule applies only to attorneys who have been suspended for a fixed period not exceeding six months.

Section (b) makes clear that an attorney is not automatically reinstated upon the expiration of the fixed period. Instead, pursuant to section (c), the attorney must file a verified petition for reinstatement. The attorney is not reinstated until the Court of Appeals enters an order of reinstatement.

Section (d) addresses Bar Counsel's review of the petition and the process for objecting to the reinstatement.

Section (e) outlines the action by the Court of Appeals. If Bar Counsel does not object, the Clerk shall forward to the Chief Judge or the designee, the petition, a certificate that no objection was filed, and a proposed order of reinstatement. If an objection is filed, the Clerk must refer the matter to the full Court for its consideration. The Court may overrule Bar Counsel's objections and enter an order for reinstatement, or set the matter for a hearing.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

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

(a) Scope of Rule

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

(b) Reinstatement Not Automatic

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

(c) Petition for Reinstatement

(1) Requirement

An attorney who seeks reinstatement

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

(2) Timing Following Order of Suspension or Disbarment

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

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

(3) Content

The petition shall state or be accompanied by the following:

(A) docket references to all prior disciplinary or remedial actions to which the attorney was a party;

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

(C) that the attorney has complied in all respects with the provisions of Rule 19-742 or, if applicable, Rule 19-744, and with any terms or conditions stated in the disciplinary or remedial order;

(D) a description of the conduct or circumstances leading to the order of disbarment, suspension, placement on inactive status, or acceptance of resignation; and

(E) facts establishing the attorney's subsequent conduct and reformation, present character, present qualifications and competence to practice law, and ability to

satisfy the criteria set forth in section (g) of this Rule.

(d) Information for Bar Counsel

(1) Generally

Upon the filing of the petition, the attorney shall separately supply to Bar Counsel, in writing, the following information:

(A) the attorney's current address, e-mail address, if any, and telephone number;

(B) the information specified in subsection (c)(2) or (c)(3) of this Rule, as applicable;

(C) evidence establishing compliance with all applicable requirements set forth in section (g) of this Rule;

(D) a statement of whether the attorney has applied for reinstatement in any other jurisdiction and the current status of each such application; and

(E) any other information that the attorney believes is relevant to determining whether the attorney possesses the character and fitness necessary for reinstatement; and

(2) If Disbarred or Suspended

If the attorney has been disbarred or suspended, the information supplied to Bar Counsel shall include:

(A) the address of each residence of the attorney during the period of discipline, with inclusive dates of each residence;

(B) the name, address, e-mail address, if any, and telephone number of each employer, associate, and partner of the attorney during the period of discipline, together with (i) the inclusive dates of each employment, association, and partnership, (ii) the positions held, (iii) the names of all immediate supervisors, and (iv) if

applicable, the reasons for termination of the employment, association, or partnership;

(C) the case caption, general nature, and disposition of each civil and criminal action pending during the period of discipline to which the attorney was a party or in which the attorney claimed an interest;

(D) a statement of monthly earnings and all other income during the period of discipline, including the source;

(E) copies of the attorney's state and federal income tax returns for the three years preceding the effective date of the order of disbarment or suspension and each year thereafter;

(F) a statement of the attorney's assets and financial obligations;

(G) the names and addresses of all creditors;

(H) a statement identifying all other business or occupational licenses or certificates applied for during the period of discipline and the current status of each application; and

(I) the name and address of each financial institution at which the attorney maintained or was signatory on any account, safe deposit box, deposit, or loan during the period of discipline and written authorization for Bar Counsel to obtain financial records pertaining to such accounts, safe deposit boxes, deposits, or loans.

(3) If Placed on Inactive Status

If the attorney was placed on inactive status, the information supplied to Bar Counsel shall include:

(A) the name, address, and telephone number of each health care provider or addiction care provider [and institution] that examined or treated the attorney for

incapacity during the period of inactive status; and

(B) a written waiver of any physician-patient privilege with respect to each psychiatrist, psychologist, or psychiatric-mental health nursing specialist named subsection (c)(3)(A) of this Rule.

(e) Response to Petition

(1) Generally

Within 30 days after service of the petition, Bar Counsel shall file and serve on the attorney a response. Except as provided in subsection (d)(2) of this Rule, the response shall admit or deny the averments in the petition in accordance with Rule 2-323 (c). The response may include Bar Counsel's recommendations in support of or opposition to the petition and with respect to any conditions to reinstatement.

(2) Consent

If Bar Counsel is satisfied that the attorney has complied fully with the provisions of Rule 19-742 and any requirements or conditions in the order of suspension or disbarment, and there are no known complaints or disciplinary proceedings pending against the attorney, the response may be in the form of a consent to the reinstatement.

(f) Disposition

(1) Consent by Bar Counsel

If, pursuant to subsection (e)(2) of this Rule, Bar Counsel has filed a consent to reinstatement, the Clerk shall proceed in accordance with Rule 19-751 (e)(1).

(2) Other Cases

In other cases, upon review of the petition and Bar Counsel's response, the Court may (A) without a hearing, dismiss the petition or grant the petition and enter an

order of reinstatement with such conditions as the Court deems appropriate, or (B) order further proceedings in accordance with section (g) of this Rule.

(g) Further Proceedings

(1) Order Designating Judge

If the Court orders further proceedings pursuant to subsection (f)(2)(B) of this Rule, it shall enter an order designating a judge of any circuit court to hold a hearing.

(2) Discovery

The judge shall allow reasonable time for Bar Counsel to investigate the petition and, subject to Rule 19-726, to take depositions and complete discovery.

(3) Hearing

The applicable provisions of Rule 19-727 shall govern the hearing and the findings and conclusions of the judge, except that the attorney shall have the burden of proving the averments of the petition by clear and convincing evidence.

(4) Proceedings in Court of Appeals

The applicable provisions of Rules 19-728 and 19-729 (a), (b), and (d) shall govern subsequent proceedings in the Court of Appeals. The Court may (A) dismiss the petition, (B) order reinstatement, with such conditions as the Court deems appropriate, or (C) remand for further proceedings.

(h) Criteria for Reinstatement

(1) Generally

In determining whether to grant a petition for reinstatement, the Court of Appeals shall consider the nature and circumstances of the attorney's conduct that led to the disciplinary or remedial order and the attorney's (A) subsequent conduct [and

reformation], (B) current character, and (C) current qualifications and competence to practice law.

(2) Specific Criteria

The Court may order reinstatement if the attorney meets each of the following criteria or presents sufficient reasons why reinstatement should be ordered in the absence of satisfaction of one or more of those criteria:

(A) the attorney has complied in all respects with the provisions of Rule 19-742 or, if applicable, 19-744 and with the terms and conditions of prior disciplinary or remedial orders;

(B) the attorney has not engaged in or attempted or offered to engage in the unauthorized practice of law during the period of disbarment, suspension, or inactive status;

(C) if the attorney was placed on inactive status, the incapacity or infirmity, including alcohol or drug abuse no longer exists and is not [reasonably] likely to recur in the future;

(D) if the attorney was disbarred or suspended, the petitioner recognizes the wrongfulness and seriousness of the professional misconduct for which discipline was imposed;

(E) the attorney has not engaged in any [other] professional misconduct or, other than minor traffic or municipal infractions, any unlawful activity since the imposition of discipline;

(F) the attorney currently has the requisite honesty and integrity to practice law;

(G) the attorney has kept informed about recent developments in the law and is competent to practice law; and

(H) the attorney has complied with all financial obligations required by these Rules or by court order, including (i) reimbursement of all amounts due to the attorney's former clients, (ii) payment of restitution which, by court order, is due to the attorney's former clients or any other person, (iii) reimbursement of the Client Protection Fund for all claims that arose out of the attorney's practice of law and satisfaction of all judgments arising our of such claims, and (iv) payment of all costs assessed by court order or otherwise required by law.

(i) Conditions to Reinstatement

An order that reinstates an attorney may include, as a condition precedent to reinstatement or as a condition of probation after reinstatement that the attorney:

(1) take the oath of attorneys required by Code, Business Occupations and Professions Article, §10-212;

(2) pass either the comprehensive Maryland bar examination or an attorney examination administered by the Board of Law Examiners;

(3) attend a bar review course approved by Bar Counsel and submit to Bar Counsel satisfactory evidence of attendance;

(4) submit to Bar Counsel evidence of successful completion of a professional ethics course at an accredited law school;

(5) submit to Bar Counsel evidence of attendance at the professionalism course required for newly-admitted attorneys;

(6) engage an attorney satisfactory to Bar Counsel to monitor the attorney's legal practice for a period stated in the order of reinstatement;

(7) limit the nature or extent of the attorney's future practice of law in the manner set forth in the order of

reinstatement;

(8) participate in a program tailored to individual circumstances that provides the attorney with law office management assistance, lawyer assistance or counseling, treatment for **[alcohol or]** substance or gambling abuse, or psychological counseling;

(9) demonstrate, by a report of a health care professional or other **[proper]** evidence, that the attorney is mentally and physically competent to resume the practice of law;

(10) issue an apology to one or more persons; or

(11) take any other corrective action that the Court deems appropriate.

(j) Effective Date of Reinstatement Order

An order that reinstates the petitioner may provide that it shall become effective immediately or on a date stated in the order. If no effective date is stated, the order shall take effect on the date that Bar Counsel gives written notice to the Clerk of the Court of Appeals that the petitioner has complied with all applicable conditions ~~precedent~~ to reinstatement ~~set forth in the order~~.

(k) Duties of Clerk

(1) Generally

Promptly after the effective date of an order that reinstates a petitioner, the Clerk of the Court of Appeals shall give any notice required by Rule ~~16-723~~ 19-707 (e).

(2) Attorney Admitted to Practice

Upon receiving a reinstatement notice authorized by section (e) of this Rule, or on the effective date of an order or notice that reinstates a petitioner admitted by the Court of Appeals to the practice of law, the Clerk of the Court of Appeals shall place the name of the petitioner on the register of

attorneys in that Court and shall certify that fact to the Trustees of the Client Protection Fund of the Bar of Maryland and to the clerks of all courts in the State.

(3) Attorney not Admitted to Practice

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

(l) Motion to Vacate Reinstatement

Bar Counsel may file a motion to vacate an order that reinstates the petitioner if (1) the petitioner has failed to demonstrate substantial compliance with the order, including any condition of reinstatement imposed under Rule ~~16-760~~ 19-752 (h) or section (j) of this Rule or (2) the petition filed under section (a) of this Rule contains a false statement or omits a material fact, the petitioner knew the statement was false or the fact was omitted, and the true facts were not disclosed to Bar Counsel prior to entry of the order. The petitioner may file a verified response within 15 days after service of the motion, unless a different time is ordered. If there is a factual dispute to be resolved, the court may enter an order designating a judge in accordance with Rule ~~16-752~~ 19-722 to hold a hearing. The judge shall allow reasonable time for the parties to prepare for the hearing and may authorize discovery pursuant to Rule ~~16-756~~ 19-726. The applicable provisions of Rule ~~16-757~~ 19-727 shall govern the hearing. The applicable provisions of Rules ~~16-758~~ 19-728 and ~~16-759~~ 19-741, except section (c) of Rule ~~16-759~~ 19-741, shall govern any subsequent proceedings in the Court of Appeals. The Court may reimpose the

discipline that was in effect when the order was entered or may impose additional or different discipline.

Source: This Rule is derived from former Rule 16-781 (2013).

Rule 19-752 was accompanied by the following Reporter's note.

Proposed Rule 19-752, Reinstatement – Other Suspension; Disbarment; Inactive Status; Resignation, is derived from former Rule 16-781.

The Chair told the Committee that Rules 19-751 and 19-752 had been totally rewritten but did not contain a great amount of substantive change. The change to the Rules came partly from the Court of Appeals and partly from Bar Counsel and the Attorney Grievance Commission. The Rules were trying to separate out the short suspensions, which last six months or less, from the longer suspensions, the indefinite suspensions, and the disbarments. This involves what actions the attorney has to take and how the attorney gets reinstated.

The Chair said that the changes to Rule 19-751 began with section (b), which clarified that reinstatement is not automatic. If an attorney gets suspended for 90 days, on the 90th day, he or she cannot start practicing law again, because there may be conditions to the reinstatement. One attorney got in trouble for this, but the Rule was sufficiently ambiguous that it needed to be changed to make clear as to what happens on the last day of the suspension. The attorney has to file a petition, which can

be filed 10 days before the date the suspension is terminated. Bar Counsel has five days to object. If Bar Counsel does not object, the Court would summarily reinstate the attorney, and the attorney can begin to practice law again. This applies to a suspension of six months or less. Bar Counsel does not have to take any action in order for an attorney to get readmitted.

The Chair noted that under Rule 19-752, if the suspension is either indefinite or longer than six months, or the attorney has been disbarred, then the attorney has to jump through more hoops. Bar Counsel does not have to object to the reinstatement, but the most efficient procedure to get reinstated is for Bar Counsel to consent, which informs the Court of Appeals that Bar Counsel has no objection to the reinstatement. This is one difference from current Rule 16-760.

The Chair commented that the attempt is to set out a road map for an attorney to find out how to get reinstated. He noted that in section (h) of Rule 19-751, some cross references have to be corrected. The reference to "Rule 16-760" should be to "Rule 19-751." The language that reads "or section (j) of this Rule" has to be deleted, because Rule 19-751 has no section (j). The reference to "Rule 16-752" should be "Rule 19-722," the reference to "Rule 16-756" should be "Rule 19-726," the reference to "Rule 16-757" should be "Rule 19-727," the reference to "Rule 16-758" should be "Rule 19-728," and the reference to "Rule 16-759" should be "Rule 19-729." By consensus, the Committee approved these changes.

By consensus, the Committee approved Rule 19-751 as amended and Rule 19-752 as presented.

Agenda Item 3. Consideration of proposed amendments to Rule 2-506 (Voluntary Dismissal)

Mr. Brault presented Rule 2-506, Voluntary Dismissal, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-506 to add a new section (b) pertaining to a dismissal upon stipulated terms, as follows:

Rule 2-506. VOLUNTARY DISMISSAL

(a) By Notice of Dismissal or Stipulation

Except as otherwise provided in these rules or by statute, a party who has filed a complaint, counterclaim, cross-claim, or third-party claim may dismiss all or part of the claim without leave of court by filing (1) a notice of dismissal at any time before the adverse party files an answer or (2) by filing a stipulation of dismissal signed by all parties to the claim being dismissed.

(b) Dismissal Upon Stipulated Terms

If an action is settled upon written stipulated terms and dismissed, the action may be reopened at any time upon request of any party to the settlement to enforce the stipulated terms through the entry of judgment or other appropriate relief.

~~(b)~~ (c) By Order of Court

Except as provided in section (a) of this Rule, a party who has filed a complaint, counterclaim, cross-claim, or third-party claim may dismiss the claim only by order of court and upon such terms and conditions as the court deems proper. If a counterclaim has been filed before the filing of a plaintiff's motion for voluntary dismissal, the action shall not be dismissed over the objection of the party who filed the counterclaim unless the counterclaim can remain pending for independent adjudication by the court.

~~(c)~~ (d) Effect

Unless otherwise specified in the notice of dismissal, stipulation, or order of court, a dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a party who has previously dismissed in any court of any state or in any court of the United States an action based on or including the same claim.

~~(d)~~ (e) Costs

Unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action or the part dismissed.

Cross reference: See Code, Courts Article, §7-202. For settlement of suits on behalf of minors, see Code, Courts Article, §6-405 and Rule 2-202. For settlement of a claim not in suit asserted by a parent or person in loco parentis under a liability insurance policy, see Code, Insurance Article, §19-113.

Source: This Rule is derived as follows:
Section (a) is derived in part from the 1968 version of Fed. R. Civ. P. 41 (a) (1) and is in part new.
Section (b) is new.
Section ~~(b)~~ (c) is derived from former Rule 541 b and the 1968 version of Fed. R. Civ. P 41 (a) (2).
Section ~~(c)~~ (d) is derived from former Rule 541 c.
Section ~~(d)~~ (e) is derived from former

Rules 541 d and 582 b.

Rule 2-506 was accompanied by the following Reporter's note.

> By unanimous request of the Conference of Circuit Judges, Rule 2-506 is proposed to be amended by the addition of a new section (b), Dismissal Upon Stipulated Terms, the language of which is taken *verbatim* from Rule 3-506 (b).

Mr. Brault explained that the request to add language to Rule 2-506 had been made by collection attorneys. There is a parallel provision in Rule 3-506, the District Court Rule, which had been requested by the collection bar some time ago. They had asked that the same provision be added to Rule 2-506. It provides for a dismissal on stipulated terms. Generally, the case is dismissed on stipulation of a payment schedule. If the defendant does not keep up with the stipulation, then any party can request the court to order that the stipulated terms must be met. It is a shortened way to enforce a settlement. The added language is a good idea. The Reporter pointed out that the Conference of Circuit Judges had unanimously requested the addition of section (b) to Rule 2-506. The language was taken verbatim from Rule 3-506 (b).

Mr. Sullivan inquired if it was contemplated that the dismissal document would contain the contents of the stipulation. Mr. Brault answered that his understanding was that in District Court, the terms of the stipulation are included in the dismissal document. He was not sure that this is necessary. Judge Price remarked that if the terms are not included, a copy of the

written agreement should be sent to the parties. Mr. Zarbin observed that this was a sensible idea. Often, there is an arbitration, and someone is displeased with the outcome. A release has to be signed, and someone who is displeased may not sign. If the circuit court action is dismissed, a fee has to be paid to reinstate the circuit court action, or the circuit court may require that a new action be filed.

Mr. Zarbin said that he practices often in District Court, and the dismissal upon stipulated terms is an efficient way to enforce a settlement. Judge Love noted that Rule 3-506 was his favorite rule. The tricky part is that if the case is passed for settlement, the time period under the time management standards keeps ticking. This is a good rule to stop the time limit.

By consensus, the Committee approved Rule 2-506 as presented.

Agenda Item 4. Consideration of proposed amendments to Rule 2-522 (Court Decision - Jury Verdict)

The Chair presented Rule 2-522, Court Decision - Jury Verdict, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-522 to add a procedure to address any material inconsistency between a jury's announced verdict and its written findings and to make stylistic changes, as

follows:

Rule 2-522. COURT DECISION - JURY VERDICT

(a) Court Decision

In a contested court trial, the judge, before or at the time judgment is entered, shall prepare and file or dictate into the record a brief statement of the reasons for the decision and the basis of determining any damages.

(b) Verdict

(1) Unanimity

Unless the parties stipulate at any time that a verdict or finding of a stated majority shall be taken as the verdict or finding of the jury, the ~~The~~ verdict of a jury shall be unanimous ~~unless the parties stipulate at any time that a verdict or finding of a stated majority shall be taken as the verdict or finding of the jury~~.

~~(c)~~ (2) Verdict Containing Written Findings

(A) Court May Require

The court may require a jury to return a verdict in the form of written findings upon specific issues. For that purpose, the court may use any method of submitting the issues and requiring written findings as it deems appropriate, including the submission of written questions susceptible of brief answers or of written forms of the several special findings that might properly be made under the pleadings and evidence. The court shall instruct the jury as may be necessary to enable it to make its findings upon each issue.

(B) Omission of Issue

If the court fails to submit any issue raised by the pleadings or by the evidence, all parties waive their right to a

trial by jury of the issues omitted unless before the jury retires a party demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding or, if it fails to do so, the finding shall be deemed to have been made in accordance with the judgment entered.

(3) Return in Open Court

A verdict shall be returned in open court. If the verdict is in the form of written findings pursuant to subsection (b)(2), the verdict sheet shall be handed to and examined by the judge prior to the announcement of the verdict or any harkening or polling. If there is any material inconsistency between the verdict as announced and the written findings, the court shall inform the jury and the parties of the inconsistency and invite and consider, on the record, the parties' position on any response.

(4) Polling

On request of a party or on the court's own initiative, the jury shall be polled before it is discharged. If the poll discloses that the jury, or stated majority, has not concurred in the verdict, the court may direct the jury to retire for further deliberations or may discharge the jury.

(5) Objections; Waiver

No party may assign as error the submission of issues to the jury, the instructions of the court, or the refusal of the court to submit a requested issue unless the party objects on the record before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Upon request of any party, the court shall receive objections out of the hearing of the jury.

Source: This Rule is derived as follows:
Section (a) replaces former Rule 18 b from which it is in part derived.

Section (b) is in part new and in part derived from former Rules 560 and 759 a and e; ~~and~~ from the 1937 version of Fed. R. Civ. P. 48~~.~~

~~Section (c) is derived from former Rule 560 and the~~ and from 1963 version of Fed. R. Civ. P. 49 (a).

Rule 2-522 was accompanied by the following Reporter's note.

The Court of Appeals has requested that the Rules Committee propose an amendment to Rule 2-522 to provide a procedure for resolving, prior to discharge of the jury, any material inconsistency that may exist between a jury's announced verdict and its written findings. Rule 2-522 is proposed to be restyled, with such a procedure included in new subsection (b)(3).

The Chair said that this issue arose as a result of a case in the Court of Appeals, *Turner v. Hastings*, No. 66, decided June 25, 2013, an appeal from *Hastings v. Turner*, 205 Md. App. 413 (2012). Language had been suggested for Rule 2-522 that would provide a procedure for resolving any material inconsistency that may exist between a jury's announced verdict and its written findings. Mr. Zarbin noted that *Turner* took place in Worcester County. When the verdict came in, no one had read the verdict other than the foreperson, and the jury left. Then the judge read it and realized that the verdict had not been entered correctly, so the judge read the correct verdict into the record. Mr. Zarbin said that he had run into this problem many times. The jury reads the verdict, finding negligence as well as contributory negligence, and then they incorrectly award money to the plaintiff.

By consensus, the Committee approved Rule 2-522 as presented.

Agenda Item 5. Consideration of proposed amendments to: Rule 8-124 (Appeals from Proceedings for Expungement - Confidentiality), Rule 8-202 (Notice of Appeals - Times for Filing), Rule 2-601 (Entry of Judgment), Rule 8-303 (Petition for Writ of Certiorari - Procedure), Rule 8-412 (Record - Time for Transmitting), Rule 8-501 (Record Extract), Rule 8-503 (Style and Form of Briefs), Rule 8-502 (Filing of Briefs), and Rule 8-606 (Mandate)

The Vice Chair presented Rule 8-124, Appeals from Proceedings for Expungement - Confidentiality, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 8-124, as follows:

Rule 8-124. APPEALS FROM PROCEEDINGS FOR EXPUNGEMENT - CONFIDENTIALITY

(a) Scope

This Rule applies to an appeal from an order relating to a petition for expungement.

(b) Caption

The proceeding shall be styled "In re Expungement Petition of [first name and first initial of last name of expungement petitioner]".

(c) Confidentiality

The last name of the expungement petitioner shall not be used in any opinion, oral argument, brief, record extract, petition, or other document pertaining to the appeal that is generally available to the public.

(d) Inclusion of Docket Numbers

If the appellate court grants the expungement, the mandate issued by the court shall contain the docket number of the lower court case.

Source: This Rule is new.

Rule 8-124 was accompanied by the following Reporter's note.

The Office of the Public Defender has requested the addition of a new Rule that would prevent the use of the full name of a person who has petitioned for the expungement of records in an appellate case caption, opinion, oral argument, brief, record extract, petition, or other similar papers for an appeal of an order related to a petition for expungement. Using the expungement petitioner's full name in the appellate case caption, opinion, and brief is inconsistent with the legislative purpose underlying expungement statutes. Further, the current uncertainty regarding whether an appellate court will permit an expungement petitioner to proceed in a manner that does not result in permanent disclosure of the petitioner's name has a chilling effect on the person's exercise of the right to appellate review, and it is impairing the development of appellate case law to resolve legal issues in expungement law.

The Appellate Subcommittee recommends adopting the language proposed by the Office of the Public Defender, but with the addition of language requiring that the mandate of the appellate court that allows the expungement should contain the docket number of the lower court case, so that the court or agency receiving the mandate can identify whose records are to be expunged.

The Vice Chair explained that Rule 8-124 was a new Rule recommended by the Office of the Public Defender. The Rule addresses expungement proceedings on appeal. The suggestion was that any documents associated with the expungement should not contain the last name of the petitioner. If the record of someone is being expunged, it is not helpful to have the person's name appear in the documents. The Rule also provides that the caption of the proceeding shall not use the last name of the petitioner. The suggested caption was "In re Expungement Petition of _____," and the blank would contain the petitioner's first name and the initial of his or her last name.

Judge Price remarked that the case would not have been expunged yet, and the Public Defender is appealing the expungement. The criminal case is still in existence containing a caption with the criminal's name on it. If the case is overturned, and it is to be expunged, why could the case not be expunged then? She did not understand hiding the identity of the petitioner when the case has not been expunged yet. The Chair said that what is being addressed is not the record of the criminal case but the appellate captions in the expungement proceeding.

The Reporter commented that there could be a reported appellate opinion that provides that the case should have been expunged, but the name is now appearing in the reported opinion. Ms. Smith noted that this is applicable to the circuit court as well. Judge Pierson explained that if someone files an appeal to

the circuit court from the District Court's denial of an expungement, the name is not hidden or shielded unless there is an order reversing it and granting the expungement (which has problems associated with it, also).

Mr. Hilton remarked that if the opinion itself would be published, the circuit court record would eventually go away due to the expungement. Sometimes there are reported opinions stating that the circuit court was wrong not to expunge, and this would result in a permanent record. The Chair asked whether it is just the opinion or whether it also includes the briefs and record extract, if there is one, as well. Mr. Hilton said that if the case is expunged, the reference to it would be removed from Westlaw, LexisNexis, etc., but a published opinion is present forever. The Chair noted that unreported opinions can be expunged, but people can still get them.

The Chair inquired whether there was any problem with Rule 8-124 with respect to the appellate courts. If another Rule is needed for the circuit court because of an appeal from the District Court, that could be drafted later. Judge Pierson responded that the problem is much bigger than simply how to draft a rule. The basic problem is that the appeals from expungements are treated as civil appeals, so the normal mechanics that exist on the criminal side do not apply. The Chair questioned whether the proposed change to Rule 8-124 would cause problems. Judge Pierson answered negatively. He said that he had raised the issue about the circuit court, because Ms.

Smith had referred to it. Ms. Smith expressed the view that a rule for the circuit court may be needed. Judge Pierson expressed the opinion that the AOC should not treat expungements as civil cases.

The Chair said that adoption of the proposed change to Rule 8-124 should not cause any problems. The Vice Chair remarked that if the Court of Appeals approves this, it is a good sign that a similar change would need to be made in the circuit court.

By consensus, the Committee approved Rule 8-124 as presented.

The Vice Chair presented Rule 8-202, Notice of Appeal - Time for Filing, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-202 to add a cross reference to Rule 2-601 after section (a) and to add language to section (f) pertaining to electronic docketing systems, as follows:

Rule 8-202. NOTICE OF APPEAL - TIMES FOR FILING

(a) Generally

Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is

taken. In this Rule, "judgment" includes a verdict or decision of a circuit court to which issues have been sent from an Orphans' Court.

Cross reference: Code, Courts Article, §12-302 (c)(3). See Rule 2-601 as to when a judgment is entered.

. . .

(f) Date of Entry

"Entry" as used in this Rule occurs on the day when the clerk of the lower court first makes a record in writing of the judgment, notice, or order on the file jacket, on a docket within the file, ~~or~~ in a docket book, or on an electronic docketing system according to the practice of that court, and records the actual date of the entry.

Cross reference: Rule 2-601.

Source: This Rule is derived from former Rule 1012.

Rule 8-202 was accompanied by the following Reporter's note.

The Chief Judge of the Court of Special Appeals requested a change to Rule 8-202 (f) to make clear that in courts that use electronic case management systems, a judgment, notice, or order is entered when it is placed on an electronic docketing system. The Appellate Subcommittee recommends amending section (f) of Rule 8-202 and section (b) of Rule 2-601 to indicate this.

The Subcommittee also recommends adding a cross reference to Rule 2-601 after section (a) of Rule 8-202 to clarify when a judgment is entered.

The Vice Chair told the Committee that the Chief Judge of the Court of Special Appeals had requested the change to Rule 8-202 to make clear that the date that the clerk enters the

judgment or order on the electronic docketing system would be the date of the judgment. The old-fashioned methods of entering the date on the file jacket, on a docket within the file, or in a docket book would be retained. The Vice Chair added that he doubted that docket books are used much anymore. Discussion of Rule 8-202 had been deferred until the MDEC Rules had been completed. The Rule reflects practice, because some people are already using electronic dockets.

Mr. Sullivan remarked that his office had been just about to file a motion to dismiss an appeal, because the online system would have showed that the appeal would be untimely. Before doing this, they asked the clerk to check the file, and it turned out that the appeal was timely based on the entry in the paper docket that the clerk maintained. There had been a disparity between what was in the online case report and what was in the clerk's report. Arguments persist as to whether the date of judgment is the date in the case file or the date that is recorded electronically.

The Chair pointed out that section (f) of Rule 8-202 provides that entry of the judgment occurs on the day when the clerk first makes a record in writing. Mr. Sullivan remarked that it would be the earliest date. Mr. Maloney expressed the view that it is a massive problem. He had just experienced a situation where the judge had issued the order previously, on April 15, but it had never been docketed. Mr. Maloney had checked on this frequently to see if the order had been docketed.

Last night, which was May 2, Mr. Maloney had been told that the order had been docketed but with an effective date of April 15. This is happening frequently. Even with checking the docket, the attorney can get into trouble.

Ms. Smith explained that two dates are entered into the system. One is the date that the clerk receives the document, and the clerk enters that date into the system. However, the date that the clerk files the document is an "after" date. It has the clerk's initials and a notation as to the date that it was entered. It is this date that should be the judgment date. She was not sure which date their online system was showing. Mr. Maloney noted that in his case, nothing showed up until last night. Ms. Smith responded that the case file could reflect the "file-stamp" date rather than the case history which would show both the "file-stamp" date and the date that the clerk entered it.

Mr. Hilton noted that the clerks' offices are not consistent as to how they fill out the forms. Ms. Smith observed that the date of entry is the default date. This date cannot be modified. Mr. Hilton asked whether there is a date on the form that is different than the date entered. Ms. Smith said that the clerk enters the date the document is received, and then there is the date that is entered on the docket. The latter is the default date, and the clerk cannot change it. Mr. Maloney commented that this is an area of mass confusion for the bar. In the case he had just described, to protect his law firm, he and the other

members of his law firm would file an appeal within 30 days of the day they knew that the judge signed the order, then they would file a second appeal, so that no one tells them that the first appeal was premature. They would then move to consolidate, and this procedure is really unnecessary. He expressed the opinion that there is an ambiguity in electronic and written practice that should be addressed with clear language in Rule 8-202.

The Chair noted that this was not a new problem. Mr. Brault observed that this problem had arisen frequently. This is why the Rule provides that the first date is the date the judge signs the order, the second date is the date the order is filed in the courthouse, and the third date is when the clerk puts the order on the docket. The judgment date is the date that the judgment is entered on the docket, not the date that it is signed, not the date that it is filed. As to Mr. Maloney's problem of filing prematurely, this is addressed by section (d) of Rule 8-602, Dismissal by Court, which provides that if the filing is premature, it is deemed filed when it is mature. The interrelationship of electronic filing with regular filing is another issue. There should be an electronic date on which it is entered on the electronic docket.

Mr. Zarbin noted another mishap, which is when the document is improperly docketed in the wrong file. This had happened to him. There are problems with the electronic filing. Mr. Zarbin's view was that the judgment date should be the date the

document is manually filed in the clerk's office. The Chair said that when MDEC becomes effective, in the counties that use it, everything will be electronic. Mr. Carbine added that the problems should dissipate. Mr. Zarbin pointed out that this assumes the documents are filed in the correct file. Mr. Brault noted that this would mean that the documents had never been filed, so the appeal time would not be running.

The Vice Chair remarked that all of the problems referred to cannot be addressed by rewriting Rule 8-202. The Rule is being changed to reflect the current practice and the future practice when electronic filing becomes a reality. Mr. Sullivan suggested that in the interim, the webmaster for the courts' online system could put in a bold warning that the actual date of entry may differ from what is seen in the report. This would indicate that there could be a major difference between what is in the report and what is in the file jacket in the clerk's office. Ms. Smith remarked that some kind of information is displayed, but it may not be exactly what Mr. Sullivan had suggested. Ms. Smith commented that in her county, they use the same date that they enter as the date filed. The file date in every other document is the date the clerk file-stamps it. But for orders, they use the date actually entered as the judgment date. They do not put in the date that the document arrived in their office.

The Chair pointed out that Mr. Maloney had said that when the order in his case was entered, it had been backdated. Ms. Smith noted that the clerk's office had used the date that the

order had been received. Mr. Maloney stated that this is a major problem. How is the attorney supposed to know this? Ms. Smith agreed, adding that this was why her office does it differently. Judge Pierson commented that in Baltimore City, for judgments they use the same date for entry on the docket and the date of receipt to avoid this problem.

Mr. Maloney remarked that if an attorney is being diligent to try to find the date of judgment for purposes of appeal, he or she can be easily misled by looking at all of the publicly available sources. Judge Pierson said that if the date of entry is the same as the docket date, the attorney would be protected. Mr. Maloney responded that not all circuit courts do this. Mr. Zarbin added that the attorney could miss the 10-day filing period to file for a new trial.

The Chair asked the Committee about the proposed changes to Rule 8-202. Mr. Maloney said that he would like for some pressure to be applied to fix this situation. If the Office of the Attorney General of Maryland is running into problems, what is an average practitioner to do? He suggested that Rule 8-202 be deferred, so that a working group, including clerks, can discuss ways to improve the situation. The Chair noted that this could be done. The problem goes beyond Rule 8-202, which only addresses when a judgment is entered. People file motions and pleadings, which come to the clerk's office and are stamped. These documents sit for what can be a great amount of time and then are docketed. Those documents should be effective when they

reach the clerk's office. Judge Pierson observed that for the most part, the deadlines for those do not run from the date of filing, they run from the date of service.

The Chair stated that Rule 8-202 as well as Rule 2-601, Entry of Judgment, would be deferred. Mr. Sykes expressed the opinion that the way Rule 2-601 is written now will cause trouble. The Chair noted that the Rules could be sent to the Judgments Subcommittee, which can discuss them with the aid of consultants. The 24 circuit courts are handling entry of judgments many different ways. There should be one standard as to how to do this. Mr. Maloney added that he did not intend to criticize the clerks, but he agreed with the Chair that there should be one bright-line rule. Judge Pierson expressed his agreement with this, but he commented that his view was that the Rule should not be held up. Most of the courts around the State do not have docket books. The idea of including an electronic docketing system in Rules 8-202 and 2-601 was to conform the Rules to reality. It may not help to hold up these Rules while the situation is addressed. Mr. Maloney expressed the opinion that Rule 8-202 would have to be amended. He would prefer not to approve a defective rule.

The Chair asked if the Committee wanted to defer Rules 8-202 and 2-601. Mr. Maloney responded that if the Vice Chair felt strongly about sending the Rule to the Court of Appeals, Mr. Maloney would not stand in the way. He wanted to make sure that the problem that was being discussed receives attention. Mr.

Carbine remarked that the problem he had reading Rule 8-202 is that he did not know when the 30-day time period after entry of the judgment or order starts running. The Chair responded that it is when the clerk first records the document somewhere. Mr. Carbine noted that if the time period were to begin running after the last action by the clerk, the attorney would be protected.

Judge Pierson asked what the attorney would do now without the additional language proposed to be added to Rule 8-202. There are no docket books. The Reporter noted that Rule 2-601 does not provide that it is the first action of the clerk; only Rule 8-202 has that language. The Chair pointed out that current Rule 8-202 provides that entry of judgment is the day when the clerk first makes a record in writing on the file jacket, on a docket within the file, or in a docket book. The proposed change is simply to add electronic docketing.

Mr. Carbine said that he had no problem with this change, but he agreed with Mr. Maloney that these Rules need some work. A date needs to be fixed that the bar can rely on for when the time starts running. Judge Price expressed the view that there is some ambiguity as to what the "first" action is. Is it the date of receipt or the electronic docketing? Mr. Sykes commented that a Reporter's note would need to be included telling the Court of Appeals that the Rule is defective. The Reporter observed that part of the problem is the disconnect between Rule 2-601, which does not have the word "first" in it, and Rule 8-202, which does. The Chair pointed out that Rule 2-601 does not

address timing. It provides how the judgment is entered. The Reporter noted that section (b) provides what the date of the judgment is. Mr. Carbine suggested that the two Rules go back to the Subcommittee. By consensus, the Committee agreed to this suggestion.

The Vice Chair presented Rule 8-303, Petition for Writ of Certiorari - Procedure, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 300 - OBTAINING APPELLATE REVIEW IN COURT OF APPEALS

AMEND Rule 8-303 (b)(1) to decrease the amount of pages allowed for a petition for writ of certiorari, as follows:

Rule 8-303. PETITION FOR WRIT OF CERTIORARI - PROCEDURE

. . .

(b) Petition

(1) Contents

The petition shall present accurately, briefly, and clearly whatever is essential to a ready and adequate understanding of the points requiring consideration. Except with the permission of the Court of Appeals, a petition shall not exceed ~~25~~ 15 pages. It shall contain the following information:

(A) A reference to the action in the lower court by name and docket number;

(B) A statement whether the case has been decided by the Court of Special Appeals;

(C) If the case is then pending in the Court of Special Appeals, a statement whether briefs have been filed in that Court or the date briefs are due, if known;

(D) A statement whether the judgment of the circuit court has adjudicated all claims in the action in their entirety, and the rights and liabilities of all parties to the action;

(E) The date of the judgment sought to be reviewed and the date of any mandate of the Court of Special Appeals;

(F) The questions presented for review;

(G) A reference to pertinent constitutional provisions, statutes, ordinances, or regulations;

(H) A concise statement of the facts material to the consideration of the questions presented; and

(I) A concise argument in support of the petition.

(2) Documents

A copy of each of the following documents shall be submitted with the petition at the time it is filed:

(A) The docket entry evidencing the judgment of the circuit court;

(B) Any opinion of the circuit court;

(C) Any written order issued under Rule 2-602 (b);

(D) If the case has not been decided by the Court of Special Appeals, all briefs that have been filed in the Court of Special Appeals; and

(E) Any opinion of the Court of Special

Appeals.

(3) Where Documents Unavailable

If a document required by subsection (b)(2) of this Rule is unavailable, the petitioner shall state the reason for the unavailability. If a document required to be submitted with the petition becomes available after the petition is filed but before it has been acted upon, the petitioner shall file it as a supplement to the petition as soon as it becomes available.

(4) Previously Served Documents

Copies of any brief or opinion previously served upon or furnished to another party need not be served upon that party.

. . .

Rule 8-303 was accompanied by the following Reporter's note.

A Court of Appeals judge requested that the page limit for petitions for a writ of certiorari be decreased. She pointed out that many of these petitions are largely a rehash of the briefs in the Court of Special Appeals, and less lengthy petitions would be more likely to focus on the major issue, which is whether granting the petition is desirable and in the public interest. See Code, Courts Article, §12-203. Research on page limits in other states indicated that 20 states limit their petitions to 15 pages or less. The Appellate Subcommittee recommends decreasing the page limit for petitions for a writ of certiorari from 25 to 15.

The Vice Chair explained that the proposed change to Rule 8-303 was a result of a request by a judge of the Court of Appeals some time ago to shorten the length of petitions for a writ of certiorari. The Vice Chair responded that it would save a great amount of time for the judges. Mr. Brault pointed out that the

interest of the petitioners is to get the writ of certiorari granted, not to save time. The Chair said that a 15-page petition is preferable.

By consensus, the Committee approved Rule 8-303 as presented.

The Vice Chair presented Rule 8-412, Record - Time for Transmitting, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-412 (a) to add references to certain cases, as follows:

Rule 8-412. RECORD - TIME FOR TRANSMITTING

(a) To the Court of Special Appeals

Unless a different time is fixed by order entered pursuant to section (d) of this Rule, the clerk of the lower court shall transmit the record to the Court of Special Appeals within sixty days or thirty days in child in need of assistance cases and guardianships terminating parental rights cases, or other cases proceeding under Rule 8-207 (a)(1) after:

(1) the date of an order entered pursuant to Rule 8-206 (a)(1) that the appeal proceed without a prehearing conference, or an order entered pursuant to Rule 8-206 (d) following a prehearing conference, unless a different time is fixed by that order, in all civil actions specified in Rule 8-205 (a); or

(2) the date the first notice of appeal

is filed, in all other actions.

Cross reference: Rule 8-207 (a).

(b) To the Court of Appeals

Unless a different time is fixed by order entered pursuant to section (d) of this Rule, the clerk of the court having possession of the record shall transmit it to the Court of Appeals within 15 days after entry of a writ of certiorari directed to the Court of Special Appeals, or within sixty days after entry of a writ of certiorari directed to a lower court other than the Court of Special Appeals.

(c) When Record is Transmitted

For purposes of this Rule the record is transmitted when it is delivered to the Clerk of the appellate court or when it is sent by certified mail by the clerk of the lower court, addressed to the Clerk of the appellate court.

(d) Shortening or Extending the Time

On motion or on its own initiative, the appellate court having jurisdiction of the appeal may shorten or extend the time for transmittal of the record. If the motion is filed after the prescribed time for transmitting the record has expired, the Court will not extend the time unless the Court finds that the failure to transmit the record was caused by the act or omission of a judge, a clerk of court, the court reporter, or the appellee.

Source: This Rule is derived from former Rules 1025 and 825.

Rule 8-412 was accompanied by the following Reporter's note.

The Chief Judge of the Court of Special Appeals requested an amendment to Rule 8-412 (a) to clarify that the clerk of a lower court shall transmit the record to the Court of Special Appeals within 30 days for guardianships terminating parental rights

cases, since those cases are exempt from the information report requirement, and no order to proceed issues. The Legal Aid Bureau pointed out that section (a) also applies to cases proceeding under Rule 8-207 (a)(1) and suggested that these cases be referenced also in section (a) of Rule 8-412. The Subcommittee recommends making both of these changes.

The Vice Chair told the Committee that the proposed change to Rule 8-412 is key to the child access cases that are expedited. The record is transmitted to the Court of Special Appeals within 30 days for child access cases as well as for child in need of assistance cases. This proposed change had been worked out with the Legal Aid Bureau attorneys, who had previously had a problem with the Rule but were now in accordance with the proposed change.

Mr. Sullivan referred to the mechanism for extending the time to transmit the record. His office had had calls where the clerk asks them to file a motion, because the clerk needed more time, which seems odd. If the court is the source of the delay, then the court ought to have its own mechanism to extend the time. The Attorney General should not be acting as the court's agent to extend the time. At least one clerk's office is under the impression that they cannot get the time extended unless a party requests it. Mr. Carbine remarked that he would routinely call the circuit court when the 60-day period is almost up to find out if he needed to file a motion.

Mr. Zarbin commented that often someone calls him to file an

extension, because the other party cannot get the record transmitted in time. Mr. Zarbin files the extension. Then there are cases when the other party does not call him, and he asks about it. The person apologizes, and Mr. Zarbin still has to file the extension. He did not think that the clerk's office has the ability to decide to extend the time. This probably cannot be fixed in the Rule. Mr. Sullivan agreed, but he remarked that for a future time, it may be a matter of inter-court communication, rather than the parties having to take care of this. Mr. Hilton observed that this problem would be solved by MDEC, which is a long way off for now. The record would not move. It is in electronic form and can be accessed by the appellate court. The notice of appeal goes to the Court of Special Appeals electronically. The exception to this is transcripts, which are a different problem.

By consensus the Committee approved Rule 8-412 as presented.

The Vice Chair presented Rule 8-501, Record Extract, and Rule 8-503, Style and Form of Briefs, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-501 (a) to delete and to add certain language, as follows:

Rule 8-501. RECORD EXTRACT

(a) Duty of Appellant

Unless otherwise ordered by the appellate court or provided by this Rule, the appellant shall prepare and file a record extract in every case in the Court of Appeals, subject to section (k) of this Rule, and in every civil case in the Court of Special Appeals. The record extract shall be included ~~as an appendix to~~ in the appellant's brief, or filed as a separate volume with the brief in the number of copies required by Rule 8-502 (c).

. . .

Rule 8-501 was accompanied by the following Reporter's note.

In an appeal, an attorney had attached a very small record extract as an appendix, basing this on the language of Rule 8-501 (a), which states that the record extract "shall be included as an appendix to appellant's brief, or filed as a separate volume with the brief in the number of copies required by Rule 8-502 (c)." The attorney had labeled the pages "App" and had made appropriate references to those pages in his brief. A Court of Appeals Judge ordered that the pages be labeled "E," not "App." The attorney's interpretation of the pertinent Rules is that a record extract, when attached as an appendix, is an appendix and should be labeled and referenced accordingly. He suggested modifying Rule 8-503 (b) to clarify this situation and conform the Rule to the practice of the Court of Appeals.

The Appellate Subcommittee recommends making the suggested change to Rule 8-503 (b) as well as a conforming change to Rule 8-501.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-503 (b) to separate it into numbered subsections and to add certain language, as follows:

Rule 8-503. STYLE AND FORM OF BRIEFS

. . .

(b) References

References (1) to the record extract when filed as a separate volume or included in the appellant's brief shall be indicated as (E.....), (2) to any appendix to appellant's brief shall be indicated as (App.....), (3) to an appendix to appellee's brief shall be indicated as (Apx.....), and (4) to an appendix to a reply brief shall be indicated as (Rep. App.....). If the case falls within an exception listed in Rule 8-501 (b), references to the transcript of testimony contained in the record shall be indicated as (T.....) and other references to the record shall be indicated as (R.....).

. . .

Rule 8-503 was accompanied by the following Reporter's note.

See the Reporter's note to the proposed amendments to Rule 8-501.

The Vice Chair said that the problem of how to label the pages in the record extract is common. The proposed change to Rule 8-503 is an attempt to address this issue, which is resolved

in favor of labeling the pages as "E," not "App." The language that provides that the record extract shall be included "as an appendix" has been eliminated. It makes sense to label the pages as "E." It will alleviate some confusion on the part of the court.

Mr. Brault commented that in his practice, he has had agreements to exchange the record extract, and then file it after all of the briefs have been filed or after the appellee's brief had been filed, so that all parties have everything they need. He would not want the proposed change to the Rule to be interpreted to mean that the extract must be filed with the appellant's brief right up front. The Vice Chair noted that the proposed change does not mean that the brief cannot have an appendix. It just means that if an attorney is going to include what looks like a record extract in his or her brief, it will be labeled as "E" instead of as "App." Rule 8-503 implements this change.

By consensus, the Committee approved Rules 8-501 and 8-503 as presented.

The Vice Chair presented Rule 8-502, Filing of Briefs, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-502 by adding certain language to subsection (a)(1), by modifying subsection (a)(3) to clarify the time for filing an appellant's reply brief, and by adding a cross reference after subsection (a)(3), as follows:

Rule 8-502. FILING OF BRIEFS

(a) Duty to File; Time

Unless otherwise ordered by the appellate court:

(1) Appellant's Brief

Within 40 days after the clerk **[mails the] [sends]** notice of the filing of the record, an appellant other than a cross-appellant shall file a brief conforming to the requirements of Rule 8-503.

(2) Appellee's Brief

Within 30 days after the filing of the appellant's brief, the appellee shall file a brief conforming to the requirements of Rule 8-503.

(3) Appellant's Reply Brief

The appellant may file a reply brief ~~within~~ not later than the earlier of 20 days after the filing of the appellee's brief~~, but in any event not later than~~ or ten days before the date of scheduled argument.

Cross reference: The meaning of subsection (a)(3) is in accordance with *Heit v. Stansbury*, 199 Md. App. 155 (2011).

(4) Cross-appellant's Brief

An appellee who is also a cross-appellant shall include in the brief filed pursuant to subsection (2) of this section the issues and arguments on the cross-appeal as well as the response to the brief of the appellant, and shall not file a separate cross-appellant's brief.

(5) Cross-appellee's Brief

Within 30 days after the filing of that brief, the appellant/cross-appellee shall file a brief in response to the issues and argument raised on the cross-appeal and shall include any reply to the appellee's response that the appellant wishes to file.

(6) Cross-appellant's Reply Brief

The appellee/cross-appellant may file a reply to the cross-appellee's response within 20 days after the filing of the cross-appellee's brief, but in any event not later than ten days before the date of scheduled argument.

(7) Multiple Appellants or Appellees

In an appeal involving more than one appellant or appellee, including actions consolidated for purposes of the appeal, any number of appellants or appellees may join in a single brief.

(8) Court of Special Appeals Review of Discharge for Unconstitutionality of Law

No briefs need be filed in a review by the Court of Special Appeals under Code, Courts Article, §3-706.

. . .

Rule 8-502 was accompanied by the following Reporter's note.

An attorney noted that although Rule 8-502 (a)(1) provides that an appellant shall file a brief conforming to the requirements of Rule 8-503 within 40 days after the filing of the record, in several cases, the practice of the Court of Special Appeals has been to time the filing of the brief from the date the clerk mailed a notice indicating the record had been received. To conform the Rule to what appears to be the practice of the court, the attorney proposed adding the language "clerk sends notice of the" to Rule 8-502 (a)(1). The Appellate Subcommittee recommends the addition of this language to

the Rule.

> A Court of Special Appeals judge proposed an amendment to Rule 8-502 to clarify subsection (a)(3) concerning the time within which the appellant's reply brief must be filed. An appellant had argued that a reply brief can be filed at any time as long as it was filed at least ten days before the date of argument, basing this interpretation of the Rule on the use of the word "may" in subsection (a)(3). *Heit v. Stansbury*, 199 Md. App. 155 (2011), clarifies that a reply brief is optional (hence the use of the word "may"), but if one is filed, it must be filed within 20 days after the filing of the appellant's brief. The language referring to "ten days" means that the appellant would not have the full benefit of the 20-day period if that period encroaches on the ten-day period before the date of argument. The Appellant Subcommittee recommends (1) changing the language of subsection (a)(3), so that the meaning is clear as it was stated in *Heit* and (2) adding a cross reference to that case.

The Vice Chair told the Committee that the proposed change to Rule 8-502 had been suggested by a member of the bar. The issue of the time within which the appellant's reply brief has to be filed was addressed in *Heit v. Stansbury*, 199 Md. App. 155 (2011). Some attorneys have taken the position that they have all of the time they wish to file the brief before the last 10 days. They are happy to file within 20 days after receipt of the appellee's brief. Others do not. The proposed change conforms the Rule to the holding of *Heit*. Another issue is the use of the word "send" used in place of the word "mail." The word "send" is better, because it is more appropriate. The mail is not being used as much as it used to be.

Judge Price asked what the language "not later than the earlier of" means. Mr. Carbine answered that normally someone has 20 days, but if this puts the person within the 10-day period before the oral argument, they do not get the full 20 days. Mr. Hilton said that in *Heit*, the appellee's brief was filed months before the reply brief was filed. The reply brief was filed 10 days prior to the oral argument but many months after the appellee's brief was filed. It gave the appellant an inordinate amount of time to write the reply brief.

By consensus, the Committee approved using the word "send" in place of the word "mail." By consensus, the Committee approved Rule 8-502 as amended.

The Vice Chair presented Rule 8-606, Mandate, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 600 - DISPOSITION

AMEND Rule 8-606 to add a new subsection (b)(3) providing for a certain exception to the time for issuing the mandate, to add a cross reference at the end of section (b), to add a new subsection (d)(2) addressing deferral of the return of the record, and to make stylistic changes, as follows:

Rule 8-606. MANDATE

(a) To Evidence Order of the Court

Any disposition of an appeal, including a voluntary dismissal, shall be evidenced by the mandate of the Court, which shall be certified by the Clerk under the seal of the Court and shall constitute the judgment of the Court.

(b) Issuance of Mandate

(1) Generally

Upon a voluntary dismissal, the Clerk shall issue the mandate immediately.

(2) Other Cases

Except as provided in subsection (b)(3) of this Rule, ~~In~~ in all other cases, unless a motion for reconsideration has been filed or the Court orders otherwise, the Clerk shall issue the mandate upon the expiration of 30 days after the filing of the Court's opinion or entry of the Court's order.

(3) Exception - Court of Special Appeals

Unless the mandate is delayed, in any case proceeding under Rule 8-207 (a), the Clerk of the Court of Special Appeals shall issue the mandate upon the expiration of 15 days after the filing of the Court's opinion or order.

Cross reference: Rule 8-207 (a)(1).

(c) To Contain Statement of Costs

The mandate shall contain a statement of the order of the Court assessing costs and the amount of the costs taxable to each party.

(d) Transmission - Mandate and Record

(1) Generally

Except as provided in subsection (d)(2) of this Rule, ~~Upon~~ upon issuance of the mandate, the Clerk shall transmit it to the appropriate lower court. Unless the

appellate court orders otherwise, the original papers comprising the record shall be transmitted with the mandate.

(2) Court of Special Appeals - Delayed Return

In the Court of Special Appeals, if a petition for a writ of certiorari is filed pursuant to Rule 8-303, the Clerk of the Court of Special Appeals shall not return the record to the lower court until (A) the petition is denied, or (B) if the petition is granted, the Court of Special Appeals takes action in accordance with the mandate of the Court of Appeals.

(e) Effect of Mandate

Upon receipt of the mandate, the clerk of the lower court shall enter it promptly on the docket and the lower court shall proceed in accordance with its terms. Except as otherwise provided in Rule 8-611 (b), the assessment of costs in the mandate shall not be recorded and indexed as provided by Rule 2-601 (c).

Cross reference: Code, Courts Article, §6-408.

Source: This Rule is derived from former Rules 1076, 1077, 876, and 877.

Rule 8-606 was accompanied by the following Reporter's note.

There is an exception to the requirement that a mandate be issued 30 days after the filing of the court's opinion or entry of the court's order. Rule 8-207 (a)(6) provides that in certain cases, unless the mandate is delayed pursuant to Rule 8-605 (d) or unless otherwise directed by the court, the Clerk of the Court of Special Appeals shall issue the mandate upon the expiration of 15 days after the filing of the court's opinion or order. The Chief Judge of the Court of Special Appeals had suggested that a cross reference be added to Rule 8-606 (b) to indicate this, and the Subcommittee, with the input of the Legal Aid Bureau, has proposed new language

to be added to section (b) to address this issue.

The Chief Judge has requested that to conform to procedures in the Court of Special Appeals, language be added to section (d) of Rule 8-606 to provide that the return of the record to the lower court shall be deferred until any petition for issuance of a writ of certiorari is denied by the Court of Appeals, or until the Court of Special Appeals takes action if a petition for issuance of a writ of certiorari is granted. The Subcommittee recommends adding to section (d) a sentence to this effect.

The Vice Chair explained that the proposed change to Rule 8-606 also is key to the child access cases that are expedited under Rule 8-207. Rule 8-606 addresses the disposition of those cases regarding the mandate. The clerk issues the mandate upon the expiration of 15 days after the filing of the opinion or order of the Court of Special Appeals. This is appropriate for an expedited case. Rule 8-606 also addresses what happens when a petition for a writ of certiorari is being filed and whether the record should be sent back to the circuit court or retained in the clerk's office in the Court of Special Appeals until the Court of Appeals decides whether to grant or deny the petition. It makes a great deal of sense not to send the record back.

By consensus, the Committee approved Rule 8-606 as presented.

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