

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Fifty-Second Report to the Court of Appeals, transmitting thereby proposed new Rules 1-104, 2-232, 6-456, 6-464, 16-821, 16-822, 16-823, 16-824, 17-105.1 and proposed amendments to Rules 1-201, 1-202, 1-203, 1-204, 1-301, 1-311, 1-321, 1-322, 1-404, 2-101, 2-112, 2-121, 2-124, 2-126, 2-201, 2-211, 2-212, 2-213, 2-214, 2-221, 2-231, 2-241, 2-301, 2-302, 2-303, 2-304, 2-305, 2-311, 2-321, 2-322, 2-323, 2-324, 2-325, 2-326, 2-327, 2-401, 2-402, 2-403, 2-404, 2-411, 2-412, 2-414, 2-415, 2-418, 2-419, 2-421, 2-422, 2-424, 2-432, 2-433, 2-501, 2-504, 2-504.2, 2-506, 2-510, 2-511, 2-512, 2-519, 2-520, 2-521, 2-522, 2-532, 2-533, 2-534, 2-535, 2-541, 2-601, 2-602, 2-613, 2-632, 2-633, 2-644, 2-645, 2-648, 2-649, 3-101, 3-102, 3-112, 3-121, 3-124, 3-126, 3-201, 3-211, 3-212, 3-213, 3-214, 3-241, 3-301, 3-302, 3-303, 3-305, 3-307, 3-326, 3-506, 3-510, 3-519, 3-533, 3-534, 3-535, 3-601, 3-602, 3-632, 3-633, 3-645, 3-648, 3-649, 3-701, 3-731, 4-102, 4-213, 4-216, 4-217, 4-222, 4-231, 4-254, 4-261, 4-312, 4-313, 4-314, 4-326, 4-342, 4-349, 4-354, 4-505, 5-407, 5-412, 5-606, 6-105, 6-107, 6-122, 6-209, 6-211, 6-411, 6-452, 6-454, 6-455, 6-461, 7-112, 7-115, 8-114, 8-207, 8-301, 8-305, 8-431, 8-501, 8-503, 8-504, 8-608, 9-208, 10-202, 10-301, 12-103, 14-206, 14-306, 15-502, 15-504, 15-505, 16-101, 16-108, 16-401, 16-406, 16-723, 16-751, 16-760, 16-761, 16-771, 16-773, 16-775, 16-781,

16-808, 17-104, 17-105, 17-107, 17-108, and 17-109; Forms 4-217.1, 4-503.4, 4-504.1; and Appendix: Form Interrogatories, Form Nos. 3, 5, and 7 of the Maryland Rules of Procedure and Rules 6 and 9 of the Rules Governing Admission to the Bar of Maryland.

The Committee's One Hundred Fifty-Second Report and the proposed new rules and amendments are set forth below.

Interested persons are asked to consider the Committee's Report and proposed rules changes and to forward on or before September 22, 2003 any written comments they may wish to make to:

Sandra F. Haines, Esq.  
Reporter, Rules Committee  
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Crownsville, Maryland 21032-2030

ALEXANDER L. CUMMINGS  
Clerk  
Court of Appeals of Maryland

July 30, 2003

ONE HUNDRED FIFTY-SECOND REPORT  
OF THE  
STANDING COMMITTEE ON RULES  
OF PRACTICE AND PROCEDURE

The Honorable Robert M. Bell,  
Chief Judge  
The Honorable John C. Eldridge  
The Honorable Irma S. Raker  
The Honorable Alan M. Wilner  
The Honorable Dale R. Cathell  
The Honorable Glenn T. Harrell, Jr.  
The Honorable Lynne A. Battaglia,  
Judges  
The Court of Appeals of Maryland  
Robert C. Murphy Courts of  
Appeal Building  
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its One Hundred Fifty-Second Report, and recommends that the Court adopt the proposed rules changes transmitted with this Report. The proposed changes fall into eighteen categories. Following is a brief description of the principal proposals in each category.

In **Category One** are five rules pertaining to the transfer of actions between courts. Proposed amendments to Rules 2-101 and 3-101 allow a plaintiff who timely filed an action in the District Court that should have been filed in a circuit court, or vice versa, 30 days after the order of dismissal to file the action in the correct court. Amendments to the sections of Rules 2-327 and 3-326 that allow certain transfers of domestic violence

actions conform the terminology of the sections to recent Constitutional and statutory changes. An additional amendment to Rule 3-326, together with an amendment to Rule 2-326, implement the provisions of Chapter 275, Acts of 2003, concerning the transfer of an action for damages exceeding \$25,000 for a dishonored check from the District Court to an appropriate circuit court.

**Category Two** comprises a proposed amendment to Rule 2-231 and proposed new Rule 2-232. The amendment to Rule 2-231 allows a party to appeal an order of a circuit court granting or denying class action certification, and new Rule 2-232 adds a procedure for derivative actions by stockholders. Both are based on comparable federal rules, Fed. R. Civ. P. 23 (f) and 23.1, respectively.

**Category Three** contains proposed rules changes relating to discovery, summary judgment, and other pretrial procedure. Amendments to Rule 2-501 are proposed to encourage disposition of actions by summary judgment in appropriate cases and, together with amendments to Rule 2-415, discourage the use of "sham affidavits" to defeat motions for summary judgment. Amendments to section (b) of Rule 2-501 require greater specificity and documentation in a response to a motion for summary judgment and allow the court, on motion, to strike all or part of an affidavit or other statement under oath that contradicts a prior sworn statement of the affiant. Amendments to Rule 2-415 allow for changes to the form and substance of deposition testimony within thirty days after submission of the transcript to the deponent and provide for further deposition on the subject matter of any substantive changes.

An amendment limiting the length of depositions is proposed to be added to Rule 2-411, and a new section (b) allowing the court in a particular case to set limits on discovery that is otherwise permitted is proposed to be added to Rule 2-402. Also added to Rule 2-402 and to Rule 2-412, and described in detail in the Reporter's notes to those Rules, are new provisions concerning discovery from an expert witness and the fees and expenses of the expert. A proposed amendment to Rule 2-401 encourages parties to supply discovery materials in a word processing file or other electronic format, upon request. Amendments to section (a) of Rules 2-501, 2-421, 2-422, and 2-424 delete the phrase "at any time" to make clear that a motion for summary judgment or a discovery request may not be made at any time if the timing is not in accordance with a scheduling order entered under Rule 2-504. An amendment to Rule 2-504.2 adds to the list of matters that may be considered at a pretrial conference two categories consistent with those of Fed. R. Civ.

P. 26 (a) (3). New Committee notes proposed to be added to Rules 2-633 and 3-633 clarify that post-judgment discovery is in addition to pre-judgment discovery.

Additional Rules changes in Category Three are amendments to Rules 2-311, 8-431, 2-419, 2-432, 2-504, 4-261, 16-808, and Form Nos. 3 and 7 in the Appendix of Form Interrogatories, which are proposed as conforming amendments to the principal changes in the Category or as otherwise described in the Reporter's note that follows each Rule or Form.

Proposed Rules changes pertaining to jury trials are set forth in **Category Four**. The proposals include new provisions pertaining to the discharge of alternate jurors, the completion of advance questionnaires by jurors, the selection of the jury foreperson, and the use of juror notes and notepads. The six Rules in this Category that are proposed to be amended are Rules 2-512, 4-312, 4-314, 2-521, 4-326, and 5-606.

In **Category Five** are amendments to six rules pertaining to service of process and the time within which a defendant must file a response to an original pleading. Proposed amendments to Rules 3-102, 3-701, and 3-307 delete the term "statutory agent," which has caused some confusion among practitioners, and generally clarify provisions as to the setting of the original trial date and the filing of a notice of intention to defend. Amendments to Rules 2-321, 2-124, and 3-124 are proposed for the reasons stated in the Reporter's notes to those Rules.

**Category Six** comprises proposed amendments to Rule 4-216, Pretrial Release, and related amendments to Rules 4-213, 4-222, 4-231, and 4-349. Many of the proposals are in response to recommendations contained in the October 11, 2001 Report of the Pretrial Release Advisory Committee. Where the recommendation of the Rules Committee differs from that of the Advisory Committee, such as on the topics of the so-called "10% Option" and when a judicial officer must provide written reasons for a determination, the proposals are set forth as alternative versions in the Rule or noted in the Reporter's note that follows the Rule.

Rules changes pertaining to procedure in criminal causes, other than pretrial release procedures, are in **Category Seven**. Amendments to Rules 4-102, 4-217, 4-254, 4-313, 4-342, 4-354, and 4-505 and Forms 4-217.1, 4-503.4, and 4-504.1 are proposed for the reasons stated in the Reporter's note that follows each Rule or Form.

**Category Eight** consists of two new Rules proposed to be added to Title 6 and proposed amendments to ten existing Rules. New Rule 6-456 provides a form of consent for an extension of time to file a final report and make distribution in a modified administration of an estate. New Rule 6-464, based upon Rule 7-105, allows an orphans' court to strike a notice of appeal under certain circumstances. Proposed amendments to Rule 6-105 modify the definition of "certified mail" and add a definition of "petition." Provisions pertaining to limited orders to locate assets or to locate a will are proposed to be added to Rule 6-122. New sections (b) and (c) are proposed to be added to Rule 6-461 to allow motions for summary judgment and motions to alter, amend, or revise a final order to be filed in the orphans' court by following the procedure set forth in the applicable Rule in Title 2, rather than the procedure set forth in Rule 6-461 (d). Amendments to Rules 6-209, 6-211, 6-411, 6-452, 6-454, 6-455, and 6-107 are proposed for the reasons stated in the Reporter's note that follows each Rule, primarily to conform to statutory changes.

**Category Nine** consists of two Rules changes pertaining to *de novo* appeals in the circuit court. Proposed amendments to Rule 7-112 require the clerk of the circuit court to notify the clerk of the District Court when the circuit court enters a superseding judgment and add a procedure to solve the problem caused by the lack of a means to take custody of a defendant who has withdrawn or dismissed an appeal in circuit court after having been convicted in the District Court, sentenced to a term of confinement, and released pending appeal. A proposed amendment to Rule 7-115 makes clear that Rule 7-115 does not apply to *de novo* appeals.

Rules changes pertaining to practice in the Court of Appeals and Court of Special Appeals and the citation of opinions of the appellate courts are in **Category Ten**. An amendment to Rule 8-114 and proposed new Rule 1-104 are proposed to govern the citation of unreported appellate opinions. To address the problem of under-inclusion of material in the record extract, proposed amendments to Rule 8-501 include deleting from section (b) a provision that allows a party to rely on a part of the record that is not included in the record extract and adding to section (j) a provision that allows material inadvertently omitted from the record extract to be included in an appendix to a brief, including a reply brief. To facilitate reimbursement of expenses incurred by the Office of the Public Defender, a proposed amendment to Rule 8-608 requires the Clerk to identify if a transcript was paid for by that Office. Other Rules changes in Category Ten are amendments to Rules 8-207, 8-301, 8-305, 8-503, and 8-504, which are proposed for the reasons set forth in the Reporter's note following each Rule.

In **Category Eleven** are a proposed amendment to Rule 10-301 (d) that allows a certificate of the Administrator of the United States Department of Veterans Affairs stating that a person has been rated by the Department as disabled to be substituted for the physician's or psychologist's certificates otherwise required by the Rule and a conforming stylistic amendment to Rule 10-202.

**Category Twelve** contains proposed amendments to Rules 16-723, 16-751, 16-760, 16-761, 16-771, 16-773, 16-775, and 16-781. The amendments clarify that all records of an investigation by Bar Counsel, including the existence and content of any complaint, are confidential; add certain notice provisions; and allow Bar Counsel to file a Petition for Disciplinary or Remedial Action without prior approval of the Attorney Grievance Commission when an attorney has been disciplined or placed on inactive status in another jurisdiction or convicted of a serious crime.

**Category Thirteen** comprises new Rules 16-821, 16-822, 16-823, and 16-824. The proposed new Rules contain certain proscriptions and provide procedural details that apply to the performance of marriage ceremonies by judges. The Rules are based on the recommendations of the Conference of Circuit Judges.

In **Category Fourteen** are proposed amendments to two additional Rules in Title 16. Amendments to Rule 16-101, proposed at the request of the Conference of Circuit Judges, (1) provide for the recommendation of the Circuit Administrative Judge in the appointment process of county administrative judges, (2) clarify the supervisory role of the Circuit Administrative Judge, and (3) restate the provision relating to the appointment and discharge of court personnel in the event a majority of a bench is not attained in such matters. An amendment to Rule 16-406, proposed at the request of the Commission on Judicial Disabilities, permits the Commission or its designee access to videotape recordings of circuit court proceedings.

**Category Fifteen** consists of proposed new Rule 17-105.1 and proposed amendments to Rules 17-104, 17-105, 17-107, 17-108, 17-109, and 16-108. Amendments to Rule 17-104 broaden the scope of the continuing mediation-related requirements in the Rule and add new requirements for mediators in actions assigned to the Business and Technology Case Management Program. New Rule 17-105.1 defines "neutral expert" and addresses the selection of and confidentiality requirements applicable to a neutral expert in an alternative dispute resolution proceeding. A new section in Rule 17-107, together with a related amendment to Rule 16-108, establish a procedure for the approval of persons seeking designation to conduct alternative dispute resolution proceedings in actions assigned to the Business and Technology Case

Management Program. Amendments to Rule 17-108 provide that fee schedules for persons conducting alternative dispute proceedings are set by the circuit administrative judge, rather than the county administrative judge.

The two Rules changes in **Category Sixteen** are proposed at the request of the State Board of Law Examiners. Proposed amendments to Rules 6 and 9 of the Rules Governing Admission to the Bar of Maryland allow the Board additional time to process a petition to take an examination and modify the provisions pertaining to certification of eligibility to take the examination.

In **Category Seventeen** are amendments to Rules 1-201, 1-202, 1-203, 1-204, 1-301, 1-311, 1-321, 1-404, 2-112, 2-121, 2-126, 2-201, 2-211, 2-212, 2-213, 2-214, 2-221, 2-241, 2-301, 2-302, 2-303, 2-304, 2-305, 2-322, 2-323, 2-324, 2-325, 2-403, 2-404, 2-414, 2-418, 2-433, 2-506, 2-510, 2-511, 2-519, 2-520, 2-522, 2-532, 2-533, 2-534, 2-535, 2-601, 2-602, 2-613, 2-632, 2-648, 3-112, 3-121, 3-126, 3-201, 3-211, 3-212, 3-213, 3-214, 3-241, 3-301, 3-302, 3-303, 3-305, 3-506, 3-510, 3-519, 3-533, 3-534, 3-535, 3-601, 3-602, 3-632, 3-648, 15-504, and 15-505. All are proposed to clarify the source of Maryland Rules that are derived from or otherwise based on federal rules. Because some federal rules have been renumbered, the source notes to some Maryland Rules no longer are accurate. By adding to the source note the date of the version of the federal rule that corresponds to the Maryland Rule, the source notes are made historically accurate.

The final category, **Category Eighteen**, contains miscellaneous, mostly "housekeeping," amendments to sixteen Rules and one Form. Most of the proposed changes conform the Rule or Form to a statute, a case, or another Rule or clarify, correct, or restyle it. In this Category are Rules 1-322, 2-541, 2-644, 2-645, 3-645, 2-649, 3-649, 3-731, 5-407, 5-412, 9-208, 12-103, 14-206, 14-306, 15-502, and 16-401 and Form No. 5 in the Appendix of Form Interrogatories. Three of the proposals go beyond mere "housekeeping." The proposed amendment to Rule 1-322 makes clear that when a rule requires that a pleading, motion, or other paper be "filed," the pleading, motion, or other paper must be in writing and delivered to the clerk of the court or a judge of that court. The addition of the word "only" to subsection (b)(1) of Rule 2-541 is proposed to close a potential loophole that could provide a way around the limitations imposed by Rule 9-208. The proposed amendments to Rule 15-502 conform the Rule to the "separate document" requirement of Rule 2-601 and require that the reasons for the issuance or denial of an injunction be stated in writing or on the record.

For the guidance of the Court and the public, following each proposed rules change is a Reporter's Note describing the reasons for the proposal and any changes that would be effected in current law or practice. We caution that these Reporter's Notes were prepared initially for the benefit of the Rules Committee; they are not part of the Rules and have not been debated or approved by the Committee; and they are not to be regarded as any kind of official comment or interpretation. They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,

Joseph F. Murphy, Jr.  
Chairpersons

Linda M. Schuett  
Vice Chairperson

JFM/LMS:cdc

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-101 to allow a certain action to be filed in a circuit court within 30 days after a certain order of dismissal in the District Court and to make certain stylistic changes, as follows:

Rule 2-101. COMMENCEMENT OF ACTION

(a) Generally

A civil action is commenced by filing a complaint with a court.

(b) After Certain Dismissals by a Federal District Court or a Court of Another State

Except as otherwise provided by statute, if an action is filed in a ~~United States District Court~~ federal district court or a court of another state within the period of limitations prescribed by Maryland law and ~~the foreign that~~ court enters an order of dismissal (1) for lack of jurisdiction, (2) because the court declines to exercise jurisdiction, or (3) because the action is barred by the statute of limitations required to be applied by that court, an action filed in ~~this State~~ a circuit court within 30 days after the ~~foreign court's~~ order of dismissal shall be treated as timely filed in this State.

Cross reference: Code, Courts ~~and Judicial Proceedings~~ Article, §5-115.

(c) After Dismissal by the District Court for Lack of Subject Matter Jurisdiction

If an action is filed in the District Court of this State within the period of limitations prescribed by Maryland law and the District Court dismisses the action for lack of subject matter jurisdiction, an action filed in a circuit court within 30 days after the District Court enters the order of dismissal shall be treated as timely filed in the circuit court.

Source: This Rule is derived as follows:

Section (a) is derived from ~~FRCP 3~~ the 1937 version of Fed. R. Civ. P. 3 and former Rules 140 a and 170 a.

Section (b) is new.

Section (c) is new.

REPORTER'S NOTE

The proposed amendment to Rule 2-101 allows a plaintiff who has timely filed an action in the District Court that should have been filed in a circuit court to file a new complaint in the correct court within 30 days after an order of dismissal for lack of jurisdiction is entered in the District Court.

The Committee initially had considered a rule change that would give the District Court the discretion to transfer the action to a circuit court in a manner similar to the transfer that is allowed from a circuit court to the District Court under Rule 2-327 (a). The Committee believes that that approach is inadvisable due to the higher filing fees and more stringent pleading requirements in circuit court, as well as timing issues pertaining to the filing of the defendant's first responsive pleading to the complaint.

The Committee also has considered the problem of the timely filing in a circuit court of an action that is within the exclusive jurisdiction of the District Court. Although the Committee believes that under the circumstances described in Rule 2-327 (a) ("the [circuit] court determines that ... the action should not be dismissed") it may be an abuse of discretion not to transfer the action to the District Court (see, e.g., Safe Deposit Co. v. Cahn, 102 Md. 530 (1906) and Corkran v. Zoning Comm'r., 41 Md. App. 437 (1979)), the Committee also believes

it appropriate to put the onus for filing an action in the correct court on the party, rather than on the judiciary. Accordingly, the Committee recommends the addition of a new section (c) to Rule 3-101 to provide as to actions that were incorrectly filed in the circuit court a procedure similar to proposed new section (c) of Rule 2-101, which applies to actions that were incorrectly filed in the District Court.

Additionally, stylistic changes to Rules 2-101 and 3-101 are proposed.

The Committee also proposes the addition of a cross reference to Rule 3-101 (c) following subsection (a)(1) of Rule 2-327.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE--DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-101 to allow a certain action to be filed in the District Court within 30 days after a certain order of dismissal in a circuit court and to make certain stylistic changes, as follows:

Rule 3-101. COMMENCEMENT OF ACTION

(a) Generally

A civil action is commenced by filing a complaint with a court.

(b) After Certain Dismissals by a Federal District Court or a Court of Another State

Except as otherwise provided by statute, if an action is filed in a ~~United States District Court~~ federal district court or a court of another state within the period of limitations prescribed by Maryland law and ~~the foreign that~~ court enters an order of dismissal (1) for lack of jurisdiction, (2) because the court declines to exercise jurisdiction, or (3) because the action is barred by the statute of limitations required to be applied by that court, an action filed in ~~this State~~ the District Court within 30 days after the ~~foreign court's~~ order of dismissal shall be treated as timely filed in this State.

Cross reference: Code, Courts ~~and Judicial Proceedings~~ Article, §5-115.

(c) After Dismissal by the Circuit Court for Lack of Subject  
Matter Jurisdiction

If an action is filed in the circuit court within the  
period of limitations prescribed by Maryland law and the circuit  
court dismisses the action for lack of subject matter  
jurisdiction, an action filed in the District Court within 30  
days after the circuit court enters the order of dismissal shall  
be treated as timely filed in the District Court.

Source: This Rule is derived as follows:

Section (a) is derived from ~~FRCP~~ <sup>3</sup> the 1937 version of Fed. R.  
Civ. P. 3 and former M.D.R. 100.

Section (b) is new.

Section (c) is new.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule  
2-101.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-327 to add a certain cross reference and to conform subsection (a)(3) to a certain constitutional amendment and legislation, as follows:

Rule 2-327. TRANSFER OF ACTION

(a) Transfer to District Court

(1) If Circuit Court Lacks Jurisdiction

If an action within the exclusive jurisdiction of the District Court is filed in the circuit court but the court determines that in the interest of justice the action should not be dismissed, the court may transfer the action to the District Court sitting in the same county.

Cross reference: See Rule 3-101 (c) concerning complaints that are timely filed in the circuit court and dismissed for lack of subject matter jurisdiction.

(2) If Circuit Court Has Jurisdiction -- Generally

Except as otherwise provided in subsection (a)(3) of this Rule, the court may transfer an action within its jurisdiction to the District Court sitting in the same county if all parties to the action (A) consent to the transfer, (B) waive any right to a jury trial they currently may have and any right they may have to a jury trial following transfer to the District Court, including on appeal from any judgment entered, and (C)

make any amendments to the pleadings necessary to bring the action within the jurisdiction of the District Court.

(3) If Circuit Court Has Jurisdiction -- Domestic Violence Actions

(A) In an action under Code, Family Law Article, Title 4, Subtitle 5, after entering a temporary protective order ~~granting ex parte relief~~, a circuit court, on motion or on its own initiative, may transfer the action to the District Court for the protective order hearing if, after inquiry, the court finds that (i) there is no other action between the parties pending in the circuit court, (ii) the respondent has sought relief under Code, Family Law Article, Title 4, Subtitle 5, in the District Court, and (iii) in the interests of justice, the action should be heard in the District Court.

(B) In determining whether a hearing in the District Court is in the interests of justice, the court shall consider (i) the safety of each person eligible for relief, (ii) the convenience of the parties, (iii) the pendency of other actions involving the parties or children of the parties in one of the courts, (iv) whether a transfer will result in undue delay, (v) the services that may be available in or through each court, and (vi) the efficient operation of the courts.

(C) The consent of the parties is not required for a transfer under this subsection.

(D) After the action is transferred, the District Court

has jurisdiction for the purposes of enforcing and extending the temporary ~~ex parte~~ protective order as allowed by law.

Cross reference: See Code, Family Law Article, §4-505 (c) concerning the duration and extension of a temporary ~~ex parte~~ protective order.

. . .

#### REPORTER'S NOTE

Concerning the proposed new cross reference following subsection (a)(1) of Rule 2-327, see the Reporter's Note to the proposed amendment to Rule 2-101.

The proposed amendments to Rules 2-327 (a)(3) and 3-326 (c) conform the terminology of the Rules to a recent Constitutional amendment (Chapter 587, Acts of 2002), which was ratified by the voters in the November 2002 election, and implementing legislation (Chapter 235, Acts of 2002). The Constitutional amendment and amendments to Code, Family Law Article, Title 4, Subtitle 5 allow a District Court Commission to issue an "interim protective order" under certain circumstances when the District Court clerk's office is not open for business. Only a judge may issue a "temporary protective order" or a "final protective order."

Rules 2-327 (a)(3) and 3-326 (c) allow domestic violence actions to be transferred from the District Court to a circuit court, or vice versa, under certain circumstances. The amendments conform the Rules to the new "temporary protective order" and "final protective order" terminology.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-326 to conform section (c) to a certain Constitutional amendment and legislation and to add a new section (d) referring to actions for dishonored checks, as follows:

Rule 3-326. DISMISSAL OR TRANSFER OF ACTION

. . .

(c) Domestic Violence Action

(1) In an action under Code, Family Law Article, Title 4, Subtitle 5, after entering a temporary protective order ~~granting ex parte relief~~, the District Court, on motion or on its own initiative, may transfer the action to a circuit court for the final protective order hearing if, after inquiry, the District Court finds that (A) there is an action in the circuit court involving one or more of the parties in which there is an existing order or request for relief similar to that being sought in the District Court and (B) in the interests of justice, the action should be heard in the circuit court.

(2) In determining whether a hearing in the circuit court is in the interests of justice, the Court shall consider (A) the safety of each person eligible for relief, (B) the convenience of the parties, (C) the pendency of other actions involving the parties or children of the parties in one of the courts, (D)

whether a transfer will result in undue delay, (E) the services that may be available in or through each court, and (F) the efficient operation of the courts.

(3) The consent of the parties is not required for a transfer under this section.

(4) After the action is transferred, the circuit court has jurisdiction for the purposes of enforcing and extending the temporary ~~ex parte~~ protective order as allowed by law.

Cross reference: See Code, Family Law Article, §4-505 (c) concerning the duration and extension of a temporary ~~ex parte~~ protective order.

(d) Action for Dishonored Check

(1) Transfer to Circuit Court

In an action for damages exceeding \$25,000 for a dishonored check or other instrument pursuant to Code, Commercial Law Article, §15-802, the District Court shall transfer the action to an appropriate circuit court upon a separate written demand filed by a defendant within 10 days after the time for filing a notice of intention to defend pursuant to Rule 3-307. Failure to file a timely demand constitutes a waiver of the right to transfer the case to a circuit court.

(2) Transmittal of Record to Circuit Court

When a timely demand is filed, the clerk shall transmit the record to the circuit court within 15 days. At any time before the record is transmitted pursuant to this section, the District Court may determine on motion or on its own initiative

that the demand for transfer was not timely filed or that the

action was not entitled to be transferred pursuant to Code,  
Courts Article, §4-402 (f).

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 317.

Section (b) is derived from U.S. C. Title 28, §1404 (a).

Section (c) is new.

Section (d) is new.

#### REPORTER'S NOTE

Concerning the proposed amendment to section (c) of Rule 3-326, see the Reporter's note to the proposed amendment to Rule 2-327.

Chapter 275 (HB 97), Acts of 2003 provides that an action for damages for a dishonored check may be filed in the District Court regardless of the amount in controversy, and if the action for damages exceeds \$25,000, the defendant is allowed to transfer the action to an appropriate circuit court by filing a timely demand as prescribed by the Maryland Rules. Accordingly, a change to Rule 3-326 is being proposed that would include a new section (d) providing for a procedure to transfer an action for damages exceeding \$25,000 for a dishonored check to the circuit court. Also, a change to Rule 2-326 is being proposed so that the procedures for transferring a case to the circuit court on demand for a jury trial apply to transfer of a dishonored check action to the circuit court.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-326 by adding to section (a) language referring to section (d) of Rule 3-326, as follows:

Rule 2-326. CERTAIN TRANSFERS FROM DISTRICT COURT ~~ON DEMAND FOR JURY TRIAL~~

(a) Notice

Upon entry on the docket of an action transferred from the District Court pursuant to a demand for jury trial or a demand for transfer pursuant to section (d) of Rule 3-326, the clerk shall send to the plaintiff and each party ~~that~~ who has been served in the District Court action a notice that states the date of entry and the assigned docket reference and includes a "Notice to Defendant" in substantially the following form:

Notice to Defendant

If you are a "defendant," "counter-defendant," "cross defendant," or "third-party defendant" in this action and you wish to contest the case against you, you must file in this court an answer or other response to the complaint, counterclaim, cross-claim, or third-party claim within 30 days after the date of this notice, regardless of whether you filed a

notice of intention to defend or other  
response in the District Court.

Committee note: If an action is transferred and a defendant or third-party defendant has not been served with process, the burden is on the plaintiff or third-party plaintiff to obtain service, as if the action were originally filed in a circuit court.

(b) Answer or Other Response; Subsequent Proceedings

Regardless of whether a notice of intention to defend or other response was filed in the District Court, a defendant, counter-defendant, cross defendant, or third-party defendant shall file an answer or other response to the complaint, counterclaim, cross-claim, or third-party claim within 30 days after the clerk sends the notice required by section (a) of this Rule. Following the expiration of the 30-day period, the action shall thereafter proceed as if originally filed in the circuit court.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to the proposed amendments to Rule 3-326.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 200 - PARTIES

AMEND Rule 2-231 to add certain provisions concerning an appeal of the grant or denial of a class action certification and to make certain stylistic changes to the source note, as follows:

Rule 2-231. CLASS ACTIONS

(a) Prerequisites to a Class Action

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Cross reference: See Code, Courts Article, §4-402 (d), regarding aggregation of claims for jurisdictional amount.

(b) Class Actions Maintainable

Unless justice requires otherwise, an action may be maintained as a class action if the prerequisites of section (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to

individual members of the class that would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions, (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class, (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum, (D) the difficulties likely to be encountered in the management of a class action.

(c) Certification

On motion of any party or on the court's own initiative,

the court shall determine by order as soon as practicable after commencement of the action whether it is to be maintained as a class action. A hearing shall be granted if requested by any party. The order shall include the court's findings and reasons for certifying or refusing to certify the action as a class action. The order may be conditional and may be altered or amended before the decision on the merits.

(d) Partial Class Actions; Subclasses

When appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class.

(e) Notice

In any class action, the court may require notice pursuant to subsection (f) (2). In a class action maintained under subsection (b) (3), notice shall be given to members of the class in the manner the court directs. The notice shall advise that (1) the court will exclude from the class any member who so requests by a specified date, (2) the judgment, whether favorable or not, will include all members who do not request exclusion, and (3) any member who does not request exclusion and who desires to enter an appearance through counsel may do so.

(f) Orders in Conduct of Actions

In the conduct of actions to which this Rule applies, the court may enter appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition

or complication in the presentation of evidence or argument, (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in the manner the court directs to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action, (3) imposing conditions on the representative parties or intervenors, (4) requiring that the pleadings be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly, (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 2-504, and may be altered or amended as may be desirable from time to time.

(g) Discovery

For purposes of discovery, only representative parties shall be treated as parties. On motion, the court may allow discovery by or against any other member of the class.

(h) Dismissal or Compromise

A class action shall not be dismissed or compromised without the approval of the court. Notice of a proposed dismissal or compromise shall be given to all members of the class in the manner the court directs.

(i) Judgment

The judgment in an action maintained as a class action

under subsections (b) (1) and (2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subsection (b) (3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subsection (e) (1) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(j) Appeals

A party may appeal an order of a circuit court granting or denying class action certification under this Rule if a notice of appeal is filed within 30 days after entry of the order. An appeal does not stay proceedings in the circuit court unless the circuit court or the appellate court so orders.

Source: This Rule is derived as follows:

Section (a) is derived from ~~FRCP 23 (a)~~ the 1966 version of Fed. R. Civ. P. 23 (a) and former Rule 209 a.

Section (b) is derived from ~~FRCP 23 (b) (1), (2) and (3)~~ the 1966 version of Fed. R. Civ. P. 23 (b) (1), (2) and (3).

Section (c) is derived from ~~FRCP 23 (c) (1)~~ the 1966 version of Fed. R. Civ. P. 23 (c) (1).

Section (d) is derived from ~~FRCP 23 (c) (4)~~ the 1966 version of Fed. R. Civ. P. 23 (c) (4).

Section (e) is derived from ~~FRCP 23 (c) (2)~~ the 1966 version of Fed. R. Civ. P. 23 (c) (2).

Section (f) is derived from ~~FRCP 23 (d)~~ the 1966 version of Fed. R. Civ. P. 23 (d).

Section (g) is new.

Section (h) is derived from ~~FRCP 23 (e)~~ the 1966 version of Fed. R. Civ. P. 23 (e) and former Rule 209 d.

Section (i) is derived from ~~FRCP 23 (c) (3)~~ the 1966 version of Fed. R. Civ. P. 23 (c) (3).

Section (j) is derived from the 1998 version of Fed. R. Civ. P. 23 (f).

REPORTER'S NOTE

The Rules Committee recommends amending Rule 2-231 by adding a new section dealing with interlocutory appeals of orders granting or denying class action certification. This conforms the Rule to Fed. R. Civ. P. 23, Class Actions, which was amended in 1998 by the addition of a similar provision. The federal decision to allow interlocutory appeals from orders denying or granting class action certification stemmed from an effort to avoid the situation (1) where a plaintiff who has been denied certification is forced to proceed to final judgment on the merits of an individual claim that is far smaller than the costs of litigation or (2) where a defendant in a class action suit which has been certified is forced to settle rather than incur the costs of defending a class action and run the risk of potentially ruinous liability. Based on the federal experience, James K. Archibald, Esq. wrote a letter suggesting that Maryland Rule 2-231 be conformed to the federal rule. He noted that currently in Maryland, interlocutory appeals of class action certification rulings can only be accomplished by a petition for a writ of mandamus and that following the federal procedure would provide significant guidance to practitioners and to the Maryland courts.

The Committee recommends that adoption of the proposed Rule change be coordinated with a legislative initiative for a like amendment to Code, Courts Article, §12-303, Appeals from Certain Interlocutory Orders.

The stylistic change to the source note distinguishes the source of proposed new section (j) (the 1998 version of Fed. R. Civ. P. 23) from the source of the other sections of the Rule (in part, the 1966 version of Fed. R. Civ. P. 23).

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 200 - PARTIES

ADD new Rule 2-232, as follows:

Rule 2-232. DERIVATIVE ACTIONS

In a derivative action brought by one or more stockholders or members to enforce a right of a corporation or of an unincorporated association that has failed to enforce a right that properly may be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a stockholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership devolved on the plaintiff by operation of law after the transaction. The complaint shall also allege with particularity (1) any efforts made by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the stockholders or members, and (2) the reasons for the plaintiff's failure to obtain the action or for not making the effort. The court shall dismiss the derivative action if it finds that the plaintiff does not fairly and adequately represent the interests of the stockholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised by the parties without the approval of the court, and notice of the proposed dismissal or

compromise shall be given to stockholders or members in such manner as the court directs.

Source: This Rule is new and derived from the 1987 version of Fed. R. Civ. P. 23.1.

REPORTER'S NOTE

The Rules Committee recommends the addition of a new rule based on Fed. R. Civ. P. 23.1, Derivative Actions by Shareholders. Because of increased stockholder litigation in Maryland, the Committee believes that it would be beneficial to have a rule governing stockholder derivative actions. See for example, *Werbowsky v. Collomb*, 362 Md. 581 (2001).

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-501 to delete the phrase "at any time" from section (a), to revise the requirements of a response to a motion for summary judgment, to require the court to strike a certain statement under oath under certain circumstances, to delete certain language from section (f), and to make certain stylistic changes, as follows:

Rule 2-501. MOTION FOR SUMMARY JUDGMENT

(a) Motion

Any party may file ~~at any time~~ a motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. The motion shall be supported by affidavit if it is (1) filed before the day on which the adverse party's initial pleading or motion is filed or (2) based on facts not contained in the record.

(b) Response

~~The A~~ response to a motion for summary judgment shall ~~identify with particularity the material facts that are disputed. When a motion for summary judgment is supported by an affidavit or other statement under oath,~~ be in writing and shall (1) identify with particularity each material fact as to which it is

contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an opposing party who desires to controvert any fact contained in it may not rest solely upon allegations contained in the pleadings, but shall support the response by an affidavit or other written statement under oath. A party may file a motion to strike all or part of an affidavit or statement that contradicts (1) the deposition testimony of the person making the affidavit or statement unless the contradiction has been resolved by changes made within the time allowed by Rule 2-415 (d), or (2) any other prior sworn statement of the affiant, including testimony at a prior hearing or an answer to an interrogatory. If the court finds that the affidavit or statement is contradictory, the court shall strike it unless the court determines that manifest injustice would result.

(c) Form of Affidavit

An affidavit supporting or opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

(d) Affidavit of Defense Not Available

If the court is satisfied from the affidavit of a party opposing a motion for summary judgment that the facts essential to justify the opposition cannot be set forth for reasons stated in the affidavit, the court may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be conducted or may enter any other order that justice requires.

(e) Entry of Judgment

The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law. By order pursuant to Rule 2-602 (b), the court may direct entry of judgment (1) for or against one or more but less than all of the parties to the action, (2) upon one or more but less than all of the claims presented by a party to the action, or (3) for some but less than all of the amount requested when the claim for relief is for money only and the court reserves disposition of the balance of the amount requested. If the judgment is entered against a party in default for failure to appear in the action, the clerk promptly shall send a copy of the judgment to that party at the party's last known address appearing in the court file.

Cross reference: Section 200 of the Soldiers' and Sailors' Relief Act of 1940, 50 U.S.C. Appendix, §520, imposes specific requirements that must be fulfilled before a default judgment may be entered.

(f) Order Specifying Issues or Facts Not in Dispute

When a ruling ~~upon~~ on a motion for summary judgment does not dispose of the entire action and a trial is necessary, the court, ~~on the basis of the pleadings, depositions, answers to interrogatories, admissions, and affidavits and, if necessary, after interrogating counsel on the record,~~ may enter an order specifying the issues or facts that are not in genuine dispute. The order controls the subsequent course of the action but may be modified by the court to prevent manifest injustice.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 610 a 1 and 3.

Section (b) is new.

Section (c) is derived from former Rule 610 b.

Section (d) is derived from former Rule 610 d 2.

Section (e) is derived in part from former Rules 610 d 1 and 611 and is ~~7~~ in part ~~7~~ new.

Section (f) is derived from former Rule 610 d 4.

#### REPORTER'S NOTE

As a method of encouraging judges to grant more motions for summary judgment, the Rules Committee recommends the addition of language to section (b) which states affirmatively that the response to a motion for summary judgment must contain specific references to transcripts or other documents that demonstrate a genuine dispute of material fact. The new language is derived from District Court Local Rule 56.1 (b) for the District of Nebraska. The Committee also recommends deleting the introductory language of the second sentence of section (b), because the Committee feels that the requirement to cite to specific facts in the record that demonstrate a genuine dispute should apply even when the motion for summary judgment is not supported by a statement under oath. The second sentence of section (b) addresses when the response must be supported by affidavit or other statement under oath, which, as the rule is proposed to be amended, would include the responding party's assertion of a material fact that the moving party contends does not exist. The proposed amendments to Rule 2-501 (b), in conjunction with proposed amendments to Rule 2-415 (d), are intended to respond to the invitation of the Court of Appeals in *Pittman v. Atlantic Realty Co.*, 359 Md. 513 (2000) for the Rules Committee to study the issue of "sham affidavits" and "recommend

appropriate adjustments in other Rules of Procedure if the trial courts were given the discretion under Rule 2-501 to strike a sham affidavit." *Id.* at 542.

Additionally, certain deletions and other amendments to sections (a) and (f) are proposed.

The deletion of the phrase "at any time" from section (a) is in response to *Pittman, supra*, and makes clear that the motion may not be filed "at any time" if the filing is not in accordance with a scheduling order entered under Rule 2-504. The addition of the phrase "or ... based on facts not contained in the record" makes clear that the affidavit requirement of Rule 2-311 (f), applicable to motions, generally, also applies to motions for summary judgment.

The deletion of language from section (f) conforms that section to section (e), from which similar language previously was deleted. The change of the word "upon" to "on" is stylistic, only.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-311 to delete certain language from section  
(d), as follows:

Rule 2-311. MOTIONS

. . .

(d) Affidavit

A motion or a response to a motion that is based on facts not contained in the record ~~or papers on file in the proceeding~~ shall be supported by affidavit and accompanied by any papers on which it is based.

. . .

REPORTER'S NOTE

The proposed amendments to Rules 2-311 and 8-431 conform the language of the Rules to the terminology of a proposed amendment to Rule 2-501 (a) by deleting from Rule 2-311 (d) the phrase "or papers on file in the proceeding" as superfluous. Any such paper is part of the record.

MARYLAND RULES OF PROCEDURE  
TITLE 8 - APPELLATE REVIEW IN COURT OF APPEALS  
AND COURT OF SPECIAL APPEALS  
CHAPTER 400 - PRELIMINARY MOTIONS

AMEND Rule 8-431 to delete certain language from section  
(c), as follows:

Rule 8-431. MOTIONS

. . .

(c) Affidavit

A motion or a response to a motion that is based on facts  
not contained in the record ~~or papers on file in the proceeding~~  
shall be supported by affidavit and accompanied by any papers on  
which it is based.

. . .

REPORTER'S NOTE

See the Reporter's Note to the proposed amendment to Rule  
2-311.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND Rule 2-401 to add language to the Committee note after subsection (d) (2) that encourages parties to provide discovery material in an electronic format upon request and to make a certain stylistic change, as follows:

Rule 2-401. GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery Methods

Parties may obtain discovery by one or more of the following methods: (1) depositions upon oral examination or written questions, (2) written interrogatories, (3) production or inspection of documents or other tangible things or permission to enter upon land or other property, (4) mental or physical examinations, and (5) requests for admission of facts and genuineness of documents.

(b) Sequence and Timing of Discovery

Unless the court orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery. The court may at any time order that discovery be completed by a specified date or time, which shall be a reasonable time after the action is at issue.

(c) Discovery Plan

The parties are encouraged to reach agreement on a plan for the scheduling and completion of discovery.

(d) Discovery Material

(1) Defined

For purposes of this section, the term "discovery material" means a notice of deposition, an objection to the form of a notice of deposition, the questions for a deposition upon written questions, an objection to the form of the questions for a deposition upon written questions, a deposition transcript, interrogatories, a response to interrogatories, a request for discovery of documents and property, a response to a request for discovery of documents and property, a request for admission of facts and genuineness of documents, and a response to a request for admission of facts and genuineness of documents.

(2) Not to be Filed with Court

Except as otherwise provided in these rules or by order of court, discovery material shall not be filed with the court. Instead, the party generating the discovery material shall serve the discovery material on all other parties and shall file with the court a notice stating (A) the type of discovery material served, (B) the date and manner of service, and (C) the party or person served. The party generating the discovery material shall retain the original and shall make it available for inspection by any other party. This section does not preclude the use of discovery material at trial or as exhibits to support or oppose

motions.

Cross reference: Rule 2-311 (c).

Committee note: Rule 1-321 requires that the notice be served on all parties. Rule 1-323 requires that it contain a certificate of service. Parties exchanging discovery material are encouraged to comply with requests that the material be provided in a word processing file or other electronic format.

(e) Supplementation of Responses

Except in the case of a deposition, a party who has responded to a request or order for discovery and who obtains further material information before trial shall supplement the response promptly.

(f) Substitution of a Party

Substitution of a party pursuant to Rule 2-241 does not affect the conduct of discovery previously commenced or the use of the product of discovery previously conducted.

(g) Stipulations Regarding Discovery Procedure

Unless the court orders otherwise, the parties by written stipulation may (1) provide that a deposition may be taken before any person, at any time or place, upon any notice, and in any manner and, when so taken, may be used like other depositions and (2) modify the procedures provided by these rules for other methods of discovery, except that the parties may not modify any discovery procedure if the effect of the modification would be to impair or delay a scheduled court proceeding or conference or delay the time specified in a court order for filing a motion or other paper.

Source: This Rule is derived as follows:

Section (a) is derived from ~~FRCP 26 (a)~~ the 1980 version of Fed. R. Civ. P. 26 (a).

Section (b) is derived from ~~FRCP 26 (d)~~ the 1980 version of Fed. R. Civ. P. 26 (d).

Section (c) is new.

Section (d) is new.

Section (e) is derived from former Rule 417 a 3.

Section (f) is derived from former Rule 413 a 5.

Section (g) is derived in part from ~~FRCP 29~~ the 1993 version of Fed. R. Civ. P. 29 and former Rule 404 and is in part new.

#### REPORTER'S NOTE

In response to a suggestion from Michael C. Worsham, Esq., the Rules Committee recommends the addition of language to the Committee note after subsection (d) (2) to encourage parties exchanging discovery material to provide the material in a word processing file or other electronic format, upon request. Mr. Worsham pointed out that providing an electronic copy of a document would save typing and document scanning, which is especially helpful in a small law office or the office of a solo practitioner.

The Committee also suggests that this recommendation be incorporated into the Discovery Guidelines of the Maryland State Bar Association.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND Rule 2-402 to add a new section (b) concerning limitations on discovery, to expand the scope of discovery by interrogatory concerning expert witnesses, to specify that any discovery beyond interrogatories concerning expert witnesses will consist of depositions, to add a new category of expert witness, to add certain provisions concerning expert witness fees, and to add a Committee note, as follows:

Rule 2-402. SCOPE OF DISCOVERY

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(a) Generally

A party may obtain discovery regarding any matter, not privileged, including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter, if the matter sought is relevant to the subject matter involved in the action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. It is not ground for objection that the information sought is already known to or otherwise obtainable by the party seeking discovery or that the

information will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. An interrogatory or deposition question otherwise proper is not objectionable merely because the response involves an opinion or contention that relates to fact or the application of law to fact.

(b) Limitations

In a particular case, the court, on motion or on its own initiative and after consultation with the parties, by order may limit or alter the limits in these rules on the length and number of depositions, the number of interrogatories, the number of requests for production of documents, and the number of requests for admissions. The court shall limit the frequency or extent of use of the discovery methods otherwise permitted under these rules if it determines that (1) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (3) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the complexity of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

~~(b)~~ (c) Insurance Agreement

A party may obtain discovery of the existence and contents

of any insurance agreement under which any person carrying on an insurance business might be liable to satisfy part or all of a judgment that might be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this section, an application for insurance shall not be treated as part of an insurance agreement.

~~(c)~~ (d) Trial Preparation - Materials

Subject to the provisions of sections ~~(d)~~ (e) and ~~(e)~~ (f) of this Rule, a party may obtain discovery of documents or other tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the materials are discoverable under section (a) of this Rule and that the party seeking discovery has substantial need for the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of these materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

~~(d)~~ (e) Trial Preparation - Party's or Witness' Own Statement

A party may obtain a statement concerning the action or

its subject matter previously made by that party without the showing required under section ~~(c)~~ (d) of this Rule. A person who is not a party may obtain, or may authorize in writing a party to obtain, a statement concerning the action or its subject matter previously made by that person without the showing required under section ~~(c)~~ (d) of this Rule. For purposes of this section, a statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

~~(e)~~ (f) Trial Preparation--Experts

(1) Expected to Be Called at Trial

(A) Generally

~~Discovery of findings and opinions of experts, otherwise discoverable under the provisions of section (a) of this Rule and acquired or developed in anticipation of litigation or for trial, may be obtained without the showing required under section (c) of this Rule only as follows: (A) A party by interrogatories may require any other party to identify each person, other than a party, whom the other party expects to call as an expert witness at trial~~;~~ to state the subject matter on which the expert is expected to testify~~;~~ to state the substance of the findings and the opinions to which the expert is expected to testify and a summary of the grounds for each opinion~~;~~ and to produce any~~

written report made by the expert concerning those findings and opinions; ~~(B) a party may obtain further discovery, by deposition or otherwise, of the findings and opinions to which an expert is expected to testify at trial, including any written reports made by the expert concerning those findings and opinions. A party also may take the deposition of the expert.~~

Committee note: This subsection requires a party to disclose the name and address of any witness who may give an expert opinion at trial, whether or not that person was retained in anticipation of litigation or for trial. Cf. Dorsey v. Nold, 362 Md. 241 (2001). See Rule 104.10 of the Rules of the U.S. District Court for the District of Maryland. The subsection does not require, however, that a party name himself or herself as an expert. See Turgut v. Levin, 79 Md. App. 279 (1989).

(B) Additional Disclosure With Respect to Experts Retained in Anticipation of Litigation or for Trial

In addition to the discovery permitted under subsection (f)(1)(A) of this Rule, a party by interrogatories may require the other party to summarize the qualifications of a person expected to be called as an expert witness at trial and whose findings and opinions were acquired or obtained in anticipation of litigation or for trial, to produce any available list of publications written by that expert, and to state the terms of the expert's compensation.

(2) Not Expected to Be Called at Trial

When an expert has been retained by a party in anticipation of litigation or preparation for trial but is not expected to be called as a witness at trial, discovery of the identity, findings, and opinions of the expert may be obtained

only if a showing of the kind required by section ~~(c)~~ (d) of this Rule is made.

(3) Fees and Expenses of Deposition

Unless the court orders otherwise on the ground of manifest injustice ~~would result~~, the party seeking discovery: (A) ~~the court shall require that the party seeking discovery shall~~ pay ~~the~~ each expert a reasonable fee, at a rate not exceeding the rate charged by the expert for time spent in responding to discovery under subsections (e) (1) (B) and (e) (2) of this Rule preparing for a deposition, for the time spent in attending a deposition and for the time and expenses reasonably incurred in travel to and from the deposition; and (B) ~~with respect to~~ discovery obtained under subsection ~~(e) (1) (B)~~ of this Rule the court may require, and with respect to discovery obtained under subsection ~~(e) (2)~~ of this Rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining findings and opinions from experts when obtaining discovery under subsection (f) (2) of this Rule, shall pay each expert a reasonable fee for preparing for the deposition.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 400 c and ~~FRCP~~ the 1980 version of Fed. R. Civ. P. 33 (b).

Section (b) is new and is derived from the 2000 version of Fed. R. Civ. P. 26 (b) (2).

Section ~~(b)~~ (c) is new and is derived from ~~FRCP~~ the 1980 version of Fed. R. Civ. P. 26 (b) (2).

Section ~~(c)~~ (d) is derived from former Rule 400 d.

Section ~~(d)~~ (e) is derived from former Rule 400 e.

Section ~~(e)~~ (f)

Subsection (f)(1) is derived in part from FRCPP the 1980 version of Fed. R. Civ. P. 26 (b)(4) and former Rule 400 f and is in part new.

Subsection (f)(2) is derived from FRCPP the 1980 version of Fed. R. Civ. P. 26 (b)(4) and former Rule U12 b.

Subsection (f)(3) is derived in part from FRCPP the 1980 version of Fed. R. Civ. P. 26 (b)(4) and is in part new.

#### REPORTER'S NOTE

The Rules Committee recommends the addition of a new section (b) to Rule 2-402, allowing the court by order in a particular case to alter the limits provided for in the Discovery Rules. This provision is derived from Fed. R. Civ. P. 26 (b)(2).

Rule 2-402 (f) is proposed to be modified and expanded. The language "acquired or developed in anticipation of litigation or for trial" has been deleted from subsection (f)(1)(A) to eliminate, as to the provisions of that subsection, the distinction between an expert who was specifically acquired to testify for the trial and one who was otherwise involved in the case and is expected to testify. This solves the problem in the case of *Dorsey v. Nold*, 362 Md. 241 (2001), in which the court made that distinction in terms of the medical examiner in a case who did not develop his opinion as to the cause of death in anticipation of litigation or for trial and thus did not have to be disclosed to the other side as a witness. Subsection (f)(1)(A) clarifies that further discovery (beyond interrogatories) will consist of the deposition of the expert. See Fed. R. Civ. P. 26 (b)(4)(A), allowing a party to "depose any person who has been identified as an expert whose opinions may be presented at trial."

The Committee proposes the addition of a Committee note following subsection (f)(1)(A) to make clear that the subsection requires a party to disclose each person, other than the party himself or herself, who may give an expert opinion at trial, regardless of whether that person was retained in anticipation of litigation or for trial. This concept is borrowed from Rule 104.10 of the Rules of the U.S. District Court for the District of Maryland, which uses the term "hybrid fact/expert witness."

A new subsection (f)(1)(B) sets forth additional provisions for disclosures with respect to persons expected to be called as expert witnesses at trial whose findings and opinions were acquired or obtained in anticipation of litigation or for trial.

Rule 2-402 (f) (3) is proposed to be amended with respect to the allocation of expert fees and expenses. The fee and expense provisions set forth in the amendment are applicable "unless the court orders otherwise on the ground of manifest injustice." Instead of the vague allowance of a fee for time spent "in responding to discovery," subsection (f) (3) (A) authorizes a fee only for time spent in attending the deposition and in traveling to and from the deposition, plus travel expenses. Subsection (f) (3) (A) further limits the rate that a party seeking discovery must pay to an expert for attending a deposition to the rate charged by the expert for time spent preparing for the deposition. This is similar to the policy reflected in Local Rule 104.11.a. of the Rules of the United States District Court for the District of Maryland.

Additionally, with respect to the rare occurrence of discovery that is allowed under subsection (f) (2), subsection (f) (3) (B) requires the party seeking discovery to pay the expert a reasonable fee for preparing for the deposition.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND Rule 2-411 to provide generally for a seven-hour limitation on the duration of a deposition and to add language referring to section (i) of Rule 2-415, as follows:

Rule 2-411. DEPOSITION - RIGHT TO TAKE

Any party to an action may cause the testimony of a person, whether or not a party, to be taken by deposition for the purpose of discovery or for use as evidence in the action or for both purposes. Leave of court must be obtained to take a deposition (a) before the earliest day on which any defendant's initial pleading or motion is required; ~~or (b) that is longer than one seven-hour day; (c) of an individual confined in prison; or (b) (d) of an individual who has previously been deposed in the same action; or (c) of an individual confined in prison unless further deposition is permitted under Rule 2-415 (i) because substantive changes have been made to the deposition transcript.~~ Leave of court may be granted on such terms as the court prescribes.

Source: This Rule is derived from former Rule 401 and the 2000 version of Fed. R. Civ. P. 30 (d)(2).

REPORTER'S NOTE

A proposed amendment to Rule 2-411 adds a new provision that limits the duration of a deposition to one day of seven hours, with additional time allowed by the court under certain

circumstances. This would make the Rule consistent with Fed. R. Civ. P. 30 (d) (2).

Proposed new section (i) of Rule 2-415 allows a party to serve notice of a further deposition on a deponent who files a correction sheet with substantive changes. This procedure is an exception to part (c) of Rule 2-411, which requires leave of court before a party can take a deposition of an individual who has previously been deposed in the same action. The Rules Committee recommends that language be added to Rule 2-411 that refers to the exception in Rule 2-415 (i).

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND Rule 2-412 to add a new section (e) concerning depositions of treating physicians, to redesignate former section (e) as section (f), and to make certain stylistic changes, as follows:

Rule 2-412. DEPOSITION--NOTICE

. . .

(e) Treating Physician

A party serving a notice to take the deposition of a treating physician shall confer with opposing counsel and in the notice advise the physician of the total number of hours that will be required for the deposition, including travel time. The treating physician (1) may not charge a fee for attending the deposition that is higher than the hourly fee customarily charged by the physician for in-office patient consultation, (2) may not charge for any hours exceeding the time estimate set forth in the notice if the deposition is completed within the estimate, and (3) may terminate the deposition when the estimated time has elapsed.

Cross reference: See Rule 2-402 (f).

~~(e)~~ (f) Objection to Form

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 405 a 1 and a 2 (a) and ~~FRCP 30 (b) (1)~~ the 1980 version of Fed. R. Civ. P. 30 (b) (1).

Section (b) is derived from Rule 410 c.

Section (c) is derived from ~~FRCP 30 (b) (5)~~ the 1980 version of Fed. R. Civ. P. 30 (b) (5).

Section (d) is derived from ~~FRCP 30 (b) (6)~~ the 1980 version of Fed. R. Civ. P. 30 (b) (6) and former Rule 405 a 2 (b).

Section (e) is new.

Section ~~(e)~~ (f) is derived from former Rule 412 a.

#### REPORTER'S NOTE

A treating physician may be considered both a fact witness and an expert whose loss of time in deposition is recognized as deserving of compensation.

New section (e) is derived in part from Local Rule 104.11.b. of the Rules of the United States District Court for the District of Maryland. It is intended to require a discovering party (1) to reimburse the physician for time spent attending a deposition and traveling to and from the deposition and (2) to estimate the total number of hours that will be required. The section also provides that the physician may not charge a fee higher than the hourly fee customarily charged for in-office patient consultation, and it allows the physician to terminate the deposition when the estimated time has elapsed.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND Rule 2-415 to allow for changes in form and substance of testimony contained in deposition transcripts and to add a new section (i) providing a procedure for further deposition following substantive change to a transcript, as follows:

Rule 2-415. DEPOSITION -- PROCEDURE

. . .

(d) ~~Correction and Signature~~ Signature and Changes

~~The officer shall submit the transcript to the deponent for correction and signing, unless~~ Unless changes and signing are waived by the deponent and the parties, the officer shall submit the transcript to the deponent, accompanied by a notice in substantially the following form:

[Caption of case]

NOTICE TO                   [name of deponent]

The enclosed transcript of your deposition in the above-captioned case is submitted to you on [date of submission of the transcript to the deponent] for your signature and any corrections or other changes you wish to make. All corrections and other changes will become part of your sworn testimony.

After you have read the transcript, sign it and, if you are making changes, attach to the transcript a separate correction sheet stating the changes and the reason why each

change is being made. Return the signed transcript and any correction sheet to [name and address of officer before whom the deposition was taken] no later than 30 days after the date stated above.

If you fail to return the signed transcript and any correction sheet within the time allowed, the transcript may be used as if signed by you. See Rules 2-415 and 2-501 of the Maryland Rules of Procedure.

~~Any corrections desired by the deponent to conform the transcript to the testimony shall be made on a separate sheet and attached by the officer to the transcript. Corrections made by the deponent become part of the transcript unless the court orders otherwise on a motion to suppress under section (i) of this Rule. If the transcript is not signed by the deponent within 30 days after its submission, the officer shall sign it and state why the deponent has not signed. Within 30 days after the date the officer mails or otherwise submits the transcript to the deponent, the deponent shall (1) sign the transcript and (2) note any changes to the form or substance of the testimony in the transcript on a separate correction sheet, stating the reason why each change is being made. The officer promptly shall serve a copy of the correction sheet on the parties and attach the correction sheet to the transcript. The changes contained on the correction sheet become part of the transcript. If the deponent does not timely sign the transcript, the officer shall sign the transcript, certifying the date that the transcript was submitted to the deponent with the notice required by this section and that the transcript was not signed and returned within the time~~

allowed. The transcript may then be used as if signed by the deponent, unless the court finds, on a motion to suppress under section ~~(i)~~ (j) of this Rule, that the reason for ~~refusal~~ the failure to sign requires rejection of all or part of the transcript.

Cross reference: See Rule 2-501 (b) for the consequences of filing an affidavit or other written statement under oath that contradicts deposition testimony that was not changed within the time allowed by this section.

. . .

(i) Further Deposition Upon Substantive Changes to Transcript

If a correction sheet contains substantive changes, any party may serve notice of a further deposition of the deponent limited to the subject matter of the substantive changes made by the deponent unless the court, on motion of a party pursuant to Rule 2-403, enters a protective order precluding the further deposition.

~~(i)~~ (j) Motions to Suppress

An objection to the manner in which testimony is transcribed, videotaped, or audiotaped, or to the manner in which a transcript is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer is waived unless a motion to suppress all or part of the deposition is made promptly after the defect is or with due diligence might have been ascertained. ~~An objection to corrections made to the transcript by the deponent is waived unless a motion to suppress all or part of the corrections is filed within sufficient time~~

~~before trial to allow for a ruling by the court and, if appropriate, further deposition.~~ In ruling on a motion to suppress, the court may grant leave to any party to depose the deponent further on terms and conditions the court deems appropriate.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 409 c.

Section (b) is derived from former Rule 409 a.

Section (c) is derived from former Rule 411 b 3.

Section (d) is derived in part from former Rules 411 a and 412 e and in part from the 1993 version of Fed. R. Civ. P. 30 (e).

Section (e) is derived from former Rule 411 b 1, 2 and 5.

Section (f) is derived from former Rule 411 b 4.

Section (g) is derived from former Rules 409 c 2, and 412 c 1 and 2.

Section (h) is derived from former Rule 422 a 2.

Section (i) is new.

Section ~~(i)~~ (j) is derived from former Rule 412 d and e.

#### REPORTER'S NOTE

The Rules Committee recommends that section (d) of Rule 2-415 be amended to allow for changes to form and substance of testimony contained in deposition transcripts. The amendments are derived from Fed. R. Civ. P. 30 (e). The proposed amendments to Rule 2-415(d), in conjunction with proposed amendments to Rule 2-501, are intended to respond to the invitation of the Court of Appeals in *Pittman v. Atlantic Realty Co.*, 359 Md. 513 (2000) for the Rules Committee to study the issue of "sham affidavits" and "recommend appropriate adjustments in other Rules of Procedure if the trial courts were given the discretion under Rule 2-501 to strike a sham affidavit." *Id.* at 542.

If changes and signing are not waived by the deponent and the parties, the deponent, within 30 days after the transcript is mailed or submitted to him or her, may make changes to the transcript and shall sign it. The changes may be to the form or substance of the testimony and must be set forth on a separate correction sheet, together with the reason for each change. If the deponent does not timely sign the transcript, the officer before whom the deposition was taken shall sign it, certifying the date that the transcript, together with the notice required by section (d), was submitted to the deponent and that the

transcript was not signed and returned within the allowed time. The requirement in current section (d) that the officer state why the deponent has not signed is proposed to be deleted because the officer usually does not know why.

Proposed new section (i), pertaining to substantive changes, allows a further deposition on the subject matter of the change and a mechanism for objecting to the further deposition by filing a motion for a protective order pursuant to Rule 2-403.

Section (j), pertaining to objections as to the manner of recording and the manner of preparing transcripts, retains the motion to suppress as the mechanism for filing objections concerning these matters. The sentence pertaining to motions to suppress corrections is proposed to be deleted in light of the proposed changes set forth above.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND Rule 2-419 to allow a deposition transcript and any correction sheets to be used to contradict or impeach the testimony of a deponent and to conform the Rule to proposed amendments to Rules 2-412 and 2-415, as follows:

Rule 2-419. DEPOSITION -- USE

(a) When May be Used

(1) Contradiction and Impeachment

A party may use a deposition transcript and any correction sheets to ~~may be used by any party for the purpose of contradicting or impeaching~~ contradict or impeach the testimony of the deponent as a witness.

(2) By Adverse Party

The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, managing agent, or a person designated under Rule 2-412 (d) to testify on behalf of a public or private corporation, partnership, association, or governmental agency which is a party may be used by an adverse party for any purpose.

(3) Witness Not Available or Exceptional Circumstances

The deposition of a witness, whether or not a party, may be used by any party for any purpose against any other party who

was present or represented at the taking of the deposition or who had due notice thereof, if the court finds:

(A) that the witness is dead; or

(B) that the witness is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(C) that the witness is unable to attend or testify because of age, mental incapacity, sickness, infirmity, or imprisonment; or

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon motion and reasonable notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) Videotape Deposition of Expert

A videotape deposition of a treating or consulting physician or of any expert witness may be used for any purpose even though the witness is available to testify if the notice of that deposition specified that it was to be taken for use at trial.

. . .

(d) Objection to Admissibility

Subject to Rules 2-412 ~~(e)~~ (f), 2-415 (g) and ~~(i)~~ (j), 2-416 (g), and 2-417 (c), an objection may be made at a hearing

or trial to receiving in evidence all or part of a deposition for any reason that would require the exclusion of the evidence if the witness were then present and testifying.

. . .

#### REPORTER'S NOTE

The Rules Committee recommends the addition of language to section (a) of Rule 2-419 to state that a deposition transcript and any correction sheets attached to it may be used to impeach or contradict the deponent's testimony. As amended, the Rule allows not only the corrected deposition but also the original deposition to be used for these purposes. For example, if in the original deposition the deponent states a certain fact and then files a correction sheet that states the opposite of that fact, both versions of the deponent's testimony may be used for the purposes set forth in section (a).

The proposed amendment to section (d) of Rule 2-419 conforms the Rule to proposed changes to Rules 2-412 and 2-415.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND Rule 2-421 to delete the phrase "at any time" from section (a) and to make a certain stylistic change, as follows:

Rule 2-421. INTERROGATORIES TO PARTIES

(a) Availability; Number

Any party may serve ~~at any time~~ written interrogatories directed to any other party. Unless the court orders otherwise, a party may serve one or more sets having a cumulative total of not more than 30 interrogatories to be answered by the same party. Interrogatories, however grouped, combined, or arranged and even though subsidiary or incidental to or dependent upon other interrogatories, shall be counted separately. Each form interrogatory contained in the Appendix to these Rules shall count as a single interrogatory.

. . .

Source: This Rule is derived as follows:

Section (a) is derived in part from former Rule 417 a 1 and 2 and is in part new.

Section (b) is derived from former Rule 417 b 1 and 2.

Section (c) is derived from former Rule 417 f and ~~FRCP 33 (c)~~ the 1980 version of Fed. R. Civ. P. 33 (c).

Section (d) is derived from former Rule 417 d.

REPORTER'S NOTE

The proposed deletion of the phrase "at any time" from section (a) of Rules 2-421 and 2-422 is in response to *Pittman v.*

*Atlantic Relaty Co.*, 359 Md. 513 (2000) and makes clear that interrogatories and requests for discovery of documents and property may not be served "at any time" if the timing is not in accordance with a scheduling order entered under Rule 2-504. Similar amendments to section (a) of Rule 2-501, Motion for Summary Judgment, and Rule 2-424, Admission of Facts and Genuineness of Documents, also are proposed by the Committee.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND Rule 2-422 to delete the phrase "at any time" from section (a) and to make a certain stylistic change, as follows:

Rule 2-422. DISCOVERY OF DOCUMENTS AND PROPERTY

(a) Scope

Any party may serve ~~at any time~~ one or more requests to any other party (1) as to items that are in the possession, custody, or control of the party upon whom the request is served, to produce and permit the party making the request, or someone acting on the party's behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 2-402 (a); or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the property, within the scope of Rule 2-402 (a).

. . .

Source: This Rule is derived from former Rule 419 and ~~FRCP 34~~  
the 1980 version of Fed. R. Civ. P. 34.

REPORTER'S NOTE

See the Reporter's Note to the proposed amendment to Rule  
2-421.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND Rule 2-424 to delete the phrase "at any time" from section (a), to add language to section (b) requiring parties responding to requests for admissions to set forth the request with the response, and to make a certain stylistic change, as follows:

Rule 2-424. ADMISSION OF FACTS AND GENUINENESS OF DOCUMENTS

(a) Request for Admission

A party may serve ~~at any time~~ one or more written requests to any other party for the admission of (1) the genuineness of any relevant documents described in or exhibited with the request, or (2) the truth of any relevant matters of fact set forth in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested shall be separately set forth.

(b) Response

Each matter of which an admission is requested shall be deemed admitted unless, within 30 days after service of the request or within 15 days after the date on which that party's initial pleading or motion is required, whichever is later, the party to whom the request is directed serves a response signed by

the party or the party's attorney. As to each matter of which an admission is requested, the response shall set forth each request for admission and shall specify an objection, or shall admit or deny the matter, or shall set forth in detail the reason why the respondent cannot truthfully admit or deny it. The reasons for any objection shall be stated. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and deny or qualify the remainder. A respondent may not give lack of information or knowledge as a reason for failure to admit or deny unless the respondent states that after reasonable inquiry the information known or readily obtainable by the respondent is insufficient to enable the respondent to admit or deny. A party who considers that a matter of which an admission is requested presents a genuine issue for trial may not, on that ground alone, object to the request but the party may, subject to the provisions of section (e) of this Rule, deny the matter or set forth reasons for not being able to admit or deny it.

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 421 a and ~~FRCP 36 (a)~~ the 1970 version of Fed. R. Civ. P. 36 (a).

Section (b) is derived from former Rule 421 b 1 and 2 and ~~FRCP 36 (a)~~ the 1970 version of Fed. R. Civ. P. 36 (a).

Section (c) is derived from former Rule 421 d.

Section (d) is derived from ~~FRCP 36 (b)~~ the 1970 version of Fed. R. Civ. P. 36 (b) and former Rule 421 c and f.

Section (e) is derived from former Rule 421 e.

REPORTER'S NOTE

The proposed deletion of the phrase "at any time" from section (a) of Rule 2-424 is in response to *Pittman v. Atlantic Relaty Co.*, 359 Md. 513 (2000), and makes clear that a request may not be filed "at any time" if the filing is not in accordance with a scheduling order entered under Rule 2-504.

The Committee also recommends an amendment to section (b) of the Rule, suggested by Michael C. Worsham, Esq. The proposed amendment adds language that requires a party responding to a request for admissions to include the original request with the response. This will make the responses more meaningful for all parties and the court. Mr. Worsham also points out that this procedure will allow parties to attach the response including the original request for admission to motions or responses to motions.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND 2-432 (c) for conformity with proposed amendments to Rule 2-402, as follows:

Rule 2-432. MOTIONS UPON FAILURE TO PROVIDE DISCOVERY

. . .

(c) By Nonparty to Compel Production of Statement

If a party fails to comply with a request of a nonparty made pursuant to Rule 2-402 ~~(d)~~ (e) for production of a statement, the nonparty may move for an order compelling its production.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 2-432 conforms the Rule to proposed changes to Rule 2-402.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-504 (b) (1) (B) for conformity with proposed amendments to Rule 2-402, as follows:

Rule 2-504. SCHEDULING ORDER

. . .

(b) Contents of Scheduling Order

(1) Required

A scheduling order shall contain:

(A) an assignment of the action to an appropriate scheduling category of a differentiated case management system established pursuant to Rule 16-202;

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

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

(D) a date by which all discovery must be completed;

(E) a date by which all dispositive motions must be filed;

and

(F) any other matter resolved at a scheduling conference

held pursuant to Rule 2-504.1.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 2-504 conforms the Rule to proposed changes to Rule 2-402.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-504.2 by adding language to subsection (b) (8) and adding new subsections (b) (9) and (b) (10) to conform the Rule to Fed. R. Civ. P. 26 (a) (3), as follows:

Rule 2-504.2. PRETRIAL CONFERENCE

(a) Generally

The court, on motion or on its own initiative, may direct all parties to appear before it for a conference before trial. If the court directs, each party shall file not later than five days before the conference a written statement addressing the matters listed in section (b) of this Rule.

(b) Matters to be Considered

The following matters may be considered at a pretrial conference:

(1) A brief statement by each plaintiff of the facts to be relied on in support of a claim;

(2) A brief statement by each defendant of the facts to be relied on as a defense to a claim;

(3) Similar statements as to any counterclaims, cross-claim, or third-party claim;

(4) Any amendments required of the pleadings;

(5) Simplification or limitation of issues;

(6) Stipulations of fact or, if unable to agree, a statement of matters of which any party requests an admission;

(7) The details of the damage claimed or any other relief sought as of the date of the pretrial conference;

(8) A listing of the documents and records to be offered in evidence by each party at the trial, other than those expected to be used solely for impeachment, indicating which documents the parties agree may be offered in evidence without the usual authentication and separately identifying those that the party may offer only if the need arises;

(9) A listing by each party of the name, address, and telephone number of each non-expert whom the party expects to call as a witness at trial (other than those expected to be used solely for impeachment) separately identifying those whom the party may call only if the need arises;

(10) A listing by each party of those witnesses whose testimony is expected to be presented by means of a deposition (other than those expected to be used solely for impeachment) and a transcript of the pertinent portions of any deposition testimony that was not taken stenographically;

~~(9)~~ (11) A listing by each party of the names and specialties of experts the party proposes to call as witnesses;

~~(10)~~ (12) Any other matter that the party wishes to raise at the conference.

(c) Pretrial Order

The court shall enter an order that recites in detail the

decisions made at the conference. The order controls the subsequent course of the action but may be modified by the court to prevent manifest injustice.

Source: Prior to 1994, this Rule was numbered Rule 2-504. It is derived from former Rule 504 a, b, and c, ~~and FRCP 16~~ the 1937 version of Fed. R. Civ. P. 16, and the 2000 version of Fed. R. Civ. P. 26 (a) (3).

#### REPORTER'S NOTE

The Rules Committee recommends that categories of information consistent with those of Fed. R. Civ. P. 26 (a) (3) be disclosed to parties and that this be accomplished by amending the list of matters that can be considered at the pretrial conference.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 2-633 to add a Committee note following section (a) to clarify that post-judgment discovery is in addition to pre-judgment discovery, as follows:

Rule 2-633. DISCOVERY IN AID OF ENFORCEMENT

. . .

(a) Methods

A judgment creditor may obtain discovery to aid enforcement of a money judgment (1) by use of depositions, interrogatories, and requests for documents, and (2) by examination before a judge or an examiner as provided in section (b) of this Rule.

Committee note: The discovery permitted by this Rule is in addition to the discovery permitted before the entry of judgment, and the limitations set forth in Rules 2-411 (d) and 2-421 (a) apply separately to each. Thus, a second deposition of an individual previously deposed before the entry of judgment may be taken after the entry of judgment without leave of court. A second post-judgment deposition of that individual, however, would require leave of court. *Melnick v. New Plan Realty*, 89 Md. App. 435 (1991). Furthermore, leave of court is not required under Rule 2-421 to serve interrogatories on a judgment debtor solely because 30 interrogatories were served upon that party before the entry of judgment.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 2-633 makes clear that discovery in aid of enforcement is allowed in addition to any pre-judgment discovery that may have been obtained. As stated in the proposed new Committee note following section (a), a second deposition of an individual previously deposed before the entry of judgment may be taken after the entry of judgment without the leave of court otherwise required by Rule 2-411. A second post-judgment deposition of that individual, however, would require leave of court. *Melnick v. New Plan Realty*, 89 Md. App. 435 (1991). Furthermore, leave of court is not required under Rule 2-421 to serve interrogatories on a judgment debtor solely because 30 interrogatories were served upon that party before the entry of judgment.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 3-633 to add a Committee note following section (a) to clarify that post-judgment discovery is in addition to pre-judgment discovery, as follows:

Rule 3-633. DISCOVERY IN AID OF ENFORCEMENT

(a) Methods

A judgment creditor may obtain discovery to aid enforcement of a money judgment (1) by use of interrogatories pursuant to Rule 3-421, and (2) by examination before a judge or an examiner as provided in section (b) of this Rule.

Committee note: The discovery permitted by this Rule is in addition to the discovery permitted before the entry of judgment, and the limitations set forth in Rule 3-421 (b) apply separately to each. Thus, leave of court is not required under Rule 3-421 to serve one set of not more than 15 interrogatories on a judgment debtor solely because interrogatories were served upon that party before the entry of judgment.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 3-633 makes clear that discovery in aid of enforcement is allowed in addition to any pre-judgment discovery that may have been obtained. As stated in the proposed new Committee note following section (a), leave of court is not required under Rule 3-421 to serve one set of not more than 15 interrogatories on a judgment debtor solely because interrogatories were served upon that party before the entry of judgment.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-261 (h) (4) for conformity with proposed amendments to Rules 2-412 and 2-415, as follows:

Rule 4-261. DEPOSITIONS

. . .

(h) Use

(1) Substantive Evidence

At a hearing or trial, all or part of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the court finds that the witness: (A) is dead, or (B) is unable to attend or testify because of age, mental incapacity, sickness, or infirmity, or (C) is present but refuses to testify and cannot be compelled to testify, or (D) is absent from the hearing or trial and that the party offering the deposition has been unable to procure the witness' attendance by subpoena or other reasonable means, unless the absence was procured by the party offering the deposition.

(2) Impeachment

At a hearing or trial, a deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness to the extent permitted by the rules of evidence.

(3) Partial Use

If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce at that time any other part that in fairness ought to be considered with the part offered, so far as otherwise admissible under the rules of evidence, and any party may introduce any other part in accordance with this Rule.

(4) Objection to Admissibility

Subject to Rules 2-412 ~~(e)~~ (f), 2-415 (g) and ~~(h)~~ (j), 2-416 (g), and 2-417 (c), an objection may be made at the hearing or trial to receiving in evidence all or part of a deposition for any reason that would require the exclusion of the evidence if the witness were then present and testifying.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 4-261 conforms the Rule to proposed changes to Rules 2-412 and 2-415.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-808 (g) (1) for conformity with proposed amendments to Rule 2-402, as follows:

Rule 16-808. PROCEEDINGS BEFORE COMMISSION

. . .

(g) Exchange of Information

(1) Upon request of the judge at any time after service of charges upon the judge, Investigative Counsel shall promptly (A) allow the judge to inspect the Commission Record and to copy all evidence accumulated during the investigation and all statements as defined in Rule 2-402 ~~(d)~~ (e) and (B) provide to the judge summaries or reports of all oral statements for which contemporaneously recorded substantially verbatim recitals do not exist, and

(2) Not later than 30 days before the date set for the hearing, Investigative Counsel and the judge shall each provide to the other a list of the names, addresses, and telephone numbers of the witnesses that each intends to call and copies of the documents that each intends to introduce in evidence at the hearing.

(3) Discovery is governed by Title 2, Chapter 400 of these Rules, except that the Chair of the Commission, rather than the

court, may limit the scope of discovery, enter protective orders permitted by Rule 2-403, and resolve other discovery issues.

(4) When disability of the judge is an issue, on its own initiative or on motion for good cause, the Chair of the Commission may order the judge to submit to a mental or physical examination pursuant to Rule 2-423.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 16-808 conforms the Rule to proposed changes to Rule 2-402.

MARYLAND RULES OF PROCEDURE

APPENDIX: FORMS

FORM INTERROGATORIES

AMEND Form No. 3 -- General Interrogatories, to conform Standard General Interrogatory No. 2 to an amendment to Rule 2-402 which expands the scope of discovery by interrogatory concerning expert witnesses, as follows:

Form No. 3 - General Interrogatories

**Interrogatories**

1. **Identify** each **person**, other than a **person** intended to be called as an expert witness at trial, having discoverable information that tends to support a position that you have taken or intend to take in this action, including any claim for damages, and state the subject matter of the information possessed by that **person**. (Standard General Interrogatory No. 1.)

2. **Identify** each **person** whom you expect to call as an expert witness at trial, state the subject matter on which the expert is expected to testify, state the substance of the findings and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and, with respect to an expert whose findings and opinions were acquired in anticipation of litigation or for trial, summarize the qualifications of the

expert, state the terms of the expert's compensation, and attach to your answers any available list of publications written by the expert and any written report made by the expert concerning those the expert's findings and opinions. (Standard General Interrogatory No. 2.)

3. If you intend to rely upon any **documents** or other tangible things to support a position that you have taken or intend to take in the action, including any claim for damages, provide a brief description, by category and location, of all such **documents** and other tangible things, and **identify** all **persons** having possession, custody, or control of them.

(Standard General Interrogatory No. 3.)

4. Itemize and show how you calculate any economic damages claimed by you in this action, and describe any non-economic damages claimed. (Standard General Interrogatory No. 4.)

5. If any **person** carrying on an insurance business might be liable to satisfy part or all of a judgment that might be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment, **identify** that **person**, state the applicable policy limits of any insurance agreement under which the **person** might be liable, and describe any question or challenge raised by the **person** relating to coverage for this action. (Standard General Interrogatory No. 5.)

**Committee note:** These interrogatories are general in nature and are designed to be used in a broad range of cases.

REPORTER'S NOTE

The proposed amendment to Standard General Interrogatory No. 2 conforms the language of that Interrogatory to the language of the proposed amendment to Rule 2-402 (f) (1) (B), which allows a party by interrogatories (1) to require the other party to summarize the qualifications of an expert, (2) to produce any available list of publications written by the expert, and (3) to state the terms of the expert's compensation, all of which apply when the expert is one whose findings and opinions were acquired or obtained in anticipation of litigation or for trial.

MARYLAND RULES OF PROCEDURE

APPENDIX: FORMS

FORM INTERROGATORIES

AMEND Form No. 7 - Motor Vehicle Tort Interrogatories, for conformity with proposed amendments to Rule 2-402, as follows:

**Form 7. Motor Vehicle Tort Interrogatories.**

**Interrogatories**

. . .

12. **Identify** all **persons** who have given you "statements," as that term is defined in Rule 2-402 ~~(d)~~ (e), concerning the action or its subject matter. For each statement, state the date on which it was given and **identify** the custodian. (Standard Motor Vehicle Tort Interrogatory No. 12.)

. . .

REPORTER'S NOTE

The proposed amendment to Form No. 7 conforms the Form to proposed changes to Rule 2-402.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-512 to change a certain provision concerning the discharge of alternate jurors, to add a new section (d) that provides for an advance questionnaire to be completed by prospective jurors, to delete a certain phrase concerning the identification of jurors, and to clarify that the jury foreperson may be selected either by the court or by the jury, as follows:

Rule 2-512. JURY SELECTION

(a) Challenge to the Array

A party may challenge the array of jurors on the ground that its members were not selected, drawn, or summoned according to law or on any other ground that would disqualify the panel as a whole. A challenge to the array shall be made and determined before any individual juror from that array is examined, except that the court for good cause may permit it to be made after the jury is sworn but before any evidence is received.

(b) Alternate Jurors

(1) Generally

The court may direct that one or more jurors be called and impanelled to sit as alternate jurors. Any juror who, before the time the ~~jury retires to consider its verdict,~~ juror's service is completed, becomes or is found to be unable or

disqualified to perform a juror's duty shall be replaced by an alternate juror in the order of selection. An alternate juror shall be drawn in the same manner, have the same qualifications, be subject to the same examination, take the same oath, and have the same functions, powers, facilities, and privileges as a juror. An alternate juror who does not replace a juror shall be discharged ~~when the jury retires to consider its verdict~~ at such time as the court concludes that the juror's service is completed.

Cross reference: See Rule 2-511 (b).

(2) Retaining Alternate Jurors

The court may retain alternate jurors after the jury retires to deliberate. The court shall ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew.

(c) Jury List

Before the examination of jurors, each party shall be provided with a list of jurors that includes the name, age, sex, education, occupation, and occupation of spouse of each juror and any other information required by the county jury plan. When the county jury plan requires the address of a juror, the address need not include the house or box number.

(d) Advance Questionnaire

Before the jury selection process takes place, the court

may direct that prospective jurors answer questions in writing under oath. Before the questionnaire is submitted to the prospective jurors, the court shall give the parties a reasonable opportunity to propose questions to be included in the questionnaire and to object to questions proposed by another party or the court. Except as otherwise provided in this section or ordered by the court, the responses are confidential and not available for public inspection. The court may require appropriate safeguards to protect against the disclosure of the identities of the prospective jurors, including identification of responses to the questionnaires only by juror numbers. The court shall provide the responses to each party before beginning the jury selection process. The court shall give the parties an opportunity to be heard before it excuses a prospective juror on the basis of a fact-specific, case-related response. The Clerk of the Court shall pay the cost of the questionnaires.

Committee note: The use of advance questionnaires is recommended in complex or multi-defendant cases. The questionnaire is intended to reduce the time required for the examination of jurors under section (e) of this Rule and respect the privacy of jurors who may be reluctant to respond to certain questions in open court.

~~(d)~~ (e) Examination of Jurors

The court may permit the parties to conduct an examination of jurors or may itself conduct the examination after considering questions proposed by the parties. If the court conducts the examination, it may permit the parties to supplement the examination by further inquiry or may itself submit to the jurors

additional questions proposed by the parties. The jurors' responses to any examination shall be under oath. Upon request of any party the court shall direct the clerk to call the roll of the panel and to request each juror to stand and be identified ~~when called by name.~~

~~(e)~~ (f) Challenges for Cause

A party may challenge an individual juror for cause. A challenge for cause shall be made and determined before the jury is sworn, or thereafter for good cause shown.

~~(f)~~ (g) Additional Jurors

When the number of jurors of the regular panel may be insufficient to allow for selection of a jury, the court may direct that additional jurors be summoned at random from the qualified jury wheel and thereafter at random in a manner provided by statute.

~~(g)~~ (h) Designation of List of Qualified Jurors

Before the exercise of peremptory challenges, the court shall designate from the jury list those jurors who have qualified after examination. The number designated shall be sufficient to provide the number of jurors and alternates to be sworn after allowing for the exercise of peremptory challenges. The court shall at the same time prescribe the order to be followed in selecting the jurors and alternate jurors from the list.

~~(h)~~ (i) Peremptory Challenges

Each party is permitted four peremptory challenges plus

one peremptory challenge for each group of three or less alternate jurors to be impanelled. For purposes of this section, several plaintiffs or several defendants shall be considered as a single party unless the court determines that adverse or hostile interests between plaintiffs or between defendants justify allowing to each of them separate peremptory challenges not exceeding the number available to a single party. The parties shall simultaneously exercise their peremptory challenges by striking from the list.

~~(i)~~ (j) Impanelling the Jury

The jurors and any alternates to be impanelled shall be called from the qualified jurors remaining on the list in the order previously designated by the court and shall be sworn. The court shall either designate a juror as ~~foreman~~ foreperson or direct that the jurors select a foreperson.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 754 a and is consistent with former Rule 543 c.

Section (b) is derived from former Rule 751 b and is consistent with former Rule 543 b 3.

Section (c) is new.

Section (d) is new.

Section ~~(d)~~ (e) is derived from former Rules 752 and 543 d.

Section ~~(e)~~ (f) is derived from former Rule 754 b.

Section ~~(f)~~ (g) is consistent with former Rule 543 a 5 and 6.

Section ~~(g)~~ (h) is new with exception of the last sentence which is derived from former Rule 753 b 1.

Section ~~(h)~~ (i) is derived from former Rule 543 a 3 and 4.

Section ~~(i)~~ (j) is derived from the last sentence of former Rule 753 b 3 and former Rule 751 d.

#### REPORTER'S NOTE

Amendments to Rules 2-512 and 4-312 are proposed by the Rules Committee.

The Committee proposes a change as to when an alternate juror is discharged, allowing the judge to keep the alternates as such until all of the jurors have been discharged. If, for example, in a case in which punitive damages may be awarded, one of the original jurors becomes ill and is unable to serve during the punitive damage phase of the case, the alternate would be available to serve in place of that juror.

At the request of the Council on Jury Use and Management, the Committee also recommends the addition of a new subsection that goes one step further and expressly allows an alternate juror to replace a juror who, during deliberations, becomes unable or disqualified to serve. The Committee notes that the addition reflects a change in the policy underlying the current rule as enunciated in Hayes v. State, 355 Md. 615 (1999), a change that would be coming "through the normal rule-making process." Id. at 635. Proposed new subsection (b)(2) of Rule 2-512 and subsection (b)(3)(C) of Rule 4-312 that implement the Council's suggested change are based on Fed. R. Crim. P. 24 (c)(2).

The Committee is recommending that Rules 2-512 and 4-312 be amended to add to each Rule a provision for an advance questionnaire for jurors, based on the recommendation of the Council on Jury Use and Management. One of the benefits of the questionnaire is the protection of privacy for potential jurors who will be able to answer questions, which may be of a personal nature, in writing instead of orally in front of an entire array of jurors. Another benefit is a reduction in the amount of time needed for the examination of jurors under Rules 2-512 (e) and 4-312 (e).

Additional proposed amendments to the two Rules allow jurors to be identified by a method other than by the juror's name during a roll call, and the amendments make clear that the jury foreperson may be selected either by the court or by the jury.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-312 to change a certain provision concerning the discharge of alternate jurors, to add a new section (d) that provides for an advance questionnaire to be completed by prospective jurors, to delete a certain phrase concerning the identification of jurors, and to clarify that the jury foreperson may be selected either by the court or by the jury, as follows:

Rule 4-312. JURY SELECTION

(a) Challenge to the Array

A party may challenge the array of jurors on the ground that its members were not selected, drawn, or summoned according to law or on any other ground that would disqualify the panel as a whole. A challenge to the array shall be made and determined before any individual juror from that array is examined, except that the court for good cause may permit it to be made after the jury is sworn but before any evidence is received.

(b) Alternate Jurors

(1) Generally

An alternate juror shall be drawn in the same manner, have the same qualifications, be subject to the same examination, take the same oath, and have the same functions, powers, facilities, and privileges as a juror.

(2) Capital Cases

In cases in which the death penalty may be imposed, the court shall appoint and retain alternate jurors as required by Code, Criminal Law Article, §2-303 (d).

(3) Non-Capital Cases

(A) Applicability

Subsection (b) (3) of this Rule applies in cases other than cases in which the death penalty may be imposed.

(B) Generally

~~In all other cases, the~~ The court may direct that one or more jurors be called and impanelled to sit as alternate jurors. Any juror who, before the time the ~~jury retires to consider its verdict~~ juror's service is completed, becomes or is found to be unable or disqualified to perform a juror's duty, shall be replaced by an alternate juror in the order of selection. An alternate juror who does not replace a juror shall be discharged ~~when the jury retires to consider its verdict at~~ such time as the court concludes that the juror's service is completed.

(C) Retaining Alternate Jurors

The court may retain alternate jurors after the jury retires to deliberate. The court shall ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew.

(c) Jury List

Before the examination of jurors, each party shall be provided with a list of jurors that includes the name, age, sex, education, and occupation of each juror, the occupation of each juror's spouse, and any other information required by the county jury plan. When the county jury plan requires the address of a juror, the address shall be limited to the city or town and zip code and shall not include the juror's street address or box number, unless otherwise ordered by the court.

(d) Advance Questionnaire

Before the jury selection process takes place, the court may direct that prospective jurors answer questions in writing under oath. Before the questionnaire is submitted to the prospective jurors, the court shall give the parties a reasonable opportunity to propose questions to be included in the questionnaire and to object to questions proposed by another party or the court. Except as otherwise provided in this section or ordered by the court, the responses are confidential and not available for public inspection. The court may require appropriate safeguards to protect against the disclosure of the identities of the prospective jurors, including identification of responses to the questionnaires only by juror numbers. The court shall provide the responses to each party before beginning the jury selection process. The court shall give the parties an opportunity to be heard before it excuses a prospective juror on the basis of a fact-specific, case-related response. The Clerk

of the Court shall pay the cost of the questionnaires.

Committee note: The use of advance questionnaires is recommended in complex, multi-defendant, or death penalty cases. The questionnaire is intended to reduce the time required for the examination of jurors under section (e) of this Rule and respect the privacy of jurors who may be reluctant to respond to certain questions in open court.

~~(d)~~ (e) Examination of Jurors

The court may permit the parties to conduct an examination of prospective jurors or may itself conduct the examination after considering questions proposed by the parties. If the court conducts the examination, it may permit the parties to supplement the examination by further inquiry or may itself submit to the jurors additional questions proposed by the parties. The jurors' responses to any examination shall be under oath. Upon request of any party the court shall direct the clerk to call the roll of the panel and to request each juror to stand and be identified ~~when called by name.~~

~~(e)~~ (f) Challenges for Cause

A party may challenge an individual juror for cause. A challenge for cause shall be made and determined before the jury is sworn, or thereafter for good cause shown.

~~(f)~~ (g) Additional Jurors

When the number of jurors of the regular panel may be insufficient to allow for selection of a jury, the court may direct that additional jurors be summoned at random from the qualified jury wheel and thereafter at random in a manner provided by statute.

~~(g)~~ (h) Designation of List of Qualified Jurors

Before the exercise of peremptory challenges, the court shall designate from the jury list those jurors who have qualified after examination. The number designated shall be sufficient to provide the number of jurors and alternates to be sworn after allowing for the exercise of peremptory challenges pursuant to Rule 4-313. The court shall at the same time prescribe the order to be followed in selecting the jurors and alternate jurors from the list.

~~(h)~~ (i) Impanelling the Jury

The jurors and any alternates to be impanelled shall be called from the qualified jurors remaining on the list in the order previously designated by the court and shall be sworn. The court shall either designate a juror as ~~foreman~~ foreperson or direct that the jurors select a foreperson.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 754 a.

Section (b) is derived from former Rule 754 b.

Section (c) is new.

Section (d) is new.

Section ~~(d)~~ (e) is derived from former Rule 752.

Section ~~(e)~~ (f) is derived from former Rule 754 b.

Section ~~(f)~~ (g) is new.

Section ~~(g)~~ (h) is derived from former Rule 753 b 1.

Section ~~(h)~~ (i) is derived from former Rule 751 c and d.

REPORTER'S NOTE

See the Reporter's Note to the proposed amendments to Rule 2-512.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-314 to conform it to the relettering of Rule 4-312, as follows:

Rule 4-314. DEFENSE OF NOT CRIMINALLY RESPONSIBLE

. . .

(b) Procedure for Bifurcated Trial

(1) Generally

For purposes of this Rule, a bifurcated trial is a single continuous trial in two stages.

(2) Sequence

The issue of guilt shall be tried first. The issue of criminal responsibility shall be tried as soon as practicable after the jury returns a verdict of guilty on any charge. The trial shall not be recessed except for good cause shown.

(3) Examination of Jurors

The court shall inform prospective jurors before examining them pursuant to Rule 4-312 ~~(d)~~ (e) that the issues of guilt or innocence and whether, if guilty, the defendant is criminally responsible will be tried in two stages. The examination of prospective jurors shall encompass all issues raised.

(4) Appointment of Alternate Jurors

The court shall appoint at least two alternate jurors, who shall be retained throughout the trial.

(5) Trial of Issue of Criminal Responsibility

(A) Except as otherwise provided in paragraph (B) or (C) of this subsection, the issue of criminal responsibility shall be tried before the same jury that tried the issue of guilt. Any juror who dies, becomes incapacitated or disqualified, or is otherwise discharged before the jury begins to deliberate in the criminal responsibility stage shall be replaced by an alternate juror in the order of selection.

(B) The defendant may move to have the issue of criminal responsibility tried without a jury by the judge who presided over the first stage of the trial. The court shall grant a motion made by the defendant unless it finds and states on the record a compelling reason to deny the motion.

(C) If an appellate court affirms the judgment of guilt but remands for a new trial on the issue of criminal responsibility, that issue shall be re-tried by a jury impaneled for the purpose or by the court pursuant to paragraph (B) of this subsection.

(6) Order of Proof

(A) Evidence of mental disorder or mental retardation as defined in Code, Health General Article, §12-108 shall not be admissible in the guilt stage of the trial for the purpose of establishing the defense of lack of criminal responsibility. This evidence shall be admissible for that purpose only in the second

stage following a verdict of guilty.

(B) In the criminal responsibility stage of the trial, the order of proof and argument shall reflect that the defendant has the burden of establishing the lack of criminal responsibility. The defendant and the State may rely upon evidence admitted during the first stage and may recall witnesses.

(7) Motion by State

The State may move for judgment on the issue of criminal responsibility at the close of the evidence offered by the defendant. In ruling on the motion, the court shall consider all evidence and inferences in the light most favorable to the defendant. The court may grant the motion if it finds no legally sufficient evidence from which a rational trier of fact could find that the defendant was not criminally responsible.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 4-314 conforms the Rule to the proposed relettering of Rule 4-312.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-521 to add certain provisions concerning juror notes and notepads, as follows:

Rule 2-521. JURY - REVIEW OF EVIDENCE - COMMUNICATIONS

(a) Jurors' Notes

The court may, and upon request of any party shall, provide paper notepads for use by jurors during trial and deliberations. The court shall maintain control over the notepads during the trial and promptly destroy them after the trial. A juror's notes may not be reviewed or relied upon for any purpose by any person other than the juror. If a juror is unable to use a notepad because of a disability, the court shall provide a reasonable accommodation.

~~(a)~~ (b) Items Taken to Jury Room

Jurors may take ~~notes regarding the evidence and may keep the notes~~ their notepads with them when they retire for ~~their~~ deliberation. Unless the court for good cause orders otherwise, the jury may also take exhibits that have been admitted in evidence, except that a deposition may not be taken into the jury room without the agreement of all parties and consent of the court. Written or electronically recorded instructions may be taken into the jury room only with the permission of the court.

Cross reference: See Rule 5-802.1 (e).

~~(b)~~ (c) Jury Request to Review Evidence

The court, after notice to the parties, may make available to the jury testimony or other evidence requested by it. In order that undue prominence not be given to the evidence requested, the court may also make available additional evidence relating to the same factual issue.

~~(c)~~ (d) Communications With Jury

The court shall notify the parties of the receipt of any communication from the jury pertaining to the action before responding to the communication. All such communications between the court and the jury shall be on the record in open court or shall be in writing and filed in the action.

Source: This Rule is derived as follows:

Section (a) is new.

Section ~~(a)~~ (b) is derived from former Rules 558 a, b and d and 758 b.

Section ~~(b)~~ (c) is derived from former Rule 758 c.

Section ~~(c)~~ (d) is derived from former Rule 758 d.

REPORTER'S NOTE

At the request of Chief Judge Bell, the Rules Committee considered the matter of control of jurors' notes, in light of Aron v. Brock, 118 Md. App. 475 (1997), cert. denied, 346 Md. 629 (1997).

Proposed amendments to Rules 2-521, 4-326, and 5-606 pertaining to jurors' notes that were included in the One Hundred Forty-First Report of the Rules Committee were remanded to the Committee, pending completion of the Report of the Council on Jury Use and Management. The Committee has considered the Council's Report and has incorporated into the Rules the Council's additional suggestions as to jurors' notes.

Proposed amendments to Rules 2-521 and 4-326 provide for notepads to be distributed by the court to jurors for notetaking during the trial and for use during deliberations, upon the request of any party or sua sponte by the court. Notes may be reviewed and relied upon only by the juror who makes them, and the court maintains control over the notepads during the trial. After the trial, the notepads are promptly destroyed. The amendments also require the court to provide a reasonable accommodation under the Americans with Disabilities Act, 42 U.S.C. §12101, et. seq., for any juror who is unable to use a notepad because of a disability.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-326 to add certain provisions concerning the use of juror notes and notepads, as follows:

Rule 4-326. JURY - REVIEW OF EVIDENCE - COMMUNICATIONS

(a) Jurors' Notes

The court may, and upon request of any party shall, provide paper notepads for use by jurors during trial and deliberations. The court shall maintain control over the notepads during the trial and promptly destroy them after the trial. A juror's notes may not be reviewed or relied upon for any purpose by any person other than the juror. If a juror is unable to use a notepad because of a disability, the court shall provide a reasonable accommodation.

~~(a)~~ (b) Items Taken to Jury Room

Jurors may take ~~notes regarding the evidence and they may keep the notes~~ their notepads with them when they retire for ~~their~~ deliberations. Unless the court for good cause orders otherwise, the jury may also take the charging document and exhibits which have been admitted in evidence, except that a deposition may not be taken into the jury room without the agreement of all parties and the consent of the court.

Electronically recorded instructions or oral instructions reduced

to writing may be taken into the jury room only with the permission of the court. On request of a party or on the court's own initiative, the charging documents shall reflect only those charges on which the jury is to deliberate. The court may impose safeguards for the preservation of the exhibits and the safety of the jurors.

Cross reference: See Rule 5-802.1 (e).

~~(b)~~ (c) Jury Request to Review Evidence

The court, after notice to the parties, may make available to the jury testimony or other evidence requested by it. In order that undue prominence not be given to the evidence requested, the court may also make available additional evidence relating to the same factual issue.

~~(c)~~ (d) Communications With Jury

The court shall notify the defendant and the State's Attorney of the receipt of any communication from the jury pertaining to the action before responding to the communication. All such communications between the court and the jury shall be on the record in open court or shall be in writing and filed in the action.

Source: This Rule is derived as follows:

Section (a) is new.

Section ~~(a)~~ (b) is derived from former Rules 758 a and b and 757 e.

Section ~~(b)~~ (c) is derived from former Rule 758 c.

Section ~~(c)~~ (d) is derived from former Rule 758 d.

REPORTER'S NOTE

See the Reporter's Note to the proposed amendment to Rule 2-521.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 600 - WITNESSES

AMEND Rule 5-606 to prohibit impeachment of a verdict by a juror's notes, as follows:

Rule 5-606. COMPETENCY OF JUROR AS WITNESS

(a) At the Trial

A member of a jury may not testify as a witness before the jury in the trial of the case in which the juror is sitting. If the juror is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry Into Validity of Verdict

(1) In any inquiry into the validity of a verdict, a juror may not testify as to (A) any matter or statement occurring during the course of the jury's deliberations, (B) the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent or dissent from the verdict, or (C) the juror's mental processes in connection with the verdict.

(2) A juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying may not be received for these purposes.

(3) A juror's notes made in accordance with Rule 2-521 (a) or Rule 4-326 (a) may not be used to impeach a verdict.

(c) "Verdict" Defined

For purposes of this Rule, "verdict" means (1) a verdict returned by a petit jury or (2) a sentence returned by a jury in a sentencing proceeding conducted pursuant to Code, Criminal Law Article, §2-303 or 2-304.

Committee note: This Rule does not address or affect the secrecy of grand jury proceedings.

Source: This Rule is derived in part from F.R.Ev. 606.

REPORTER'S NOTE

The proposed amendment to Rule 5-606 prohibits impeachment of a verdict by the use of a juror's notes made in accordance with Rule 2-521 (a) or Rule 4-326 (a).

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE--DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-102 to clarify section (a) and to add a certain cross reference, as follows:

Rule 3-102. TRIAL DATE AND TIME

(a) Fixed by Clerk

~~At the time the complaint is filed, the~~ Upon the filing of the complaint, the clerk shall fix the date and time for trial of the action. ~~which shall be not less than 60 days after the date of filing,~~ When the notice of intention to defend is due within 15 days after service, the original trial date shall be not less than 60 days after the complaint was filed. or not less than 90 days after filing when service of process is to be made out of State or upon a statutory agent for a nonresident. When the notice of intention to defend is due within 60 days after service, the original trial date shall be not less than 90 days after the complaint was filed. With leave of court, an action may be tried ~~at an earlier~~ sooner than on the date ~~than that~~ originally fixed.

Cross reference: See Rule 3-307 concerning the time for filing a notice of intention to defend.

(b) Reassignment

Subject to section (c) of this Rule, when service of

process is not made and the summons becomes dormant pursuant to Rule 3-113, the clerk shall cancel the assigned trial date. If the summons is renewed pursuant to Rule 3-113, the clerk shall assign a new trial date and shall notify the plaintiff of the reassignment.

(c) Multiple Defendants

When multiple defendants are joined in the action and one or more, but not all, are served, the action shall be tried as to those served on the assigned trial date unless continued pursuant to Rule 3-508.

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 101 a.

Section (b) is in part new and in part derived from former M.D.R. 103 e.

Section (c) is derived from former M.D.R. 103 g.

REPORTER'S NOTE

Proposed amendments to Rules 3-102 (a) and 3-701 (c) delete references to the term "statutory agent" and clarify the sections. The phrase "statutory agent" has caused some confusion as to whether it includes a resident agent for a domestic corporation or partnership or for a governmental entity.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT  
CHAPTER 700 - SPECIAL PROCEEDINGS

AMEND Rule 3-701 to clarify section (c) and to add a certain cross reference, as follows:

Rule 3-701. SMALL CLAIM ACTIONS

(a) Applicable Rules

The rules of this Title apply to small claim actions, except as provided in this Rule.

Cross reference: Code, Courts Article, §4-405.

(b) Forms

Forms for the commencement and defense of a small claim action shall be prescribed by the Chief Judge of the District Court and used by persons desiring to file or defend such an action.

(c) Trial Date and Time

~~The original trial date for a small claim action shall be within 60 days after the filing of the complaint, except that the original trial date shall be within 90 days after the filing of the complaint if service of the complaint is to be made outside this State or on a statutory agent for the defendant. The A~~  
small claim action shall be tried at a special session of the court designated for the trial of small claim actions.

Upon the filing of the complaint, the clerk shall fix the date

and time for trial of the action. When the notice of intention to defend is due within 15 days after service, the original trial date shall be not less than 60 days after the complaint was filed. When the notice of intention to defend is due within 60 days after service, the original trial date shall be not less than 90 days after the complaint was filed. With leave of court, an action may be tried sooner than on the date originally fixed.

Cross reference: See Rule 3-307 concerning the time for filing a notice of intention to defend.

(d) Counterclaims -- Cross-claims -- Third-party Claims

If a counterclaim, cross-claim, or third-party claim in an amount exceeding the jurisdictional limit for a small claim action (exclusive of interest, costs, and attorney's fees and exclusive of the original claim) is filed in a small claim action, this Rule shall not apply and the clerk shall transfer the action to the regular civil docket.

Cross reference: Rule 3-331 (f).

(e) Discovery Not Available

No pretrial discovery under Chapter 400 of this Title shall be permitted in a small claim action.

(f) Conduct of Trial

The court shall conduct the trial of a small claim action in an informal manner. Title 5 of these rules does not apply to proceedings under this Rule.

Cross reference: See Rule 5-101 (b) (4).

Source: This Rule is derived in part from former M.D.R. 568 and 401 a and is in part new.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 3-102.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-307 to clarify the service requirement in section (a) and to clarify section (b), as follows:

Rule 3-307. NOTICE OF INTENTION TO DEFEND

(a) To be Filed with Court - When Service Not Required

The defendant, including a counter-defendant, cross-defendant, and third-party defendant, shall file with the court a notice of intention to defend which may include any explanation or ground of defense. ~~The~~ When the defendant is represented by an attorney, the notice shall be served in accordance with Rule 1-321. A defendant not represented by an attorney need not serve the notice on any party.

(b) Time for Filing

(1) Generally

Except as provided by subsection (b)(2) of this Rule,  
~~The~~ the notice shall be filed within 15 days after service of the complaint, counterclaim, cross-claim, or third-party claim, ~~except if service is made outside this State or upon a statutory agent for a defendant, the notice shall be filed within 60 days after service.~~

(2) Exceptions

A defendant shall file the notice within 60 days after

being served if the defendant is:

(A) served outside of the State;

(B) a person who is required by statute of this State to have a resident agent and who is served by service upon the State Department of Assessments and Taxation, the Insurance Commissioner, or some other agency of the State authorized by statute to receive process; or

(C) the United States or an officer or agency of the United States served pursuant to Rule 3-124 (m) or (n).

(c) Identity of Attorney

If the defendant is represented by an attorney, the notice shall contain the attorney's name, office address and telephone number.

(d) Notice to Parties

When the defendant files a notice pursuant to this Rule, the clerk promptly shall mail notice of the filing to other parties.

(e) Effect of Failure to File Notice

If a defendant fails to file a timely notice of intention to defend pursuant to this Rule, the court, on the date set for trial, may determine liability and assess damages based on *ex parte* proof by the plaintiff, unless the defendant appears and the court is satisfied that the defendant may have a defense to the claim. In that event, the court shall proceed with trial or, upon request of the plaintiff, may grant a continuance for a time

sufficient to allow the plaintiff to prepare for trial on the merits.

Source: This Rule is derived in part from former M.D.R. 302 and is in part new.

#### REPORTER'S NOTE

The proposed amendment to section (a) of Rule 3-307, while retaining the policy that an unrepresented defendant is not required to serve a copy of the notice of intention to defend, is amended to note that an attorney who represents the defendant is required to serve other parties.

The proposed amendments to section (b) delete a reference to the term "statutory agent" and revise the section to clarify it. The phrase "statutory agent" has caused some confusion as to whether it includes a resident agent for a domestic corporation or partnership or for a governmental entity. The revision of section (b) is patterned upon Rule 2-321 (a) and (b).

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-321 (b) to correct an internal reference and to make certain stylistic changes, as follows:

Rule 2-321. TIME FOR FILING ANSWER

. . .

(b) Exceptions

(1) A defendant who is served with an original pleading outside of the State but within the United States shall file an answer within 60 days after being served.

(2) A defendant who is served with an original pleading by publication or posting, pursuant to Rule 2-122, shall file an answer within the time specified in the notice.

(3) A person who is required by statute of this State to have a resident agent ~~that~~ and who is served with an original pleading by service upon the State Department of Assessments and Taxation, the Insurance Commissioner, or some other agency of the State authorized by statute to receive process shall file an answer within 60 days after being served.

(4) The United States or an officer or agency of the United States served with an original pleading pursuant to Rule 2-124 ~~(f)~~ (m) or (n) shall file an answer within 60 days after being served.

(5) A defendant who is served with an original pleading outside of the United States shall file an answer within 90 days after being served.

(6) If rules for special proceedings, or statutes of this State or of the United States, provide for a different time to answer, the answer shall be filed as provided by those rules or statutes.

. . .

Source: This Rule is derived as follows:

Section (a) is new.

Section (b)

Subsection (b)(1) is derived from former Rules 107 b and 307 c (4).

Subsection (b)(2) is derived from former Rule 307 a 2.

Subsection (b)(3) is derived from former Rule 106 e 3 as cross referenced in former Rule 307 c (6).

Subsection (b)(4) is derived from former Rule 108 d as cross referenced in former Rule 307 c (5).

Subsection (b)(5) is derived from former Rule 107 b as cross referenced in former Rule 307 c (4).

Subsection (b)(6) is new.

Section (c) is new but is consistent with the concept of ~~FRCP~~ the 1966 version of Fed. R. Civ. P. 12.

#### REPORTER'S NOTE

The proposed amendments to Rule 2-321 correct an incorrect reference to "section (f)" of Rule 2-124, which should be to "section (m) or (n)" of that Rule and make stylistic changes to conform subsection (b)(3) to the style of proposed new subsection (b)(2)(B) of Rule 3-307.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-124 by adding a reference to Code, Business Regulation Article, §4-402 to the Committee note, as follows:

Rule 2-124. PROCESS - PERSONS TO BE SERVED

(a) Statutes Not Abrogated

The provisions of this Rule do not abrogate any statute permitting or requiring service on a person.

Committee note: Examples of statutes permitting or requiring service on a person include the Maryland Tort Claims Act, Code, State Government Article, §12-108 (a) (service of a complaint is sufficient only when made upon the Treasurer of the State); Code, Insurance Article, §4-107 (service on certain insurance companies is effected by serving the Insurance Commissioner); Code, Business Regulation Article, §4-402 (service on a non-resident "athlete agent" is effected by serving the Secretary of Labor, Licensing, and Regulation); Code, Business Regulation Article, §6-202 (service on certain nonresident charitable organizations is effected by serving the Secretary of State); and Code, Courts Article, §3-405 (notice to the Attorney General is required immediately after a declaratory judgment action is filed alleging that a statute, municipal or county ordinance, or franchise is unconstitutional).

. . .

REPORTER'S NOTE

The Rules Committee recommends the addition of a reference to a new statute to the Committee note after section (a) of Rules 2-124 and 3-124 that lists examples of statutes permitting or requiring service on a person. The new statute is Code, Business Regulation Article, §4-402 that was created by Chapter 421 (HB 361), Acts of 2003 pertaining to athlete agents.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-124 by adding a reference to Code, Business Regulation Article, §4-402 to the Committee note, as follows:

Rule 3-124. PROCESS - PERSONS TO BE SERVED

(a) Statutes Not Abrogated

The provisions of this Rule do not abrogate any statute permitting or requiring service on a person.

Committee note: Examples of statutes permitting or requiring service on a person include the Maryland Tort Claims Act, Code, State Government Article, §12-108 (a) (service of a complaint is sufficient only when made upon the Treasurer of the State); Code, Insurance Article, §4-107 (service on certain insurance companies is effected by serving the Insurance Commissioner); Code, Business Regulation Article, §4-402 (service on a non-resident "athlete agent" is effected by serving the Secretary of Labor, Licensing, and Regulation); Code, Business Regulation Article, §6-202 (service on certain nonresident charitable organizations is effected by serving the Secretary of State); and Code, Courts Article, §3-405 (notice to the Attorney General is required immediately after a declaratory judgment action is filed alleging that a statute, municipal or county ordinance, or franchise is unconstitutional).

. . .

REPORTER'S NOTE

See the Reporter's Note to Rule 2-124.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216 to delete current section (a); to change the tagline of new section (a); to add new language to section (a) pertaining to a judicial officer determining probable cause for a warrantless arrest; to require the release of a defendant on personal recognizance with no other conditions of release if there was no probable cause for a warrantless arrest; to add certain statutory references to section (b); to add language in section (b) clarifying that a judicial officer who releases a defendant in accordance with that section on personal recognizance or on bail may impose conditions in either case; to eliminate a certain cross reference; to conform certain language in sections (c), (d), and (e) to language in section (b); to require the judicial officer under certain circumstances to take into account certain information to the extent available; to require the judicial officer to state in writing or on the record the amount and terms of any bail; to expand on the bail bond provisions of subsection (e) (4); to conform statutory references to recent legislation; to add clarifying language to section (h) concerning the power of a judge to alter conditions set by another judge or by a commissioner; to add cross references to Rules 1-361 and 4-347 following section (j); and to make certain stylistic changes, as follows:

Rule 4-216. PRETRIAL RELEASE

~~(a) Interim Bail~~

~~Pending an initial appearance by the defendant before a judicial officer pursuant to Rule 4-213 (a), the defendant may be released upon execution of a bond in an amount and subject to conditions specified in a schedule that may be adopted by the Chief Judge of the District Court for certain offenses. The Chief Judge may authorize designated court personnel or peace officers to release a defendant by reference to the schedule.~~

~~(b) (a) Probable Cause Determination Arrest Without Warrant~~

~~A defendant arrested without a warrant shall be released on personal recognizance under terms that do not significantly restrain the defendant's liberty unless the judicial officer determines that there is probable cause to believe that the defendant committed an offense. If a defendant was arrested without a warrant, the judicial officer shall determine whether there was probable cause for the arrest. If there was probable cause, the judicial officer shall implement the remaining sections of this Rule. If there was no probable cause, the judicial officer shall release the defendant on personal recognizance, with no other conditions of release, and the remaining sections of this Rule are inapplicable.~~

Cross reference: See Rule 4-213 (a) (4).

~~(c)~~ (b) Defendants Eligible for Release by Commissioner or Judge

~~Except~~ In accordance with this Rule and Code, Criminal Procedure Article, §§5-101 and 5-201 and except as otherwise provided in section ~~(d)~~ (c) of this Rule or by ~~law~~ Code, Criminal Procedure Article, §§5-201 and 5-202, a defendant is entitled to be released before verdict ~~in conformity with this Rule~~ on personal recognizance or ~~with~~ on bail, in either case with or without conditions imposed, one or more conditions imposed unless the judicial officer determines that no condition of release will reasonably ~~assure~~ ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community.

~~Cross reference: See Code, Criminal Procedure Article, §5-101 (c) concerning defendants who may not be released on personal recognizance.~~

~~(d)~~ (c) Defendants Eligible for Release Only by a Judge

A defendant charged with an offense for which the maximum penalty is death or life imprisonment or with an offense listed under Code, Criminal Procedure Article, §5-202 (a), (b), (c), (d), or (e) may not be released by a District Court Commissioner, but may be released before verdict or pending a new trial, if a new trial has been ordered, if a judge determines that all requirements imposed by law have been satisfied and that one or more conditions of release will reasonably ~~assure~~ ensure (1) the appearance of the defendant as required and (2) ~~if the defendant is charged with an offense listed under Code, Criminal Procedure~~

~~Article, §5-202 (b), (c), (d), or (e), that the defendant will not pose a danger to another person or the safety of the alleged victim, another person, and the community while released.~~

~~(e)~~ (d) Duties of Judicial Officer

(1) Consideration of Factors

In determining whether a defendant should be released and the conditions of release, the judicial officer, ~~on the basis of information available or developed in a pretrial release inquiry,~~ shall take into account the following information, to the extent available:

(A) ~~The~~ the nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the potential sentence upon conviction, ~~insofar as these factors are relevant to the risk of nonappearance;~~

(B) ~~The~~ the defendant's prior record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings;

(C) ~~The~~ the defendant's family ties, employment status and history, financial resources, reputation, character and mental condition, length of residence in the community, and length of residence in this State;

(D) ~~The~~ any recommendation of an agency ~~which~~ that conducts pretrial release investigations;

(E) ~~The~~ any recommendation of the State's Attorney;

(F) ~~Information~~ any information presented by the defendant or defendant's counsel;

(G) ~~The~~ the danger of the defendant to the alleged victim, another person, or ~~to~~ the community;

(H) ~~The~~ the danger of the defendant to himself or herself;  
and

(I) ~~Any~~ any other factor bearing on the risk of a wilful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult and prior convictions.

(2) Statement of Reasons - When Required

Upon determining to release a defendant to whom section ~~(d)~~ (c) of this Rule applies or to refuse to release a defendant to whom section ~~(c)~~ (b) of this Rule applies, the judicial officer shall state the reasons in writing or on the record.

(3) Imposition of Conditions of Release

If the judicial officer determines that the defendant should be released other than on personal recognizance without any additional conditions imposed, the judicial officer shall impose on the defendant the least onerous condition or combination of conditions of release set out in section ~~(f)~~ (e) of this Rule that will reasonably:

(A) ~~Assure~~ ensure the appearance of the defendant as required,

(B) ~~Protect~~ protect the safety of the alleged victim by ordering the defendant to have no contact with the alleged victim

or the alleged victim's premises or place of employment or by other appropriate order, and

(C) ~~Assure~~ ensure that the defendant will not pose a danger to another person or to the community ~~if the charge against the defendant is an offense listed under Code, Criminal Procedure Article, §5-202 (b), (c), (d), or (e).~~

(4) Advice of Conditions; ~~and~~ Consequences of Violation; Amount and Terms of Bail

The judicial officer shall advise the defendant in writing or on the record of the conditions of release imposed and of the consequences of a violation of any condition. When bail is required, the judicial officer shall state in writing or on the record the amount and any terms of the bail.

~~(f)~~ (e) Conditions of Release

The conditions of release imposed by a judicial officer under this Rule may include:

(1) ~~Committing~~ committing the defendant to the custody of a designated person or organization that agrees to supervise the defendant and assist in ~~assuring~~ ensuring the defendant's appearance in court;

(2) ~~Placing~~ placing the defendant under the supervision of a probation officer or other appropriate public official;

(3) ~~Subjecting~~ subjecting the defendant to reasonable restrictions with respect to travel, association, or residence during the period of release;

(4) ~~Requiring~~ requiring the defendant to post a bail bond

complying with Rule 4-217 in an amount and on conditions specified by the judicial officer, including any of the following:

(A) without collateral security;

Recommendation of the Rules Committee  
as to subsection (e) (4) (B):

(B) with collateral security of the kind specified in Rule 4-217 (e) (1) (A) equal in value to the greater of ~~\$25.00~~ \$100.00 or 10% of the full penalty amount, ~~or a larger percentage as may be fixed by the judicial officer and if the judicial officer sets bail at \$2500 or less, the judicial officer shall advise the defendant that the defendant may post a bail bond secured by either a corporate surety or a cash deposit of 10% of the full penalty amount~~;

Alternate Version  
of subsection (e) (4) (B):

(B) with collateral security of the kind specified in Rule 4-217 (e) (1) (A) equal in value to the greater of ~~\$25.00~~ \$100.00 or 10% of the full penalty amount, ~~or a larger percentage as may be fixed by the judicial officer~~;

Recommendation of the Rules Committee  
as to subsections (e) (4) (C), (D), and (E)

(C) with collateral security of the kind specified in Rule 4-217 (e) (1) (A) equal in value to a percentage greater than 10% but less than the full penalty amount;

~~(C)~~ (D) with collateral security of the kind specified in Rule 4-217 (e) (1) equal in value to the full penalty amount~~;~~ or

~~(D)~~ (E) with the obligation of a corporation that is an insurer or other surety in the full penalty amount;

Alternate Version of subsections (e) (4) (C), (D), and (E)  
(Adding "for reasons stated in writing" to  
subsections (C), (D), and (E)):

(C) for reasons stated in writing, with collateral security of the kind specified in Rule 4-217 (e) (1) (A) equal in value to a percentage greater than 10% but less than the full penalty amount;

~~(C)~~ (D) for reasons stated in writing, with collateral security of the kind specified in Rule 4-217 (e) (1) equal in value to the full penalty amount~~;~~ or

~~(D)~~ (E) for reasons stated in writing, with the obligation of a corporation that is an insurer or other surety in the full penalty amount;

(5) ~~Subjecting~~ subjecting the defendant to any other condition reasonably necessary to:

(A) ~~assure~~ ensure the appearance of the defendant as required,

(B) protect the safety of the alleged victim, and

(C) ~~assure~~ ensure that the defendant will not pose a danger to another person or to the community ~~if the charge against the defendant is an offense listed under Code, Criminal Procedure Article, §5-202 (b), (c), (d), or (e); and~~

(6) ~~Imposing~~ imposing upon the defendant, for good cause shown, one or more of the conditions authorized under Code, ~~Article 27, §763~~ Criminal Law Article, §9-304 reasonably necessary to stop or prevent the intimidation of a victim or witness or a violation of Code, ~~Article 27, §26, §761, or §762~~ Criminal Law Article, §9-302, 9-303, or 9-305.

Cross reference: See Code, Criminal Procedure Article, §5-201 (b), and Code, Business Occupations and Professions Article, Title 20, concerning private home detention monitoring as a condition of release.

~~(g)~~ (f) Review of Commissioner's Pretrial Release Order

(1) Generally

A defendant who is denied pretrial release by a commissioner or who for any reason remains in custody for 24 hours after a commissioner has determined conditions of release pursuant to this Rule shall be presented immediately to the District Court if the court is then in session, or if not, at the next session of the court. The District Court shall review the

commissioner's pretrial release determination and take appropriate action. If the defendant will remain in custody after the review, the District Court shall set forth in writing or on the record the reasons for the continued detention.

Cross reference: See Rule 4-231 (d) concerning the presence of a defendant by video conferencing.

(2) Juvenile Defendant

If the defendant is a child whose case is eligible for transfer to the juvenile court pursuant to Code, Criminal Procedure Article, §4-202 (b), the District Court, regardless of whether it has jurisdiction over the offense charged, may order that a study be made of the child, the child's family, or other appropriate matters. The court also may order that the child be held in a secure juvenile facility.

~~(h)~~ (g) Continuance of Previous Conditions

When conditions of pretrial release have been previously imposed in the District Court, the conditions continue in the circuit court unless amended or revoked pursuant to section ~~(i)~~ (h) of this Rule.

~~(i)~~ (h) Amendment of Pretrial Release Order

After a charging document has been filed, the court, on motion of any party or on its own initiative and after notice and opportunity for hearing, may revoke an order of pretrial release or amend it to impose additional or different conditions of release. If its decision results in the detention of the defendant, the court shall state the reasons for its action in

writing or on the record. A judge may alter conditions set by a commissioner or another judge.

~~(j)~~ (i) Supervision of Detention Pending Trial

In order to eliminate unnecessary detention, the court shall exercise supervision over the detention of defendants pending trial. It shall require from the sheriff, warden, or other custodial officer a weekly report listing each defendant within its jurisdiction who has been held in custody in excess of seven days pending preliminary hearing, trial, sentencing, or appeal. The report shall give the reason for the detention of each defendant.

~~(k)~~ (j) Violation of Condition of Release

A court may issue a bench warrant for the arrest of a defendant charged with a criminal offense who ~~violates~~ is alleged to have violated a condition of pretrial release. After the defendant is presented before a court, the court may (1) revoke the defendant's pretrial release or (2) continue the defendant's pretrial release with or without conditions.

Cross reference: See Rule 1-361, Execution of Warrants and Body Attachments. See also, Rule 4-347, Proceedings for Revocation of Probation, which preserves the authority of a judge issuing a warrant to set the conditions of release on an alleged violation of probation.

~~(l)~~ (k) Title 5 Not Applicable

Title 5 of these rules does not apply to proceedings conducted under this Rule.

Source: This Rule is derived in part from former Rule 721, M.D.R. 723 b 4, and is in part new.

## REPORTER'S NOTE

The Pretrial Release Project Advisory Committee in its report issued October 11, 2001 recommended modification of the pretrial release system. The Rules Committee has considered the recommendations that involve rules changes, several of which are to Rule 4-216.

The Advisory Committee recommended the deletion of current section (a) because the District Court schedules were used only when the transition from the former People's Court to the District Court took place. The Rules Committee concurs.

The Rules Committee recommends that the Advisory Committee's proposal to integrate the rules provisions pertaining to pretrial release determined either by a commissioner or by a judge should not be adopted. The Rules Committee believes that section (c) pertaining to defendants eligible for release only by a judge should be retained, as should the specific references to the relevant sections of Code, Criminal Procedure Article, §5-202, which specifically exclude a commissioner from authorizing pretrial release. The distinction between section (b) and section (c) is highlighted by the requirements of subsection (d)(2) (the judicial officer must state in writing or on the record the reasons for releasing a defendant to whom section (c) applies or refusing to release a defendant to whom section (b) applies).

The Rules Committee also recommends that a requirement proposed by the Advisory Committee (shown as an alternate version of subsections (e)(4)(C), (D), and (E)) that a judicial officer explain in writing when the judicial officer sets a greater amount of bail than 10% of the full penalty amount not be added to the Rule.

Current section (b), relettered (a) and given a new tagline, Arrest Without Warrant, has been rewritten so that the first sentence states the obligation of the judicial officer to make a determination as to whether there was probable cause for the arrest. Based on that determination, the judicial officer either implements the remaining sections of the Rule if there was probable cause or releases the defendant if there was no probable cause. The Rules Committee has considered whether a defendant arrested without probable cause can be released on personal recognizance or whether the defendant must be released with no conditions at all. A review of *Gerstein v. Pugh*, 420 U.S. 103 (1975), indicates that release on personal recognizance is constitutional because the defendant's liberty is not restricted. The Rules Committee believes that it is appropriate to release a defendant arrested without probable cause on personal recognizance so that the defendant remains in the criminal

justice system for any court appearances or other matters concerning the charges. Therefore, the Rules Committee has retained the concept of personal recognizance in section (a).

In section (b), Defendants Eligible for Release by Commissioner or Judge, references to Code, Criminal Procedure Article, §§ 5-101, 5-201, and 5-202 have been added, and the section has been restyled to make clear that the judicial officer may impose conditions not only on a defendant who is released on bail but also on a defendant who is released on personal recognizance pursuant to this section of the Rule. The cross reference following section (b) is deleted as unnecessary, in light of the inclusion of the Code references in the text of section (b).

Identical language concerning conditions of release that "will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community" has been included in sections (b) and (c). Where references to one or both components of this standard are made in other sections of the Rule, the language is conformed to that of sections (b) and (c).

Subsection (1) of section (d), Duties of Judicial Officer, sets forth a list of factors for the judicial officer to take into account in determining whether a defendant should be released and the conditions of any release. In the introductory clause, the word "shall" replaces the word "may," requiring the judicial officer to take into account certain information "to the extent available." Subsection (d)(1)(F) is amended to include any information presented by the defendant, as well as by the defendant's counsel. A new sentence is added to subsection (d)(4) requiring the judicial officer to state on the record or in writing the amount and terms of any bail.

The Rules Committee is presenting several alternatives for the wording of the bail bond provision in subsection (e)(4). One alternative, which is the recommendation of the Rules Committee, includes language stating that if the judicial officer sets bail at \$2500 or less, the judicial officer shall advise the defendant that he or she may post a bail bond secured either by a corporate surety or by a cash deposit of 10% of the full penalty amount. Another alternative is that the judicial officer must explain in writing when the judicial officer sets a greater amount of bail than 10% of the full penalty amount. Both of these alternatives are in response to complaints by defense attorneys and the Pretrial Release Project Advisory Committee that commissioners do not choose the 10% option. The alternatives expand on the types of bail allowed because of an overlap between subsections (e)(4)(B) and (e)(4)(C). Both versions include an increase from \$25.00 to \$100.00 in the minimum amount of collateral security

under subsection (e) (4) (B). A third alternative is to make no change to subsection (e) (4).

The alternatives presented to the Court reflect the position of the Pretrial Release Advisory Committee that judicial officers should rely to the extent practicable on criminal sanctions, rather than financial loss, to ensure both the defendant's appearance and the safety of the alleged victim, other persons, and the community. "Criminal sanctions" include both the sanction for the offense for which released and the sanction for a separate charge of "failure to appear" if the defendant does not appear.

The proposed amendment to section (i), relettered section (h), makes clear that a judge may alter not only the pretrial conditions set by a commissioner, but also conditions that had been set by another judge.

The amendment to the text of section (k), relettered section (j), is stylistic, only. The phrase "alleged to have violated" is believed to provide a more accurate statement of the defendant's status than the current text. A new cross reference to Rules 1-361 and 4-347 is proposed to be added following the section.

Additionally, because Chapter 26, Acts of 2002 (HB 11), created a new Criminal Law Article which contains many of the provisions formerly in Article 27 of the Annotated Code of Maryland, the references to Article 27 in Rule 4-216 are corrected to reflect their new placement.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-213 to revise certain language concerning pretrial release and to make a certain stylistic change, as follows:

Rule 4-213. INITIAL APPEARANCE OF DEFENDANT

(a) In District Court Following Arrest

When a defendant appears before a judicial officer of the District Court pursuant to an arrest, the judicial officer shall proceed as follows:

(1) Advice of Charges

The judicial officer shall inform the defendant of each offense with which the defendant is charged and of the allowable penalties, including mandatory penalties, if any, and shall provide the defendant with a copy of the charging document if the defendant does not already have one and one is then available. If one is not then available, the defendant shall be furnished with a copy as soon as possible.

(2) Advice of Right to Counsel

The judicial officer shall require the defendant to read the notice to defendant required to be printed on charging documents in accordance with Rule 4-202 (a), or shall read the notice to a defendant who is unable for any reason to do so. A

copy of the notice shall be furnished to a defendant who has not received a copy of the charging document. The judicial officer shall advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.

~~(3) Pretrial Release Determination~~

~~The judicial officer shall determine the defendant's eligibility for pretrial release pursuant to Rule 4-216.~~

~~(4) (3) Advice of Preliminary Hearing~~

When a defendant has been charged with a felony that is not within the jurisdiction of the District Court and has not been indicted, the judicial officer shall advise the defendant of the right to have a preliminary hearing by a request made then or within ten days thereafter and that failure to make a timely request will result in the waiver of a preliminary hearing. If the defendant then requests a preliminary hearing, the judicial officer may either set its date and time or notify the defendant that the clerk will do so.

(4) Pretrial Release

The judicial officer shall comply with Rule 4-216 governing pretrial release.

(5) Certification by Judicial Officer

The judicial officer shall certify compliance with this section in writing.

(6) Transfer of Papers by Clerk

As soon as practicable after the initial appearance by the defendant, the judicial officer shall file all papers with the clerk of the District Court or shall direct that they be forwarded to the clerk of the circuit court if the charging document is filed there.

Cross reference: Code ~~(1957, 1989 Repl. Vol.)~~, ~~Courts Art. Courts Article~~, §10-912. See Rule 4-231 (d) concerning the appearance of a defendant by video conferencing.

(b) In District Court Following Summons

When a defendant appears before the District Court pursuant to a summons, the court shall proceed in accordance with Rule 4-301.

(c) In Circuit Court Following Arrest or Summons

The initial appearance of the defendant in circuit court occurs when the defendant (1) is brought before the court by reason of execution of a warrant pursuant to Rule 4-212 (e) or (f) (2), or (2) appears in person or by written notice of counsel in response to a summons. In either case, if the defendant appears without counsel the court shall proceed in accordance with Rule 4-215. If the appearance is by reason of execution of a warrant, the court shall inform the defendant of each offense with which the defendant is charged, ensure that the defendant has a copy of the charging document, and determine eligibility for pretrial release pursuant to Rule 4-216.

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 723.

Section (b) is new.

Section (c) is derived from former Rule 723 a.

REPORTER'S NOTE

In his June 21, 2002 memorandum entitled "Two Recommended Changes to the Proposed Md. Rule 4-216" and at the Rules Committee meeting on June 21, 2002, Professor Byron Warnken noted that in the case of *Gerstein v. Pugh*, 420 U.S. 103 (1975), the U.S. Supreme Court established a constitutional requirement for a prompt probable cause determination for any defendant arrested without a warrant. This requirement is not expressly stated in Rule 4-213. Revision of the language of current subsection (a)(3), relettered (a)(4), of Rule 4-213, together with a proposed amendment to Rule 4-216, makes clear that this is one of the tasks to be accomplished by the judicial officer at the time of the defendant's initial appearance.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-222 (b) to conform to certain proposed amendments to Rule 4-216, as follows:

Rule 4-222. PROCEDURE UPON WAIVER OF JURISDICTION BY JUVENILE COURT

. . .

(b) Probable Cause Determination

A minor or adult defendant shall be released on personal recognizance, ~~under terms and conditions that do not significantly restrain the defendant's liberty with no other conditions of release,~~ unless the judicial officer determines that there is probable cause to believe that the minor or adult defendant committed the offense described in the juvenile petition.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 4-222 conforms section (b) of the rule to a comparable provision in proposed new section (a) of Rule 4-216.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-231 to reflect the relettering of Rule 4-216,  
as follows:

Rule 4-231. PRESENCE OF DEFENDANT

. . .

(d) Video Conferencing in District Court

In the District Court, if the Chief Judge of the District Court has approved the use of video conferencing in the county, a judicial officer may conduct an initial appearance under Rule 4-213 (a) or a review of the commissioner's pretrial release determination under Rule 4-216 ~~(g)~~ (f) with the defendant and the judicial officer at different locations, provided that:

(1) the video conferencing procedure and technology are approved by the Chief Judge of the District Court for use in the county;

(2) immediately after the proceeding, all documents that are not a part of the District Court file and that would be a part of the file if the proceeding had been conducted face-to-face shall be electronically transmitted or hand-delivered to the District Court; and

(3) if the initial appearance under Rule 4-213 is conducted by video conferencing, the review under Rule 4-216 ~~(g)~~ (f) shall

not be conducted by video conferencing.

. . .

REPORTER'S NOTE

Proposed amendments to Rules 4-231 (d) and 4-349 (b) conform them to the proposed relettering of Rule 4-216.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-349 to reflect the relettering of Rule 4-216,  
as follows:

Rule 4-349. RELEASE AFTER CONVICTION

. . .

(b) Factors Relevant to Conditions of Release

In determining whether a defendant should be released under this Rule, the court may consider the factors set forth in Rule 4-216 ~~(f)~~ (e) and, in addition, whether any appellate review sought appears to be frivolous or taken for delay. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

. . .

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 4-231.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 100 - GENERAL

AMEND Rule 4-102 to add a definition of "peace officer" and to modify the definition of "citation," as follows:

Rule 4-102. DEFINITIONS

The following definitions apply in this Title:

(a) Charging Document

"Charging document" means a written accusation alleging that a defendant has committed an offense. It includes a citation, an indictment, an information, and a statement of charges.

(b) Citation

"Citation" means a charging document, other than an indictment, information, or statement of charges, issued to a defendant by a peace officer ~~or other person authorized by law to do so.~~

(c) Defendant

"Defendant" means a person who has been arrested for an offense or charged with an offense in a charging document.

(d) Indictment

"Indictment" means a charging document returned by a grand jury and filed in a circuit court.

(e) Information

"Information" means a charging document filed in a court by a State's Attorney.

(f) Judicial Officer

"Judicial Officer" means a judge or District Court commissioner.

(g) Offense

"Offense" means a violation of the criminal laws of this State or political subdivision thereof.

(h) Peace Officer

"Peace officer" means (1) a "law enforcement officer" as defined in Code, Public Safety Article, §3-101 (e), (2) a "police officer" as defined in Code, Criminal Procedure Article, §2-101 (c), and (3) any other person authorized by State or local law to issue citations.

~~(h)~~ (i) Petty Offense

"Petty offense" means an offense for which the penalty may not exceed imprisonment for a period of three months or a fine of five hundred dollars.

~~(i)~~ (j) Statement of Charges

"Statement of charges" means a charging document, other than a citation, filed in District Court by a peace officer or by a judicial officer.

~~(j)~~ (k) State's Attorney

"State's Attorney" means a person authorized to prosecute an offense.

~~(k)~~ (l) Verdict

"Verdict" means the finding of the jury or the decision of the court pertaining to the merits of the offense charged.

~~(i)~~ (m) Warrant

"Warrant" means a written order by a judicial officer commanding a peace officer to arrest the person named in it or to search for and seize property as described in it.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 702 a and M.D.R. 702 a.

Section (b) is derived from former M.D.R. 702 c.

Section (c) is derived from former Rule 702 b and M.D.R. 702 d.

Section (d) is derived from former Rule 702 c.

Section (e) is derived from former Rule 702 d and M.D.R. 702 e.

Section (f) is derived from former M.D.R. 702 f.

Section (g) is derived from former Rule 702 e and M.D.R. 702 g.

Section (h) is new.

Section ~~(h)~~ (i) is derived from former M.D.R. 702 h.

Section ~~(i)~~ (j) is derived from former M.D.R. 702 i.

Section ~~(j)~~ (k) is derived from former Rule 702 f and M.D.R. 702 j.

Section ~~(k)~~ (l) is derived from former Rule 702 g and M.D.R. 702 l.

Section ~~(l)~~ (m) is derived from former Rule 702 h and M.D.R. 702 m.

#### REPORTER'S NOTE

The Rules Committee had approved substituting the term "law enforcement officer" for the term "peace officer" throughout the Rules, but Robert A. Zarnoch, Esq. pointed out that certain employees of administrative agencies, such as the liquor board in some counties, perform some quasi-law enforcement duties, including issuing citations, yet are not defined as "law enforcement officers" by Code, Public Safety Article, §3-101 (e) or "police officers" by Code, Criminal Procedure Article, §2-101 (c). The two Code sections are not identical, and neither includes the administrative agency employees. So that no individuals are inadvertently excluded from the rules that apply to them, the Committee recommends retaining the term "peace officer," which has been in use for many years, while adding a definition of that term to Rule 4-102 to clarify that the term includes not only law enforcement officers and police officers, but also persons who are authorized by State or local law to issue citations.

With the addition of the definition of "peace officer," the phrase "or other person authorized by law to do so" currently in the definition of "citation" becomes unnecessary, and the Committee recommends that the phrase be deleted.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-217 to delete an obsolete cross reference and to make a certain stylistic change in subsection (e) (3), as follows:

Rule 4-217. BAIL BONDS

. . .

(c) Authorization to Take Bail Bond

Any clerk, District Court commissioner, or other person authorized by law may take a bail bond. The person who takes a bail bond shall deliver it to the court in which the charges are pending, together with all money or other collateral security deposited or pledged and all documents pertaining to the bail bond.

Cross reference: Code, Criminal Procedure Article, §§5-204 and 5-205 ~~and Code (1957, 1991 Repl. Vol.), Article 87, §6.~~

. . .

(e) Collateral Security

. . .

(3) Additional or Different Collateral Security

Upon a finding that the collateral security originally deposited, pledged, or encumbered is insufficient to ~~insure~~ ensure collection of the penalty sum of the bond, the court, on motion by the State or on its own initiative and after notice and

opportunity for hearing, may require additional or different collateral security.

. . .

REPORTER'S NOTE

The proposed amendments to Rule 4-217 delete an obsolete cross reference following section (c) and substitute the word "ensure" for "insure" in subsection (c) (3).

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-254 (b) (1) to add language providing that the filing of a notice of intention to seek the death penalty by the State's Attorney is a condition for removal of a capital case and to make certain stylistic changes, as follows:

Rule 4-254. REASSIGNMENT AND REMOVAL

(a) Reassignment in District Court

The reassignment of a criminal action pending in the District Court shall be governed by the provisions of Rule 3-505.

(b) Removal in Circuit Courts

(1) Capital Cases

~~When~~ If a defendant is charged with an offense for which the maximum penalty is death and the State's Attorney has filed a notice of intention to seek the death penalty, either party ~~files~~ may file a suggestion under oath that the party cannot have a fair and impartial trial in the court in which the action is pending~~7~~. A suggestion by a defendant shall be under the defendant's personal oath, and a suggestion filed by the State shall be under the oath of the State's Attorney. the When a suggestion is filed, the court shall order that the action be transferred for trial to another court having jurisdiction. ~~The,~~ and the Circuit Administrative Judge of the court ordering

removal shall designate the county to which the case is to be removed. ~~A suggestion by a defendant shall be under the defendant's personal oath. A suggestion filed by the State shall be under the oath of the State's Attorney.~~

(2) Non-capital Cases

When a defendant ~~is charged with an offense for which is not eligible for the ~~maximum death~~ penalty is not death~~ and either party files a suggestion under oath that the party cannot have a fair and impartial trial in the court in which the action is pending, the court shall order that the action be transferred for trial to another court having jurisdiction only if ~~it~~ the court is satisfied that the suggestion is true or that there is reasonable ground for it. The Circuit Administrative Judge of the court ordering removal shall designate the county to which the case is to be removed. A party who has obtained one removal may obtain further removal pursuant to this section.

(3) Transfer of Case File - Trial

Upon the filing of an order for removal, the clerk shall transmit the case file and a certified copy of the docket entries to the clerk of the court to which the action is transferred and the action shall proceed as if originally filed there. After final disposition of the action, the clerk shall return a certified copy of the docket entries to the clerk of the court in which the action was originally instituted for entry on the docket as final disposition of the charges.

Source: This Rule is derived as follows:  
Section (a) is derived from former M.D.R. 744.  
Section (b) is derived from former Rule 744.

REPORTER'S NOTE

Judge Missouri pointed out a problem with the wording of subsection (b)(1) of Rule 4-254. A judge in his circuit interprets this provision to mean that the court is required to transfer a case upon the defense attorney's request even though the State's Attorney has no intention of seeking the death penalty. The wording of subsection (b)(1) does not track the language in the Maryland Constitution, Article IV, Section 8, Removal of Cases. To make it clear that a case must be removed only when the State's Attorney intends to seek the death penalty, the Rules Committee recommends the addition of language to subsection (b)(1) stating this requirement. Conforming stylistic changes also are proposed.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-313 to delete subsection (a)(4), as follows:

Rule 4-313. PEREMPTORY CHALLENGES

(a) Number

(1) Generally

Except as otherwise provided by this section, each party is permitted four peremptory challenges.

(2) Cases Involving Death or Life Imprisonment

Each defendant who is subject on any single count to a sentence of death or life imprisonment, except when charged with a common law offense for which no specific penalty is provided by statute, is permitted 20 peremptory challenges and the State is permitted ten peremptory challenges for each defendant.

(3) Cases Involving Imprisonment for 20 Years or More, but Less Than Life

Each defendant who is subject on any single count to a sentence of imprisonment for 20 years or more, but less than life, except when charged with a common law offense for which no specific penalty is provided by statute, is permitted ten peremptory challenges and the State is permitted five peremptory challenges for each defendant.

~~(4) Cases Involving Election Law Offenses Punishable by~~

~~Imprisonment in Penitentiary~~

~~In trials for offenses against the provisions of Code, Article 33, or any other law relating to elections or voter registration, each party shall be entitled to twenty peremptory challenges if the offense is punishable by imprisonment in the penitentiary.~~

~~Cross reference: Code, Article 33, §24-31.~~

~~(5)~~ (4) Alternate Jurors

For each alternate juror to be selected, the State is permitted one additional peremptory challenge for each defendant and each defendant is permitted two additional peremptory challenges. The additional peremptory challenges may be used only against alternate jurors, and other peremptory challenges allowed by this section may not be used against alternate jurors.

. . .

REPORTER'S NOTE

Chapter 585 (SB 118), Acts of 1998, deleted Code, Article 33, §24-31 because the Election Law Article Review Committee was of the opinion that peremptory challenges in election law offense cases are covered by Code, Courts Article, §8-301, and these cases do not need to be singled out in the Election Law Article. Subsection (a) (4) is now obsolete and is proposed to be deleted.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 by adding a new section (l) providing for recordation of restitution, as follows:

Rule 4-342. SENTENCING -- PROCEDURE IN NON-CAPITAL CASES

(a) Applicability

This Rule applies to all cases except those governed by Rule 4-343.

(b) Statutory Sentencing Procedure

When a defendant has been found guilty of murder in the first degree and the State has given timely notice of intention to seek a sentence of imprisonment for life without the possibility of parole, but has not given notice of intention to seek the death penalty, the court shall conduct a sentencing proceeding, separate from the proceeding at which the defendant's guilt was adjudicated, as soon as practicable after the trial to determine whether to impose a sentence of imprisonment for life or imprisonment for life without parole.

Cross reference: Code, Criminal Law Article, §§2-101, 2-201, 2-202 (b) (3), 2-303, and 2-304.

(c) Judge

If the defendant's guilt is established after a trial has commenced, the judge who presided shall sentence the defendant. If a defendant enters a plea of guilty or nolo contendere before

trial, any judge may sentence the defendant except that, the judge who directed entry of the plea shall sentence the defendant if that judge has received any matter, other than a statement of the mere facts of the offense, which would be relevant to determining the proper sentence. This section is subject to the provisions of Rule 4-361.

(d) Presentence Disclosures by the State's Attorney

Sufficiently in advance of sentencing to afford the defendant a reasonable opportunity to investigate, the State's Attorney shall disclose to the defendant or counsel any information that the State expects to present to the court for consideration in sentencing. If the court finds that the information was not timely provided, the court shall postpone sentencing.

(e) Notice and Right of Victim to Address the Court

(1) Notice and Determination

Notice to a victim or a victim's representative of proceedings under this Rule is governed by Code, Criminal Procedure Article, §11-104 (e). The court shall determine whether the requirements of that section have been satisfied.

(2) Right to Address the Court

The right of a victim or a victim's representative to address the court during a sentencing hearing under this Rule is governed by Code, Criminal Procedure Article, §11-403.

Cross reference: See Code, Criminal Procedure Article, §§11-103 (b) and 11-403 (e) concerning the right of a victim or victim's representative to file an application for leave to appeal under

certain circumstances.

(f) Allocution and Information in Mitigation

Before imposing sentence, the court shall afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment.

(g) Reasons

The court ordinarily shall state on the record its reasons for the sentence imposed.

(h) Credit for Time Spent in Custody

Time spent in custody shall be credited against a sentence pursuant to Code, Criminal Procedure Article, §6-218.

(i) Advice to the Defendant

At the time of imposing sentence, the court shall cause the defendant to be advised of any right of appeal, any right of review of the sentence under the Review of Criminal Sentences Act, any right to move for modification or reduction of the sentence, and the time allowed for the exercise of these rights. At the time of imposing a sentence of incarceration for a violent crime as defined in Code, Correctional Services Article, §7-101 and for which a defendant will be eligible for parole as provided in §7-301 (c) or (d) of the Correctional Services Article, the court shall state in open court the minimum time the defendant must serve for the violent crime before becoming eligible for parole. The circuit court shall cause the defendant who was sentenced in circuit court to be advised that within ten days

after filing an appeal, the defendant must order in writing a transcript from the court stenographer.

Cross reference: Code, Criminal Procedure Article, §§8-102 - 8-109.

Committee note: Code, Criminal Procedure Article, §6-217 provides that the court's statement of the minimum time the defendant must serve for the violent crime before becoming eligible for parole is for informational purposes only and may not be considered a part of the sentence, and the failure of a court to comply with this requirement does not affect the legality or efficacy of the sentence imposed.

(j) Terms for Release

On request of the defendant, the court shall determine the defendant's eligibility for release under Rule 4-349 and the terms for any release.

(k) Restitution from a Parent

If restitution from a parent of the defendant is sought pursuant to Code, Criminal Procedure Article, §11-604, the State shall serve the parent with notice of intention to seek restitution and file a copy of the notice with the court. The court may not enter a judgment of restitution against the parent unless the parent has been afforded a reasonable opportunity to be heard and to present evidence. The hearing on parental restitution may be part of the defendant's sentencing hearing.

(l) Recordation of Restitution

(1) Circuit Court

Recordation of a judgment of restitution in the circuit court is governed by Code, Criminal Procedure Article, §11-608 and Rule 2-601.

(2) District Court

Upon the entry of a judgment of restitution in the District Court, the Clerk of the Court shall send the written notice required under Code, Criminal Procedure Article, §§11-610 (e). Recordation of a judgment of restitution in the District Court is governed by Code, Criminal Procedure Article, §§11-610 and 11-612 and Rule 3-621.

~~Cross reference: Parent's liability, hearing, recording and effect, Rule 11-118.~~

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 772 a.

Section (b) is new.

Section (c) is derived from former Rule 772 b and M.D.R. 772 a.

Section (d) is derived from former Rule 772 c and M.D.R. 772 b.

Section (e) is new.

Section (f) is derived from former Rule 772 d and M.D.R. 772 c.

Section (g) is derived from former Rule 772 e and M.D.R. 772 d.

Section (h) is derived from former Rule 772 f and M.D.R. 772 e.

Section (i) is in part derived from former Rule 772 h and M.D.R. 772 g and in part new.

Section (j) is new.

Section (k) is new.

Section (l) is new.

REPORTER'S NOTE

The Rules Committee recommends amendments to Rules 4-342 and 4-354 requested by Russell Butler, Esq. because of problems with recording and enforcing judgments of restitution. The amendments would clarify that judgments of restitution may be enforced in the same manner as money judgments in civil actions and would add cross references to those sections of the Criminal Procedure Article that govern recording and indexing judgments of restitution. These amendments would provide more specific guidance for the clerks.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-354 by adding a new section (b) and a cross reference, as follows:

Rule 4-354. ENFORCEMENT OF MONEY JUDGMENT

(a) Generally

A money judgment or other order for payment of a sum certain entered in a criminal action in favor of the State, including imposition of a fine, forfeiture of an appearance bond, and adjudication of a lien pursuant to Code, Article 27A, §7, may be enforced in the same manner as a money judgment entered in a civil action.

(b) Judgment of Restitution

A judgment of restitution may be enforced in the same manner as a monetary judgment entered in a civil action.

Cross reference: Code, Criminal Procedure Article, §11-613 (d).

Source: This Rule is derived in part from former M.D.R. 620 a and in part new.

REPORTER'S NOTE

See the Reporter's Note to the proposed amendments to Rule 4-342.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-505 to add to section (a) new language requiring a law enforcement agency that objects to an application for expungement to file an answer, as follows:

Rule 4-505. ANSWER TO APPLICATION OR PETITION

(a) Answer to Application

Within 30 days after service of an application for expungement, if the law enforcement agency objects to the expungement, the ~~law enforcement~~ agency shall file an answer, ~~if it has not previously filed a timely notice of denial or if it wishes to assert additional reasons for denial at the hearing,~~ and serve a copy on the applicant or the attorney of record.

(b) Answer to Petition

Within 30 days after service of a petition for expungement, the State's Attorney shall file an answer, and serve a copy on the petitioner or the attorney of record.

Cross reference: Code, Criminal Procedure Article, §10-105 (d).

(c) Contents

An answer objecting to expungement of records shall state in detail the specific grounds for objection. A law enforcement agency or State's Attorney may by answer consent to the expungement of an applicant's or petitioner's record.

(d) Effect of Failure to Answer

The failure of a law enforcement agency or State's Attorney to file an answer within the 30-day period constitutes a consent to the expungement as requested.

Source: This Rule is derived from former Rule EX4.

REPORTER'S NOTE

Julia M. Andrew, Esq., Assistant Attorney General, explained in a letter that a law enforcement agency is not required to file an answer to an application for expungement if the agency previously filed a timely notice of denial. The current language of section (d) of Rule 4-505 is misleading because it does not refer to a filing of a notice of denial, and Ms. Andrew suggested that this language be added. The Rules Committee recommends, instead, that the agency always be required to file an answer if it objects to the expungement. This change makes the Rule in conformance with Form 4-503.4, Notice of Hearing, which requires an answer stating the agency's specific grounds for objection if it wishes to oppose an application for expungement of records. Ms. Andrew agreed with the recommendation of the Rules Committee.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

BAIL BOND FORMS

AMEND Form 4-217.1 to state the statutory capitalization rates for ground leases, as follows:

Form 4-217.1. DECLARATION OF TRUST OF REAL ESTATE TO SECURE PERFORMANCE OF A BAIL BOND

DECLARATION OF TRUST OF REAL ESTATE TO SECURE PERFORMANCE OF A BAIL BOND

STATE OF MARYLAND,

The undersigned [ ] Defendant, [ ] Surety, ..... of ..... (Name) (Address)

in order to secure the performance of the bail bond annexed hereto, being first sworn (or, if Surety is a corporation, its undersigned officer being first sworn), acknowledges and declares under oath as follows:

That the undersigned is the sole owner of [ ] a fee simple absolute, or [ ] a leasehold subject to an annual ground rent of \$....., in certain land and premises situate in ..... Maryland and described as (County) ..... (lot, block, and subdivision or other legal description)

That the undersigned is competent to execute a conveyance of said land and premises; and

That the undersigned hereby holds the same in trust to the use and subject to the demand of the State of Maryland as collateral security for the performance of that bond;

That ~~said~~ the property is assessed for \$..... x .8 = \$..... from which the following encumbrances should be deducted:

Ground rent capitalized at 6% <u>    </u> %*	\$.....	
Mortgages/Deeds of Trust totaling	\$.....	
Federal/State Tax Liens	\$.....	
Mechanics Liens	\$.....	
Judgment & Other Liens	\$.....	
Other outstanding Bail Bonds	<u>\$.....</u>	
Total Encumbrances	\$.....	<u>\$.....</u>

and that the present net equity in the property is \$.....

\* The capitalization rates for ground leases are: (1) 4% for leases executed from April 9, 1884 to April 5, 1888, inclusive; (2) 12% for leases created after July 1, 1982; and (3) 6% for leases created at any other time. See Code, Real Property Article, §8-110.

That, if the undersigned is a body corporate, this Declaration of Trust is its act and deed and that its undersigned officer is fully authorized to execute this Declaration of Trust on its behalf.

And the undersigned further declares, covenants, and undertakes not to sell, transfer, convey, assign, or encumber the land and premises or any interest therein, so long as the bail

bond hereby secured remains undischarged and in full force and effect, without the consent of the court in which the bail bond is filed, it being understood that upon discharge of the bail bond the clerk of the court will execute a release in writing endorsed on the foot of this document (or by a separate Deed of Release), which may be recorded in the same manner and with like effect of a release of mortgage if this Declaration of Trust is recorded among the Land Records.

..... (Seal)  
(Defendant)

or

..... (Seal)  
(Surety)

by .....

SWORN to, signed, sealed, and acknowledged before me this  
..... day of ....., .....  
(month) (year)

.....  
Commissioner/Clerk/Judge

of the ..... Court

for ..... County/City

REPORTER'S NOTE

Julia M. Andrew, Assistant Attorney General, pointed out that Code, Real Property Article, §8-110 (b) provides that the capitalization rate for ground leases created after July 1, 1982 has been changed to 12%. However, Form 4-217.1 provides that ground rents are capitalized at 6%, which was the percentage rate before 1982. The Rules Committee recommends that the form be amended to reflect the various capitalization rates for ground leases set forth in Code, Real Property Article, §8-110 (b).

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
FORMS FOR EXPUNGEMENT OF RECORDS

AMEND Form 4-503.4 to make a certain stylistic change, as follows:

Form 4-503.4. NOTICE OF HEARING

(Caption)

NOTICE OF HEARING

TO THE LAW ENFORCEMENT AGENCY SERVED HEREWITH:

A hearing on the foregoing Application for Expungement of Records has been set for . . . . ., 19 . . . . ,  
(Date)  
at . . . . M. in the District Court for . . . . .  
City/County at . . . . ., Maryland, at which time an Order for Expungement of Records may be entered.

If you wish to oppose the application, within 30 days after the service of this Notice of Hearing you must file and serve upon the applicant or the applicant's attorney of record an answer stating in detail your specific grounds for objection.

Issued this . . . . . day of . . . . ., 19 . . . .  
(Month) (Year)

. . . . .  
Clerk

REPORTER'S NOTE

The proposed amendments to Form 4-503.4 delete date references to the year "19 \_\_\_\_."

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
FORMS FOR EXPUNGEMENT OF RECORDS

AMEND Form 4-504.1 to delete the five-year requirement for filing a petition for expungement based on a pardon, as follows:

Form 4-504.1. PETITION FOR EXPUNGEMENT OF RECORDS

(Caption)

PETITION FOR EXPUNGEMENT OF RECORDS

1. (Check one of the following boxes) On or about \_\_\_\_\_,  
(Date)  
I was [ ] arrested, [ ] served with a summons, or [ ] served  
with a citation by an officer of the \_\_\_\_\_  
(Law Enforcement Agency)  
at \_\_\_\_\_, Maryland, as  
a result of the following incident \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

2. I was charged with the offense of \_\_\_\_\_  
\_\_\_\_\_.

3. On or about \_\_\_\_\_,  
(Date)  
the charge was disposed of as follows (check one of the following  
boxes):

[ ] I was acquitted and either three years have passed since

disposition or a General Waiver and Release is attached.

[ ] The charge was dismissed or quashed and either three years have passed since disposition or a General Waiver and Release is attached.

[ ] A judgment of probation before judgment was entered on a charge that is not a violation of Code\*, Transportation Article, §21-902 or Code\*, Criminal Law Article, §§2-503, 2-504, 2-505, or 2-506, or former Code\*, Article 27, §388A or §388B, and either (a) at least three years have passed since the disposition, or (b) I have been discharged from probation, whichever is later. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

[ ] A Nolle Prosequi was entered and either three years have passed since disposition or a General Waiver and Release is attached. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or

regulations not carrying a possible sentence of imprisonment.

[ ] The proceeding was placed on the Stet docket and three years have passed since disposition. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

[ ] The case was compromised pursuant to Code\*, Criminal Law Article, §3-207, former Code\*, Article 27, §12A-5, or former Code\*, Article 10, §37 and three years have passed since disposition.

[ ] On or about \_\_\_\_\_, I was granted  
(Date)

a full and unconditional pardon by the Governor for the one criminal act, not a crime of violence as defined in Code\*, Criminal Law Article, §14-101 (a), of which I was convicted. ~~More than five years, but not~~ Not more than ten years, have passed since the Governor signed the pardon, and since the date the Governor signed the pardon I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of

imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

WHEREFORE, I request the Court to enter an Order for Expungement of all police and court records pertaining to the above arrest, detention, confinement, and charges.

I solemnly affirm under the penalties of perjury that the contents of this Petition are true to the best of my knowledge, information and belief, and that the charge to which this Petition relates was not made for any nonincarcerable violation of the Vehicle Laws of the State of Maryland, or any traffic law, ordinance, or regulation, nor is it part of a unit the expungement of which is precluded under Code, Criminal Procedure Article, §10-107.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Address)

\_\_\_\_\_

\_\_\_\_\_  
(Telephone No.)

\* References to "Code" in this Petition are to the Annotated Code of Maryland.

REPORTER'S NOTE

Chapter 121 (HB 116), Acts of 2003 repealed the five-year period for persons waiting to file a petition for expungement based on a pardon from the Governor. Accordingly, the Rules Committee recommends deleting the language in Form 4-504.1 that refers to the five-year period.

MARYLAND RULES OF PROCEDURE  
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES  
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-105 to modify the definition of "certified mail" and to add a definition of "petition," as follows:

Rule 6-105. DEFINITIONS

The definitions contained in Code, Estates and Trusts Article, §1-101 apply in this Title. The following definitions also apply:

(a) Certified Mail

"Certified mail" means mail deposited with the United States Postal Service ~~as restricted delivery mail, with~~ postage prepaid, and return receipt requested, ~~addressed to the addressee at the address last known to the sender, with delivery restricted to the addressee.~~

Cross reference: Code, Estates and Trusts Article, §1-103 (a).

(b) Clerk

"Clerk" when used in any rule incorporated by reference into this Title means the register of wills.

(c) Code

"Code" means the Annotated Code of Public General Laws of Maryland as from time to time amended.

(d) Person

"Person" includes any individual, partnership, joint stock

company, unincorporated association or society, municipal or other corporation, the State, its agencies or political subdivisions, any court, or any other governmental entity.

(e) Petition

"Petition" means an application to the court for an order and includes a motion permitted to be filed pursuant to Title 6 of these Rules.

REPORTER'S NOTE

The proposed amendment to Rule 6-105 conforms the definition of "certified mail" in section (a) to the definition of "certified mail" in Rule 1-202, Definitions. The change deletes the requirement that the delivery of certified mail is restricted to delivery to the addressee. This will save probate estates money because the requirement that the mail must be delivered only to the addressee is a more expensive mailing procedure. The consultants to the Probate/Fiduciary Subcommittee have noted that often the U.S. Post Office is not able to effectuate the directed addressee procedure, so the modified procedure may result in more deliveries of the certified mail. The Rules that refer to "certified mail" include Rules 6-105, 6-125, 6-210, 6-302, 6-317, 6-412, 6-432, and 6-452.

Additionally, a definition of "petition" is proposed to be added to the Rule. Many papers filed in the orphans' court are captioned either as a "motion" or as a "petition." The addition of the definition of the word "petition" makes clear that either caption is acceptable.

MARYLAND RULES OF PROCEDURE  
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES  
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-122 to add to Schedule B a certain paragraph concerning the payment of claims, to add certain provisions concerning limited orders, and to make certain stylistic changes, as follows:

Rule 6-122. PETITIONS

(a) Initial Petition ~~for Probate~~

The Initial Petition ~~for Probate~~ shall be in the following form:

IN THE ORPHANS' COURT FOR

(OR) \_\_\_\_\_, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF: \_\_\_\_\_ ESTATE NO: \_\_\_\_\_

FOR:

- |  |   |   |  |
|--|---|---|--|
| <input type="checkbox"/> REGULAR ESTATE<br>PETITION FOR <del>PROBATE</del><br><u>ADMINISTRATION</u> Estate<br>value in excess of<br>\$30,000. (If spouse<br>is sole heir or<br>legatee, \$50,000.)<br>Complete and attach<br>Schedule A. | <input type="checkbox"/> SMALL ESTATE<br>PETITION FOR<br>ADMINISTRATION<br>Estate value of<br>\$30,000 or less.<br>(If spouse is<br>sole heir or<br>legatee, \$50,000.)<br>Complete and attach<br>Schedule B. | <input type="checkbox"/> WILL OF NO<br>ESTATE<br>Complete<br>items 2<br>and 5 | <input type="checkbox"/> <u>LIMITED</u><br><u>ORDERS</u><br><u>Complete</u><br><u>item 2 and</u><br><u>attach</u><br><u>Schedule C</u> |
|--|---|---|--|

The petition of:

Name	Address
Name	Address
Name	Address

Each of us states:

1. I am (a) at least 18 years of age and either a citizen of the United States or a permanent resident alien spouse of the decedent or (b) a trust company or any other corporation authorized by law to act as a personal representative.

2. The Decedent, \_\_\_\_\_, was domiciled in \_\_\_\_\_, (County) State of \_\_\_\_\_ and died on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ (place of death).

3. If the decedent was not domiciled in this county at the time of death, this is the proper office in which to file this petition because: \_\_\_\_\_.

4. I am entitled to priority of appointment as personal representative of the decedent's estate pursuant to §5-104 of the Estates and Trusts Article, Annotated Code of Maryland because:

---

---

and I am not excluded by §5-105 (b) of the Estates and Trusts Article, Annotated Code of Maryland from serving as personal representative.

5. I have made a diligent search for the decedent's will and to the best of my knowledge:

none exists; or

the will dated \_\_\_\_\_ (including codicils, if any, dated \_\_\_\_\_)

accompanying this petition is the last will and it came into my hands in the following manner: \_\_\_\_\_

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---

and the names and last known addresses of the witnesses are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Other proceedings, if any, regarding the decedent or the estate are as follows: \_\_\_\_\_

---

7. If any information required by paragraphs 2 through 6 has not been furnished, the reason is: \_\_\_\_\_

---

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8. If appointed, I accept the duties of the office of

personal representative and consent to personal jurisdiction in any action brought in this State against me as personal representative or arising out of the duties of the office of personal representative.

WHEREFORE, I request appointment as personal representative of the decedent's estate and the following relief as indicated:

that the will and codicils, if any, be admitted to administrative probate;

that the will and codicils, if any, be admitted to judicial probate;

that the will and codicils, if any, be filed only;

that only a limited order be issued;

that the following additional relief be granted: \_\_\_\_\_

---

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

_____ Attorney	_____ Petitioner	_____ Date
_____ Address	_____ Petitioner	_____ Date
_____	_____ Petitioner	_____ Date
_____ Telephone Number	_____ Telephone Number (optional)	



\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Telephone Number (optional)

.....

**(FOR REGISTER'S USE)**

Safekeeping Wills \_\_\_\_\_

Custody Wills \_\_\_\_\_

Bond Set \$ \_\_\_\_\_

Deputy \_\_\_\_\_

IN THE ORPHANS' COURT FOR

(OR) \_\_\_\_\_, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

\_\_\_\_\_

ESTATE NO. \_\_\_\_\_

SCHEDULE - B

Small Estate - Assets and Debts of the Decedent

1. I have made a diligent search to discover all property and debts of the decedent and set forth below are:

(a) A listing of all real and personal property owned by the decedent, individually or as tenant in common, and of any other property to which the decedent or estate would be entitled, including descriptions, values, and how the values were determined:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) A listing of all creditors and claimants and the amounts claimed, including secured\*, contingent and disputed claims:

---

2. Allowable funeral expenses are \$ \_\_\_\_\_; statutory family allowances are \$ \_\_\_\_\_; and expenses of administration claimed are \$ \_\_\_\_\_.

3. Attached is a List of Interested Persons.

4. After the time for filing claims has expired, subject to the statutory order of priorities, and subject to the resolution of disputed claims by the parties or the court, I shall (1) pay all proper claims\*\*, expenses, and allowances not previously paid; (2) if necessary, sell property of the estate in order to do so; and (3) distribute the remaining assets of the estate in accordance with the will or, if none, with the intestacy laws of this State.

---

Date

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Personal Representative

\*NOTE: §5-601 (d) of the Estates and Trusts Article, Annotated Code of Maryland "For the purpose of this subtitle - value is determined by the fair market value of property less debts of record secured by the property as of the date of death, to the extent that insurance benefits are not payable to the lien holder or secured party for the secured debt."

\*\*NOTE: Proper claims shall be paid pursuant to the provisions of Code, Estates and Trusts Article, §§8-104 and 8-105.

I solemnly affirm under the penalties of perjury that the

contents of the foregoing schedule are true to the best of my knowledge, information, and belief.

_____ Attorney	_____ Petitioner	_____ Date
_____ Address	_____ Petitioner	_____ Date
_____ Telephone Number	_____ Petitioner	_____ Date
	_____ Telephone Number (optional)	

IN THE ORPHANS' COURT FOR

(OR) \_\_\_\_\_, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

ESTATE NO. \_\_\_\_\_

SCHEDULE - C

Request for Limited Order

To Locate Assets

To Locate Will

1. I am entitled to the issuance of a limited order

because I am:

a nominated personal representative or

a person interested in the proceedings by reason of

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

2. The reasons(s) a limited order should be granted are:

\_\_\_\_\_  
\_\_\_\_\_

I solemnly affirm under the penalties of perjury that the contents of the foregoing schedule are true to the best of my knowledge, information, and belief. I further acknowledge that this order may not be used to transfer assets.

_____ <u>Attorney</u>	_____ <u>Petitioner</u>	_____ <u>Date</u>
_____ <u>Address</u>	_____ <u>Petitioner</u>	_____ <u>Date</u>
_____	_____ <u>Petitioner</u>	_____ <u>Date</u>
_____ <u>Telephone Number</u>	_____ <u>Telephone Number (optional)</u>	

.....

(b) Other Petitions

(1) Generally

Except as otherwise provided by the rules in this Title or permitted by the court, ~~an application to the court for an order shall be by petition filed with the register. The~~ and unless made during a hearing or trial, a petition shall be in

writing, shall set forth the relief or order sought, ~~and~~ shall state the legal or factual basis for the relief requested, and shall be filed with the Register of Wills. The petitioner may serve on any interested person and shall serve on the personal representative and such persons as the court may direct a copy of the petition, together with a notice informing the person served of the right to file a response and the time for filing it.

(2) Response

Any response to the petition shall be filed within 20 days after service or within such shorter time as may be fixed by the court for good cause shown. A copy of the response shall be served on the petitioner and the personal representative.

(3) Order of Court

The court shall rule on the petition and enter an appropriate order.

Cross reference: Code, Estates and Trusts Article, §§2-102 (c), 2-105, 5-201 through 5-206, and 7-402.

(c) Limited Order to Locate Assets

Upon the filing of a verified petition pursuant to Rule 6-122 (a), the orphans' court may issue a limited order to search for assets titled in the sole name of a decedent. The petition shall contain the name, address, and date of death of the decedent and a statement as to why the limited order is necessary. The limited order to locate assets shall be in the following form:

IN THE ORPHANS' COURT FOR

(OR) \_\_\_\_\_, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

\_\_\_\_\_ QUALIFIED ORDER NO. \_\_\_\_\_

LIMITED ORDER TO LOCATE ASSETS

Upon the foregoing petition by a person interested in the  
proceedings, it is this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ by the Orphans' Court of \_\_\_\_\_  
(county), Maryland, ordered that:

1. The following institutions shall disclose to

\_\_\_\_\_ the assets, and the values  
(Name of petitioner)

thereof, titled in the sole name of the above decedent:

\_\_\_\_\_ (Name of financial institution)      \_\_\_\_\_ (Name of financial institution)

\_\_\_\_\_ (Name of financial institution)      \_\_\_\_\_ (Name of financial institution)

\_\_\_\_\_ (Name of financial institution)      \_\_\_\_\_ (Name of financial institution)

2. THIS ORDER MAY NOT BE USED TO TRANSFER ASSETS.

(d) Limited Order to Locate Will

Upon the filing of a verified petition pursuant to Rule  
6-122 (a), the orphans' court may issue a limited order to a  
financial institution to enter the safe deposit box of a decedent

in the presence of the Register of Wills or the Register's authorized deputy for the sole purpose of locating the decedent's will and, if it is located, to deliver it to the Register of Wills or the authorized deputy. The limited order to locate a will shall be in the following form:

IN THE ORPHANS' COURT FOR

(OR) \_\_\_\_\_, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

\_\_\_\_\_ LIMITED ORDER NO. \_\_\_\_\_

LIMITED ORDER TO LOCATE WILL

Upon the foregoing Petition, it is this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by the Orphans' Court of \_\_\_\_\_ (County), Maryland, ordered that:

\_\_\_\_\_, located at \_\_\_\_\_  
(Name of financial institution)

\_\_\_\_\_ enter the  
(Address)

safe deposit box titled in the sole name of \_\_\_\_\_

\_\_\_\_\_, in the presence of  
(Name of decedent)

the Register of Wills or the Register's authorized deputy for the sole purpose of locating the decedent's will and, if the will is located, deliver it to the Register of Wills.

Committee note: This procedure is not exclusive. Banks may also rely on the procedure set forth in Code, Financial Institutions Article, §12-603.

REPORTER'S NOTE

The Rules Committee recommends a reorganization of Rule 6-122 to include a section pertaining to limited orders, which are already in use in many jurisdictions. To effectuate this change, amendments to section (a) are proposed that add (1) a new column listing "limited orders" as a choice on the petition which would now be titled as "Petition," instead of "Petition for Probate," and (2) a new listing in the "wherefore" clause at the end of the initial petition. New sections (c) and (d) and the pertinent forms pertaining to limited orders are added.

Allan Gibber, Esq., a consultant to the Probate/Fiduciary Subcommittee, has noted that in many cases, the Registers of Wills are not able to close an estate because the personal representative has not indicated whether all of the claims have been paid and whether distribution of the estate has been made. The language added to section (a), Schedule B, before the affirmation clause, requires the personal representative to represent that he or she has performed all of the necessary duties, so that the Register can close an estate after the expiration of the time for filing claims. The language in the new paragraph is derived from section (a) of Rule 6-211, Proceedings After Publication.

MARYLAND RULES OF PROCEDURE  
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES  
CHAPTER 200 - SMALL ESTATE

AMEND Rule 6-209 (a) to conform the time for filing an objection to the probate of a will to the time allowed by statute, as follows:

Rule 6-209. NOTICE OF APPOINTMENT

(a) Notice

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

(FILE IN DUPLICATE)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(name and address of  
attorney)

SMALL ESTATE

NOTICE OF APPOINTMENT

Estate No. \_\_\_\_\_

NOTICE TO CREDITORS

NOTICE TO UNKNOWN HEIRS

TO ALL PERSONS INTERESTED IN THE ESTATE OF \_\_\_\_\_.

Notice is given that \_\_\_\_\_  
(name and address)

was on \_\_\_\_\_ appointed personal  
(date)  
representative of the small estate of \_\_\_\_\_  
who died on \_\_\_\_\_ (with) (without) a will.  
(date)

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

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

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

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

(2) Thirty days after the personal representative mails or

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

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Personal Representative(s)

True Test Copy

Name and Address of Register  
of Wills for \_\_\_\_\_

Name of newspaper designated by personal representative:

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(b) Modification of Form

If the initial appointment is made under judicial probate, this form may be modified to delete reference to the notice of the right to object to the appointment of the personal representative or to the probate of the decedent's will, as applicable.

(c) Publication

The register shall cause the notice to be published once in a newspaper of general circulation in the county of appointment.

(d) Certificate of Publication

Within 60 days after publication, the personal representative shall cause to be filed with the register a certification that the required newspaper notice has been published.

Cross reference: Code, Estates and Trusts Article, §§7-103 and 5-604 (b); Rule 6-401.

#### REPORTER'S NOTE

The proposed amendment to Rule 6-209 conforms the time period for filing an objection to the probate of a will to the time allowed by statute. The current 30-day period set forth in the Rule is inconsistent with Code, Estates and Trusts Article, §5-207, which provides for six months to file a caveat proceeding.

MARYLAND RULES OF PROCEDURE  
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES  
CHAPTER 200 - SMALL ESTATE

AMEND Rule 6-211 by deleting sections (b) and (d) and to make a certain stylistic change, as follows:

Rule 6-211. PROCEEDINGS AFTER PUBLICATION

(a) Payments and Distribution

After ~~the expiration of~~ the time for filing claims ~~and has~~ expired, subject to the statutory order of priorities and subject to the resolution of disputed claims by the parties or the court, the personal representative shall (1) pay all proper claims, expenses, and allowances not previously paid; (2) if necessary, sell property of the estate in order to do so; and (3) distribute the remaining assets of the estate in accordance with the will or, if none, with the intestacy laws of this State.

~~(b) Certificate of Compliance~~

~~Within 60 days after the expiration of the time for filing claims, the personal representative shall file a Certificate of Compliance with the register in the following form:~~

~~{CAPTION}~~

~~SMALL ESTATE CERTIFICATE OF COMPLIANCE~~

~~The personal representative certifies as follows:~~

~~1. The required publication has been made as evidenced by:~~

~~[ ] the attached copy of the published newspaper notice; or  
[ ] the certificate of publication filed or being filed by  
the newspaper ( \_\_\_\_\_ ).  
Name of Newspaper~~

~~2. There are:~~

~~[ ] no claims not previously disclosed in this proceeding;  
or~~

~~[ ] the following claims not previously disclosed, including  
contingent and disputed claims.~~

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

~~3. All proper claims, expenses and allowances [ ] have been  
paid [ ] have not been paid.~~

~~4. Distribution of the remaining property of the estate [ ]  
has been made or [ ] will be made within thirty (30) days hereof  
in accordance with the will, or, if none, with the intestacy laws  
of this State.~~

~~5. The reasons why any of the above has not been completed  
are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_~~

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

Date: \_\_\_\_\_  
Personal Representative

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

Instructions:

- ~~1. This form must be filed in every small estate proceeding in which publication is required. It shall be filed with the register no later than 60 days after the expiration of the time for filing claims.~~
- ~~2. If final distribution of the estate cannot be completed at the time this Certificate of Compliance is required to be filed, or within 30 days thereafter, a supplemental certificate shall be filed every 30 days until the estate is closed, unless the register or court otherwise directs.~~

~~(c)~~ (b) Objections and Disputed Claims

Objections or disputed claims that have not been resolved or settled by agreement may be pursued by the objecting party or claimant before the court. The court shall decide the objection or dispute after a hearing and shall direct payment from the estate of all proper claims, expenses and allowances not previously paid, direct distribution of the net estate in accordance with the will or, if none, with the intestacy laws of this State, and take any action it deems necessary.

~~(d)~~ Supplemental Certificate of Compliance

~~If final distribution of the estate cannot be completed at the time the initial Certificate of Compliance is required to be filed, or within 30 days thereafter, a supplemental certificate shall be filed every 30 days until the estate is closed, unless the register or court otherwise directs.~~

Cross reference: Code, Estates and Trusts Article, §5-604 (b).

#### REPORTER'S NOTE

The addition of language to section (a) of Rule 6-122 that requires that the personal representative affirm that he or she has performed all of the duties necessary to terminate probate of an estate eliminates the need for the personal representative to file a certificate of compliance and a supplemental certificate of compliance. The Rules Committee therefore recommends that sections (b) and (d) be deleted from Rule 6-211.

The proposed amendment to section (a) of Rule 6-211 is stylistic, only, conforming the language of that section to proposed new language set forth in Schedule B, paragraph 4, in Rule 6-122 (a).

MARYLAND RULES OF PROCEDURE  
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES  
CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-411 (b) by deleting the reference to filing an election to take a statutory share "within seven months" and substituting a new time period, as follows:

Rule 6-411. ELECTION TO TAKE STATUTORY SHARE

(a) Form of Election

A surviving spouse may elect to take a statutory share by the timely filing of an election in the following form:

[CAPTION]

ELECTION TO TAKE STATUTORY SHARE OF ESTATE

I, \_\_\_\_\_,  
surviving spouse of \_\_\_\_\_,

renounce all provisions of my spouse's will pertaining to myself and elect to take my statutory share of the estate.

Witness:

\_\_\_\_\_

\_\_\_\_\_  
Surviving Spouse

Date: \_\_\_\_\_

\_\_\_\_\_  
Attorney



following form:

[CAPTION]

NOTICE OF EXTENSION OF TIME  
TO ELECT STATUTORY SHARE

On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, an extension  
(month) (year)  
of time to elect a statutory share of the estate was granted to  
\_\_\_\_\_,  
the decedent's surviving spouse. The extension expires on the  
\_\_\_\_\_ day of \_\_\_\_\_,  
(month) (year).

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

\_\_\_\_\_  
Register of Wills

(d) Withdrawal

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

Cross reference: Code, Estates and Trusts Article, §§3-203 and 3-206.

REPORTER'S NOTE

Chapter 234 (SB 312), Acts of 2003, modified the time period for a surviving spouse to take an elective share of an estate. The time period originally was not later than seven months after the date of the first appointment of a personal representative, and it has been changed to the later of nine months after the date of the decedent's death or six months after the first appointment of a personal representative under a will. The Rules Committee proposes changing section (b) of Rule 6-411 to conform to the statute, Code, Estates and Trusts Article, §3-206.

MARYLAND RULES OF PROCEDURE  
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES  
CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-452 to add a cross reference to Code, Estates and Trusts Article, §12-701, as follows:

Rule 6-452. REMOVAL OF A PERSONAL REPRESENTATIVE

(a) Commencement

The removal of a personal representative may be initiated by the court or the register, or on petition of an interested person.

(b) Show Cause Order and Hearing

The court shall issue an order (1) stating the grounds asserted for the removal, unless a petition for removal has been filed, (2) directing that cause be shown why the personal representative should not be removed, and (3) setting a hearing. The order may contain a notice that the personal representative, after being served with the order, may exercise only the powers of a special administrator or such other powers as the court may direct. Unless otherwise permitted by the court, the order shall be served by certified mail on the personal representative, all interested persons, and such other persons as the court may direct. The court shall conduct a hearing for the purpose of determining whether the personal representative should be removed.

Cross reference: Rule 6-124.

(c) Appointment of Successor Personal Representative

Concurrently with the removal of a personal representative, the court shall appoint a successor personal representative or special administrator.

(d) Account of Removed Personal Representative

Upon appointment of a successor personal representative or special administrator, the court shall order the personal representative who is being removed from office to (1) file an account with the court and deliver the property of the estate to the successor personal representative or special administrator or (2) comply with Rule 6-417 (c).

Cross reference: Code, Estates and Trusts Article, §§6-306 (removal of personal representative) and 12-701 (no stay by appeal; power of successor).

REPORTER'S NOTE

Chapter 241 (SB 368), Acts of 2003, provides that an appeal from a final order of an orphans' court or a circuit court removing a personal representative does not stay an order appointing a successor personal representative or special administrator and that an appointed successor personal representative shall have the powers of a special administrator, if an appeal is filed. The Rules Committee proposes to add cross references to this statute, Code, Estates and Trusts Article, §12-701, in Rules 6-452 and 6-454 to draw attention to the new law.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-454 to add a cross reference to Code, Estates and Trusts Article, §12-701, as follows:

Rule 6-454. SPECIAL ADMINISTRATION

(a) Appointment of Special Administrator

When necessary to protect property before the appointment and qualification of a personal representative or before the appointment of a successor personal representative following a vacancy in the position of personal representative, the court shall enter an order appointing a special administrator. The appointment may be initiated by the court or the register or upon the filing of a petition by an interested person, a creditor, the personal representative of a deceased personal representative, or the person appointed to protect the estate of a personal representative under a legal disability.

(b) Contents of Petition

A petition for appointment of a special administrator shall contain a brief description of the property requiring protection, a statement setting forth the necessity for the appointment before the appointment of a personal representative and, when appropriate, the reasons for the delay in the appointment of a personal representative.

(c) Bond

Upon appointment, the special administrator shall comply with Rule 6-312, except to the extent that the court, upon recommendation of the register, may otherwise prescribe.

(d) Specified Duties

The special administrator shall assume any unperformed duties required of a personal representative concerning the preparation and filing of inventories, accounts and notices of filing accounts, and proposed payments of fees and commissions. The special administrator shall collect, manage, and preserve property of the estate and shall account to the personal representative subsequently appointed. The special administrator shall have such further powers and duties as the court may order.

(e) Notice

Notice of the appointment of a special administrator is not required unless otherwise directed by the court.

Cross reference: Code, Estates and Trusts Article, §§1-101 (s), 6-304, 6-401 through 6-404, 7-201, ~~and 7-301,~~ and 12-701.

REPORTER'S NOTE

See the Reporter's Note to the proposed amendment to Rule 6-452.

MARYLAND RULES OF PROCEDURE  
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES  
CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-455 to change part (c) of the Form of Election in section (b) and to add a new part (d) in the Form of Election to conform to changes to Code, Estates and Trusts Article, §5-702, as follows:

Rule 6-455. MODIFIED ADMINISTRATION

(a) Generally

When authorized by law, an election for modified administration may be filed by a personal representative within three (3) months after the appointment of the personal representative.

(b) Form of Election

An election for modified administration shall be in the following form:

BEFORE THE REGISTER OF WILLS FOR \_\_\_\_\_, MARYLAND

ESTATE OF \_\_\_\_\_ Estate No. \_\_\_\_\_

ELECTION OF PERSONAL REPRESENTATIVE FOR

MODIFIED ADMINISTRATION

1. I elect Modified Administration. This estate qualifies for Modified Administration for the following reasons:

(a) The decedent died on \_\_\_\_\_ [ ] with a will or

[ ] without a will.

(b) This Election is filed within 3 months from the date of my appointment which was on \_\_\_\_\_.

(c) [ ] ~~All~~ Each of the residuary legatees named in the will or [ ] ~~all~~ each of the heirs of the intestate decedent ~~are limited to~~ is either:

[ ] The decedent's personal representative, or [ ] ~~a surviving spouse, [ ] children of the decedent~~ an individual or an entity exempt from inheritance tax in the decedent's estate under §7-203 (b), (e), and (f) of the Tax - General Article.

(d) Each trustee of every trust created in the decedent's will is one or more of the following: the decedent's [ ] personal representative, [ ] surviving spouse, [ ] child.

~~(d)~~ (e) Consents of the persons referenced in 1 (c) [ ] are ~~††~~ filed herewith or [ ] were ~~previously~~ filed previously.

~~(e)~~ (f) The estate is solvent and the assets are sufficient to satisfy all specific legacies.

~~(f)~~ (g) Final distribution of the estate can be made within 12 months after the date of my appointment.

2. Property of the estate is briefly described as follows:

Description	Estimated Value
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

3. I acknowledge that I must file a Final Report Under Modified Administration no later than 10 months after the date of appointment and that, upon request of any interested person, I must provide a full and accurate Inventory and Account to all interested persons.

4. I acknowledge the requirement under Modified Administration to make full distribution within 12 months after the date of appointment and I understand that the Register of Wills and Orphans' Court are prohibited from granting extensions under Modified Administration.

5. I acknowledge and understand that Modified Administration shall continue as long as all the requirements are met. I solemnly affirm under the penalties of perjury that the contents of the foregoing are true to the best of my knowledge, information and belief.

_____ Attorney	_____ Personal Representative
_____ Address	_____ Personal Representative
_____ Address	
_____ Telephone	

(c) Consent

An election for modified administration may be filed if all the residuary legatees of a testate decedent and the heirs at law of an intestate decedent consent in the following form:

BEFORE THE REGISTER OF WILLS FOR \_\_\_\_\_, MARYLAND  
ESTATE OF \_\_\_\_\_ Estate No. \_\_\_\_\_

CONSENT TO ELECTION FOR  
MODIFIED ADMINISTRATION

I am a [ ] residuary legatee or [ ] heir of the decedent who died intestate. I consent to Modified Administration and acknowledge that under Modified Administration:

1. Instead of filing a formal Inventory and Account, the personal representative will file a verified Final Report Under Modified Administration no later than 10 months after the date of appointment.

2. Upon written request to the personal representative by any legatee not paid in full or any heir-at-law of a decedent who died without a will, a formal Inventory and Account shall be provided by the personal representative to the legatees or heirs of the estate.

3. At any time during administration of the estate, I may revoke Modified Administration by filing a written objection with the Register of Wills. Once filed, the objection is binding on the estate and cannot be withdrawn.

4. If Modified Administration is revoked, the estate will proceed under Administrative Probate and the personal representative shall file a formal Inventory and Account, as required, until the estate is closed.

5. Unless I waive notice of the verified Final Report Under

Modified Administration, the personal representative will provide a copy of the Final Report to me, upon its filing which shall be no later than 10 months after the date of appointment.

6. Final Distribution of the estate will occur not later than 12 months after the date of appointment of the personal representative.

---

Signature of Residuary Legatee  
or Heir

---

Type or Print Name

---

Signature of Residuary Legatee  
or Heir

---

Type or Print Name

(d) Final Report

(1) Filing

A verified final report shall be filed no later than 10 months after the date of the personal representative's appointment.

(2) Copies to Interested Persons

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

(3) Contents

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

BEFORE THE REGISTER OF WILLS FOR \_\_\_\_\_, MARYLAND

ESTATE OF \_\_\_\_\_ Estate No. \_\_\_\_\_

Date of Death \_\_\_\_\_ Date of Appointment of Personal Representative \_\_\_\_\_

FINAL REPORT UNDER MODIFIED ADMINISTRATION

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

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

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

2. Attached are the following Schedules and supporting attachments:

Total Schedule A: Reportable Property ..... \$ \_\_\_\_\_
Total Schedule B: Payments and Disbursements ..... \$ (\_\_\_\_\_)
Total Schedule C: Distribution of Net Reportable Property ..... \$ \_\_\_\_\_

3. I acknowledge that:

(a) Final distributions shall be made within 12 months after the date of my appointment as personal representative.

(b) The Register of Wills and Orphans' Court are prohibited from granting extensions of time.

(c) If Modified Administration is revoked, the estate shall proceed under Administrative Probate, and I will file a formal



Address	Personal Representative
City, State, Zip Code	
Telephone Number	

---

FOR REGISTER OF WILLS USE

Distributions subject to collateral tax at _____%	_____	Tax thereon _____
---	-------	-------------------

Distribution subject to collateral tax at _____%	_____	Tax thereon _____
--	-------	-------------------

Distribution subject to direct tax at _____%	_____	Tax thereon _____
--	-------	-------------------

Distribution subject to direct tax _____	_____	Tax thereon _____
--	-------	-------------------

Exempt distributions to _____	_____
(Identity of the Recipient)	

Exempt distributions to _____	_____
(Identity of the Recipient)	

Exempt distributions to _____	_____
(Identity of the Recipient)	

Total Inheritance Tax due	_____
---------------------------	-------

Total Inheritance Tax paid	_____
----------------------------	-------

Gross estate _____	Probate Fee & Costs Collected	_____
		_____

FINAL REPORT UNDER MODIFIED ADMINISTRATION

SUPPORTING SCHEDULE A

REPORTABLE PROPERTY

ESTATE OF \_\_\_\_\_ Estate No. \_\_\_\_\_

Basis of

<u>Item No.</u>	<u>Description</u>	<u>Valuation</u>	<u>Value</u>
TOTAL REPORTABLE PROPERTY OF THE DECEDENT (Carry forward to Schedule C)			\$ _____

INSTRUCTIONS

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

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

2. The personal representative may value: Debts owed to the decedent, including bonds and notes; bank accounts, building,

savings and loan association shares, money and corporate stocks listed on a national or regional exchange or over the counter securities.

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

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ATTACH ADDITIONAL SCHEDULES AS NEEDED  
FINAL REPORT UNDER MODIFIED ADMINISTRATION  
SUPPORTING SCHEDULE B  
Payments and Disbursements

ESTATE OF \_\_\_\_\_ Estate No. \_\_\_\_\_

<u>Item No.</u>	<u>Description</u>	<u>Amount Paid</u>
-----------------	--------------------	--------------------

Total Disbursements: \$ \_\_\_\_\_  
(Carry forward to Schedule C)

---

INSTRUCTIONS

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

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

---

ATTACH ADDITIONAL SCHEDULES AS NEEDED  
FINAL REPORT UNDER MODIFIED ADMINISTRATION  
SUPPORTING SCHEDULE C

Distributions of Net Reportable Property

1. SUMMARY OF REPORTABLE PROPERTY

Total from Schedule A .....	_____
Total from Schedule B.....	_____
Total Net Reportable Property..... (Schedule A minus Schedule B)	_____

2. SPECIFIC BEQUESTS (If Applicable)

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

3. DISTRIBUTION OF BALANCE OF ESTATE

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

Total Reportable Distributions	\$ _____
Inheritance Tax	\$ _____

---

ATTACH ADDITIONAL SCHEDULES AS NEEDED

(4) Inventory and Account

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

(e) Revocation

(1) Causes for Revocation

A modified administration shall be revoked by:

- (A) the filing of a timely request for judicial probate;
- (B) the filing of a written objection by an interested person;
- (C) the personal representative's filing of a withdrawal of the election for modified administration;
- (D) the court, on its own initiative, or for good cause shown by an interested person or by the register;
- (E) the personal representative's failure to timely file the final report and make distribution within 12 months after the date of appointment, or to comply with any other provision of this Rule or Code, Estates and Trusts Article, §§5-701 through 5-710.

(2) Notice of Revocation

The register shall serve notice of revocation on each interested person.

(3) Consequences of Revocation

Upon revocation, the personal representative shall file a formal inventory and account with the register pursuant to Rules 6-402 and 6-417. The inventory and account shall be filed within the time provided by Rules 6-402 and 6-417, or, if the deadline for filing has passed, within 30 days after service of the register's notice of revocation.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 232 (SB 307), Acts of 2003 (1) changed the categories of the specific residuary legatees and heirs at law

which qualify the personal representative to file for a modified administration of an estate and (2) added a requirement that all trustees must be one or more of the following: the decedent's personal representative, surviving spouse, or child, in order for the personal representative to be authorized to file for a modified administration. The Rules Committee recommends that part (c) of the Form of Election in section (b) of Rule 6-455 be modified and that part (d) in the form be added to conform to the statute. The Committee recommends changing some of the statutory language in the Rule to clarify its meaning.

MARYLAND RULES OF PROCEDURE  
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES  
CHAPTER 400 - ADMINISTRATION OF ESTATES

ADD new Rule 6-456, as follows:

Rule 6-456. MODIFIED ADMINISTRATION - EXTENSION OF TIME TO FILE  
A FINAL REPORT AND TO MAKE DISTRIBUTION

(a) Generally

The initial time periods for filing a final report and for making distribution to each legatee and heir may be extended for 90 days if the personal representative and each interested person sign the form set out in section (b) of this Rule and file the form within 10 months of the date of appointment of the personal representative.

(b) Form

A consent to an extension of time to file a final report and to make distribution in a modified administration shall be in substantially the following form:

BEFORE THE REGISTER OF WILLS FOR \_\_\_\_\_, MARYLAND  
IN THE ESTATE OF \_\_\_\_\_ Estate No. \_\_\_\_\_  
Date of Death \_\_\_\_\_ Date of Appointment  
Of Personal Representative \_\_\_\_\_

CONSENT TO EXTEND TIME TO FILE FINAL REPORT  
AND TO MAKE DISTRIBUTION IN A MODIFIED ADMINISTRATION

We, the Personal Representative and Interested Persons in the above-captioned estate, consent to extend for 90 days the time to file a final report and to make distribution in the modified administration of the estate. We acknowledge that this consent must be filed within 10 months of the date of appointment of the personal representative.

Personal Representatives  
(Type or Print Names)

_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature

Interested Persons  
(Type or Print Names)

_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Source: The Rule is new.

REPORTER'S NOTE

Chapter 233 (SB 310), Acts of 2003 provides for an extension of the time period of 90 days to file a final report and to make distribution to each legatee and heir conditioned upon all personal representatives and interested persons consenting to the extension and the consent being filed within 10 months of the date of appointment of the personal representative. The Rules Committee recommends the addition of new Rule 6-456 and an additional cross reference in Rule 6-107 to conform to the change in the law.

MARYLAND RULES OF PROCEDURE  
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES  
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-107 to add a cross reference to new Rule 6-456,  
as follows:

Rule 6-107. EXTENSION OF TIME

(a) By Request to Register or Court

The court or the register, upon written request, may extend to a specified date the time for filing an inventory (Rule 6-402), an information report (Rule 6-404), an application to fix inheritance tax on non-probate assets (Rule 6-405), or an account (Rule 6-417). The request may be made *ex parte*.

(b) By Petition

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

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

REPORTER'S NOTE

See the Reporter's Note to proposed new Rule 6-456.

MARYLAND RULES OF PROCEDURE  
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES  
CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-461 to provide for the applicability of certain Rules in Title 2, as follows:

Rule 6-461. APPLICABILITY OF TITLE 2 RULES

(a) Discovery Rules

Discovery in accordance with the rules in Title 2, Chapter 400 is available in any court proceeding on a contested matter.

(b) Summary Judgment

Rule 2-501 applies to a proceeding in the orphans' court.

(c) Motions to Alter, Amend, or Revise a Final Order

Rules 2-534 and 2-535 apply to a final order entered pursuant to Rule 6-171.

~~(b)~~ (d) Other Rules

In any proceeding in which an issue of law or fact is in controversy, the court, on petition of a party or on its own motion and after notice to all persons who may be affected by the proceeding and an opportunity to be heard, may apply other rules in Title 2. The petition and notice shall state the specific rules in Title 2 that the court is requested to apply.

Cross reference: Code, Estates and Trusts Article, §2-104 (a).

REPORTER'S NOTE

New sections (b) and (c), proposed to be added to Rule 6-461, allow motions for summary judgment and motions to alter, amend, or revise a final order to be filed in the orphans' court by following the procedure set forth in the applicable Rule in Title 2, rather than the procedure set forth in Rule 6-461 (d).

MARYLAND RULES OF PROCEDURE  
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES  
CHAPTER 400 - ADMINISTRATION OF ESTATES

ADD new Rule 6-464, as follows:

Rule 6-464. STRIKING OF NOTICE OF APPEAL BY ORPHANS' COURT

(a) Generally

On motion or on its own initiative, the orphans' court may strike a notice of appeal (1) that has not been filed within the time prescribed by Rule 6-463, (2) if the Register of Wills has prepared the record pursuant to Code, Courts Article, §§12-501 and 12-502 and the appellant has failed to pay for the record, (3) if the appellant has failed to deposit with the Register of Wills the transcript costs or filing fee required by Code, Estates and Trusts Article, §2-206, or (4) if by reason of any other neglect on the part of the appellant the record has not been transmitted to the court to which the appeal has been taken within the time prescribed in Code, Courts Article, §12-502.

(b) Notice

Before the orphans' court strikes a notice of appeal on its own initiative, the Register of Wills shall serve on all interested persons pursuant to Rule 6-125 a notice that an order striking the notice of appeal will be entered unless a response is filed within 15 days after service showing good cause why the notice of appeal should not be stricken.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 6-464 is based upon Rule 7-105 and allows the orphans' court to strike a notice of appeal under certain circumstances. This will address the problem occurring in various orphans' courts of a party filing a notice of appeal, but then failing to pay the required fee or to transmit the record in a timely fashion. Under the existing Rules, there is no provision authorizing the orphans' court to strike the notice of appeal.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 - APPEALS FROM THE DISTRICT COURT TO

THE CIRCUIT COURT

AMEND Rule 7-112 to add a new section providing for the clerk of the circuit court to notify the clerk of the District Court when there is a superseding circuit court judgment and to add new language requiring the circuit court under certain circumstances to issue a warrant or enter an order for the defendant to appear before a judge or Commissioner of the District Court for the entry of a certain commitment, as follows:

Rule 7-112. APPEALS HEARD DE NOVO

(a) Scope

This Rule applies only to appeals heard de novo in the circuit court.

(b) District Court Judgment

The District Court judgment shall remain in effect pending the appeal unless and until superseded by a judgment of the circuit court or, in a criminal action, a disposition by nolle prosequi or stet entered in the circuit court.

(c) Modification of Peace Orders Pending Appeal

In an appeal from the grant or denial of a peace order, the circuit court, on its own initiative or on motion of any party, may modify, stay, or issue a peace order for good cause

shown pending the determination of the appeal.

Cross reference: Grounds for the issuance of a peace order are set forth in Title 3, Subtitle 15 of Code, Courts Article.

(d) Procedure in Circuit Court

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

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

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

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

(e) Circuit Court Judgment

Upon the entry of the judgment of the circuit court, the clerk of the circuit court shall send notice of the superseding judgment to the clerk of the District Court, who shall enter the notice on the docket.

~~(e)~~ (f) Withdrawal of Appeal; Entry of Judgment

(1) An appeal shall be considered withdrawn if the appellant files a notice withdrawing the appeal or fails to appear as

required for trial or any other proceeding on the appeal.

(2) Upon a withdrawal of the appeal, the circuit court shall dismiss the appeal, and the clerk shall promptly return the file to the District Court. Any statement of satisfaction shall be docketed in the District Court.

(3) On motion filed in the circuit court within 30 days after entry of a judgment dismissing an appeal, the circuit court, for good cause shown, may reinstate the appeal upon the terms it finds proper. On motion of any party filed more than 30 days after entry of a judgment dismissing an appeal, the court may reinstate the appeal only upon a finding of fraud, mistake, or irregularity. If the appeal is reinstated, the circuit court shall notify the District Court of the reinstatement and request the District Court to return the file.

(4) If a defendant in a criminal case who was sentenced to a term of confinement and released pending appeal pursuant to Rule 4-349 withdraws the appeal, the circuit court shall (A) issue a warrant directing that the defendant be taken into custody and brought before a judge or commissioner of the District Court or (B) enter an order that requires the defendant to appear before a judge or commissioner. The warrant or order shall identify the District Court case by name and number and shall provide that the purpose of the appearance is the entry of a commitment that conforms to the judgment of the District Court.

Source: This Rule is derived in part from former Rule 1314 and in part new.

#### REPORTER'S NOTE

New section (e) is proposed in response to a letter from John Amato, IV, Esq., regarding a case in which his client had appealed a judgment in the District Court for an unpaid hospital bill. Because there is no mechanism for the circuit court to notify the District Court that the judgment was reversed, even though the client won in the circuit court on appeal, the District Court judgment still appeared in the records of that court, and the hospital attorney served a wage garnishment against Mr. Amato's client. The Rules Committee proposes the addition of a new section (e) to Rule 7-112 that requires the circuit court clerk to notify the District Court clerk when a superseding circuit court judgment has been entered.

New subsection (f)(4) is proposed to solve the problem caused by the lack of a means to take custody of a defendant who has withdrawn or dismissed an appeal in circuit court after having been convicted in the District Court, sentenced to a term of confinement, and released pending appeal. The Committee recommends that language be added to provide that the circuit court shall either issue a warrant for the defendant to be taken into custody and brought before a judge or commissioner of the District Court for the entry of a commitment that conforms to the judgment in the District Court or enter an order that requires the defendant to appear for that purpose. Because the circuit court case has a different number from the District Court case, the Committee recommends that the warrant or order identify the District Court case by name and number.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 - APPEALS FROM THE DISTRICT COURT TO

THE CIRCUIT COURT

AMEND Rule 7-115 to clarify it, as follows:

Rule 7-115. RETURN OF RECORD TO DISTRICT COURT

Upon entry of the circuit court's order under Rule 7-113 (g), or upon any other termination of ~~the~~ an appeal that was not heard de novo in the circuit court, the clerk of the circuit court shall transmit a copy of the order to the District Court. Any order of satisfaction shall be docketed in the District Court. Unless the circuit court orders otherwise, the original papers included in the record shall be transmitted with the copy of the order.

Cross reference: Rule 7-112 (e) governs the notice to the District Court when an appeal was heard de novo in the circuit court.

Source: This Rule is derived from former Rule 1377.

REPORTER'S NOTE

The proposed amendment to Rule 7-115 makes clear that the Rule does not apply to *de novo* appeals.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 8-114 by combining sections (a) and (b) and deleting the last two sentences of the Rule, as follows:

Rule 8-114. UNREPORTED OPINIONS

~~(a) Not Authority~~

An unreported opinion of the Court of Appeals or Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority, but

~~(b) Citation~~

~~An unreported opinion of either Court may be cited in either Court for any purpose other than as precedent within the rule of stare decisis or as persuasive authority. In any other court, an unreported opinion of either Court may be cited only (1) when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, (2) in a criminal action or related proceeding involving the same defendant, or (3) in a disciplinary action involving the same respondent. A party who cites an unreported opinion shall attach a copy of it to the pleading, brief, or paper in which it is cited.~~

Source: This Rule is derived from former Rules 1092 c and 891 a 2.

REPORTER'S NOTE

The Rules Committee recommends transferring the last two sentences of Rule 8-114 to Title 1 as new Rule 1-104. The Committee's view is that this language pertains not only to appellate courts but also to all of the other courts in the State, and therefore belongs in Title 1. In conjunction with this, the Committee recommends adding a cross reference in Rule 8-504 to new Rule 1-104 and to Rule 8-114.

MARYLAND RULES OF PROCEDURE  
TITLE 1 - GENERAL PROVISIONS  
CHAPTER 100 - APPLICABILITY AND CITATION

ADD new Rule 1-104, as follows:

Rule 1-104. CITATION OF UNREPORTED OPINIONS

An unreported opinion of the Court of Appeals or the Court of Special Appeals may be cited only (1) when relevant under the doctrine of the law of the case, *res judicata*, or collateral estoppel, (2) in a criminal action or related proceeding involving the same defendant, or (3) in a disciplinary action involving the same respondent. A party who cites an unreported opinion shall attach a copy of it to the pleading, brief, or paper in which it is cited.

Cross reference: See Rule 8-114 for use of unreported opinions of the Court of Appeals and Court of Special Appeals in those courts.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to the proposed amendments to Rule 8-114.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-207 by reversing the order of sections (a) and (b) and adding to new section (a) a reference to "child in need of assistance" cases, as follows:

Rule 8-207. EXPEDITED APPEAL

~~(b)~~ (a) Adoption, Guardianship, Child Access, Child in Need of Assistance Cases

(1) This section applies to every appeal to the Court of Special Appeals (A) from a judgment granting or denying a petition for adoption, guardianship terminating parental rights, or guardianship of the person of a minor or disabled person, ~~and~~ (B) contesting a judgment granting, denying, or establishing custody of or visitation with a minor child, and (C) from a judgment finding that a child is in need of assistance. Unless otherwise provided for good cause by order of the Court of Special Appeals or by order of the Court of Appeals if that Court has assumed jurisdiction over the appeal, the provisions of this section shall prevail over any other rule to the extent of any inconsistency.

(2) In the information report filed pursuant to Rule 8-205, the appellant shall state whether the appeal is subject to this

section.

(3) Within five days after entry of an order pursuant to Rule 8-206 (a) (1) or an order pursuant to Rule 8-206 (d) directing preparation of the record, the appellant shall order the transcript and make an agreement for payment to assure its preparation. The court reporter or other person responsible for preparation of the transcript shall give priority to transcripts required for appeals subject to this section and shall complete and file the transcripts with the clerk of the lower court within 20 days after receipt of an order of the party directing their preparation and an agreement for payment of the cost. An extension of time may be granted only for good cause.

(4) The clerk of the lower court shall transmit the record to the Court of Special Appeals within thirty days after the date of the order entered pursuant to Rule 8-206 (a) (1) or Rule 8-206 (d).

(5) The briefing schedule set forth in Rule 8-502 shall apply, except that (A) an appellant's reply brief shall be filed within 15 days after the filing of the appellee's brief, (B) a cross-appellee's brief shall be filed within 20 days after the filing of a cross-appellant's brief, and (C) a cross-appellant's reply brief shall be filed within 15 days after the filing of a cross-appellee's brief. Unless directed otherwise by the Court, any oral argument shall be held within 120 days after transmission of the record. The decision shall be rendered within 60 days after oral argument or submission of the appeal on

the briefs filed.

(6) Any motion for reconsideration pursuant to Rule 8-605 shall be filed within 15 days after the filing of the opinion of the Court or other order disposing of the appeal. 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.

~~(a)~~ (b) By Election of Parties

(1) Election

Within 20 days after the first notice of appeal is filed or within the time specified in an order entered pursuant to Rule 8-206 (d), the parties may file with the Clerk of the Court of Special Appeals a joint election to proceed pursuant to this Rule.

(2) Statement of Case and Facts

Within 15 days after the filing of the joint election, the parties shall file with the Clerk four copies of an agreed statement of the case, including the essential facts, as prescribed by Rule 8-413 (b). By stipulation of counsel filed with the clerk, the time for filing the agreed statement of the case may be extended for no more than an additional 30 days.

Committee note: Rule 8-413 (b) requires that an agreed statement of the case be approved by the lower court.

(3) Withdrawal

The election is withdrawn if (1) within 15 days after

its filing the parties file a joint stipulation to that effect or (2) the parties fail to file the agreed statement of the case within the time prescribed by subsection (a)(2) of this Rule. The case shall then proceed as if the first notice of appeal had been filed on the date of the withdrawal.

(4) Appellant's Brief

The appellant shall file a brief within 15 days after the filing of the agreed statement required by subsection (a)(2) of this Rule. The brief need not include statement of facts, shall be limited to two issues, and shall not exceed ten pages in length. Otherwise, the brief shall conform to the requirements of Rule 8-504. The appellant shall attach the agreed statement of the case as an appendix to the brief.

(5) Appellee's Brief

The appellee shall file a brief within 15 days after the filing of the appellant's brief. The brief shall not exceed ten pages in length and shall otherwise conform to the requirements of Rule 8-504.

(6) Reply Brief

A reply brief may be filed only with permission of the Court.

(7) Briefs in Cross-appeals

An appellee who is also a cross-appellant shall include in the brief filed under subsection (a)(5) of this Rule the issue and argument on the cross-appeal as well as the response to the brief of the appellant. The combined brief shall not exceed 15

pages in length. Within ten days after the filing of an appellee/cross-appellant's brief, the appellant/cross-appellee shall file a brief, not exceeding ten pages in length, in response to the issues and argument raised on the cross-appeal.

(8) Oral Argument

Except in extraordinary circumstances, any oral argument shall be held within 45 days after the filing of the appellee's brief or, if the Court is not in session at that time, within 45 days after commencement of the next term of the Court. The oral argument shall be limited to 15 minutes for each side.

(9) Decision

Except in extraordinary circumstances or when a panel of the Court recommends that the opinion be reported, the decision shall be rendered within 20 days after oral argument or, if all parties submitted on brief, within 30 days after the last submission.

(10) Applicability of Other Rules

The Rules of this Title governing appeals to the Court of Special Appeals shall be applicable to expedited appeals except to the extent inconsistent with this Rule.

Source: This Rule is derived from former Rule 1029.

REPORTER'S NOTE

The Honorable James Eyler of the Court of Special Appeals and Leslie Gradet, Esq., Clerk of the Court of Special Appeals pointed out a problem with the organization of Rule 8-207. Because section (a) is placed before section (b), many attorneys have the mistaken belief that they must file an agreed statement of the case before any adoption, guardianship, or child access

case under section (b) can proceed. This misinterpretation can be avoided if section (a) becomes section (b) and vice versa. Ms. Gradet also pointed out that what would become new section (a) should have a reference to child in need of assistance cases because those cases are within the scope of section (a).

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 300 - OBTAINING APPELLATE REVIEW IN COURT OF APPEALS

AMEND Rule 8-301 to correct an obsolete cross reference, as follows:

Rule 8-301. METHOD OF SECURING REVIEW IN COURT OF APPEALS

(a) Generally

Appellate review by the Court of Appeals may be obtained only:

(1) by direct appeal or application for leave to appeal, where allowed by law;

(2) pursuant to the Maryland Uniform Certification of Questions of Law Act; or

(3) by writ of certiorari in all other cases.

Cross reference: For Code provisions governing direct appeals to the Court of Appeals, see Criminal Law Article, §2-401 concerning automatic review in death penalty cases; ~~Article 33, §19-4~~ Election Law Article, §12-203 concerning appeals from circuit court decisions regarding contested elections; and Financial Institutions Article, §9-712 concerning appeals from circuit court decisions approving transfers of assets of savings and loan associations. For Maryland Uniform Certification of Questions of Law Act, see Code, Courts Article, §§12-601 through 12-609.

(b) Direct Appeals or Applications to Court of Appeals

(1) An appeal or application for leave to appeal to the Court of Appeals in a case in which a sentence of death was imposed is governed by Rule 8-306.

(2) Any other appeal to the Court of Appeals allowed by law is governed by the other rules of this Title applicable to appeals, or by the law authorizing the direct appeal. In the event of a conflict, the law authorizing the direct appeal shall prevail. Except as otherwise required by necessary implication, references in those rules to the Court of Special Appeals shall be regarded as references to the Court of Appeals.

(c) Certification of Questions of Law

Certification of questions of law to the Court of Appeals pursuant to the Maryland Uniform Certification of Questions of Law Act is governed by Rule 8-305.

Source: This Rule is in part derived from Rule 810 and in part new.

REPORTER'S NOTE

Code, Article 33 was revised in 1998, and Article 33, §19-4 was renumbered at that time. Further revisions became effective January 1, 2003 because of Chapter 291 (SB 1), Acts of 2002, changing this provision to Code, Election Law Article, §12-203. Article 33 has been replaced by the Election Law Article.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 300 - OBTAINING APPELLATE REVIEW IN COURT OF APPEALS

AMEND Rule 8-305 (a) to conform the definition of "certifying court" to the statutory list of such courts and to make a certain stylistic change, as follows:

Rule 8-305. ~~CERTIFICATION FROM FEDERAL COURTS AND OTHER STATE COURTS~~ OF QUESTIONS OF LAW TO THE COURT OF APPEALS

(a) Certifying Court

"Certifying court" as used in this Rule means ~~the Supreme Court of the United States, a United States Court of Appeals, a United States District Court, or the highest appellate court or an intermediate appellate court of another State, District, Territory, or Commonwealth of the United States~~ a court authorized by Code, Courts Article, §12-603 to certify a question of law to the Court of Appeals of Maryland.

Committee note: Necessary implication requires that the definition of "court" set forth in Rule 1-202 does not apply in this Rule.

(b) Certification Order

In disposing of an action pending before it, a certifying court, on motion of any party or on its own initiative, may submit to the Court of Appeals a question of law of this State,

in accordance with the Maryland Uniform Certification of Questions of Law Act, by filing a certification order ~~signed by a judge of the certifying court.~~ The certification order shall be signed by a judge of the certifying court and state the question of law submitted, the relevant facts from which the question arises, and the party who shall be treated as the appellant in the certification procedure. The original order and seven copies shall be forwarded to the Court of Appeals by the clerk of ~~of~~ the certifying court under its official seal, together with the filing fee for docketing regular appeals, payable to the Clerk of the Court of Appeals.

(c) Proceeding in the Court of Appeals

The filing of the certification order in the Court of Appeals shall be the equivalent of the transmission of a record on appeal. The Court of Appeals may request, in addition, all or any part of the record before the certifying court. Upon request, the certifying court shall file the original or a copy of the parts of the record requested together with a certificate, under the official seal of the certifying court and signed by a judge or clerk of that court, stating that the materials submitted are all the parts of the record requested by the Court of Appeals.

(d) Decision by the Court of Appeals

The written opinion of the Court of Appeals stating the law governing the question certified shall be sent by the Clerk of the Court of Appeals to the certifying court. The Clerk of

the Court of Appeals shall certify, under seal of the Court, that the opinion is in response to the question of law of this State submitted by the certifying court.

Cross reference: Code, Courts Article, §§12-601 through 12-609.

Source: This Rule is derived from former Rule 896.

#### REPORTER'S NOTE

The Honorable Paul Mannes, a judge of the United States Bankruptcy Court for the District of Maryland observed that in 1996, the Uniform Act on Certification was amended to include the United States Bankruptcy Court and that Code, Courts Article, §12-603 authorizes the Court of Appeals to answer questions of law certified to it from certain other courts, among which is the Bankruptcy Court. The proposed amendment to Rule 8-305 (a) conforms the Rule to the statute.

The proposed amendment to section (b) of the Rule is stylistic, only.

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 to make certain additions to the list of required contents of the record extract, to delete a certain phrase that allows a party to rely on parts of the record not included in the record extract, and to make certain stylistic changes, 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 appellant's brief, or filed as a separate volume with the brief in the same number of copies.

(b) Exceptions

~~A~~ Unless otherwise ordered by the court, a record extract shall not be filed (1) when an agreed statement of the case is filed pursuant to Rule 8-207 or 8-413 (b) ~~or~~ or (2) in an appeal in the Court of Special Appeals from juvenile delinquency proceedings, inmate grievance proceedings, ~~or~~ extradition

proceedings; or (3) in a criminal case in the Court of Special Appeals, unless otherwise ordered by that Court.

Cross reference: See Rule 8-504 (b) for contents of required appendix to appellant's brief in criminal cases in the Court of Special Appeals.

(c) Contents

The record extract shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal and any cross-appeal. It shall include the circuit court docket entries, the judgment appealed from, and such other parts of the record as are designated by the parties pursuant to section (d) of this Rule. In agreeing on or designating parts of the record for inclusion in the record extract, the parties shall refrain from unnecessary designation. The record extract shall not include those parts of the record that support facts set forth in an agreed statement of facts or stipulation made pursuant to section (g) of this Rule nor any part of a memorandum of law in the trial court, unless it has independent relevance. The fact that a part of the record is not included in the record extract or an appendix to a brief shall not preclude ~~a party from relying on it or the~~ an appellate court from considering it.

(d) Designation by Parties

Whenever possible, the parties shall agree on the parts of the record to be included in the record extract. ~~In agreeing on or designating parts of the record for inclusion in the record extract, the parties shall have regard for the fact that the~~

~~entire record is always available to the appellate court for reference and examination and shall not engage in unnecessary designation.~~ If the parties are unable to agree:

(1) Within 15 days after the filing of the record in the appellate court, the appellant shall serve on the appellee a statement of those parts of the record that the appellant proposes to include in the record extract.

(2) Within ten days thereafter, the appellee shall serve on the appellant a statement of any additional parts of the record that the appellee desires to be included in the record extract.

(3) Within five days thereafter, the appellant shall serve on the appellee a statement of any additional parts of the record that the appellant proposes to include in view of the parts of the record designated by the appellee.

(4) If the appellant determines that a part of the record designated by the appellee is not material to the questions presented, the appellant may demand from appellee advance payment of the estimated cost of reproducing that part. Unless the appellee pays for or secures that cost within five days after receiving the appellant's demand, the appellant may omit that part from the record extract but shall state in the record extract the reason for the omission.

(e) Appendix in Appellee's Brief

If the record extract does not contain a part of the record that the appellee believes is material, the appellee may reproduce that part of the record as an appendix to the

appellee's brief together with a statement of the reasons for the additional part. The cost of producing the appendix may be withheld or divided under section (b) of Rule 8-607.

(f) Appendix in Appellant's Reply Brief

The appellant may include as an appendix to a reply brief any additional part of the record that the appellant believes is material in view of the appellee's brief or appendix. The appendix to the appellant's reply brief shall be prefaced by a statement of the reasons for the additional part. The cost of producing the appendix may be withheld or divided under section (b) of Rule 8-607.

(g) Agreed Statement of Facts or Stipulation

The parties may agree on a statement of undisputed facts that may be included in a record extract or, if the parties agree, as all or part of the statement of facts in the appellant's brief. As to disputed facts, the parties may include in the record extract, in place of any testimony or exhibit, a stipulation that summarizes the testimony or exhibit. The stipulation may state all or part of the testimony in narrative form. Any statement of facts or stipulation shall contain references to the page of the record and transcript. The parties are strongly encouraged to agree to such a statement of facts or stipulation.

(h) Table of Contents

If the record extract is produced as an appendix to a brief, the table of contents required under section (a) of Rule

8-504 shall include the contents of the appendix. If the record extract is produced as a separate volume, it shall be prefaced by its own table of contents. The table of contents shall (1) reference the first page of the initial examination, cross-examination, and redirect examination of each witness and of each pleading, exhibit, or other paper reproduced and (2) identify each document by a descriptive phrase including any exhibit number.

(i) Style and Format

The numbering of pages, binding, method of referencing, and covers of the record extract, whether an appendix to a brief or a separate volume, shall conform to sections (a) through (c) of Rule 8-503. Except as otherwise provided in this section and in section (g) of this Rule, the record extract shall reproduce verbatim the parts of the record that are included. Asterisks or other appropriate means shall be used to indicate omissions in the testimony or in exhibits. Reference shall be made to the pages of the record and transcript. The date of filing of each paper reproduced in the extract shall be stated at the head of the copy. If the transcript of testimony is reproduced, the pages shall be consecutively renumbered. Documents and excerpts of a transcript of testimony presented to the trial court more than once shall be reproduced in full only once in the record extract and may be referred to in whole or in part elsewhere in the record extract. Any photograph, document, or other paper filed as an exhibit and included in the record extract shall be

included in all copies of the record extract and may be either folded to the appropriate size or photographically or mechanically reduced, so long as its legibility is not impaired.

(j) Correction of Inadvertent Errors

Material inadvertently omitted from the record extract may be included in an appendix to a brief, including a reply brief.

Other inadvertent inadvertent omissions or misstatements in the record extract or in any appendix may be corrected by direction of the appellate court on motion or on the Court's own initiative.

(k) Record Extract in Court of Appeals on Review of Case from Court of Special Appeals

When a writ of certiorari is issued to review a case pending in or decided by the Court of Special Appeals, unless the Court of Appeals orders otherwise, the appellant shall file in that Court 20 copies of any record extract that was filed in the Court of Special Appeals within the time the appellant's brief is due. If a record extract was not filed in the Court of Special Appeals or if the Court of Appeals orders that a new record extract be filed, the appellant shall prepare and file a record extract pursuant to this Rule.

(l) Deferred Record Extract; Special Provisions Regarding Filing of Briefs

(1) If the parties so agree in a written stipulation filed with the Clerk or if the appellate court so orders on motion or on its own initiative, the preparation and filing of the record

extract may be deferred in accordance with this section. The provisions of section (d) of this Rule apply to a deferred record extract, except that the designations referred to therein shall be made by each party at the time that party serves the page-proof copies of its brief.

(2) If a deferred record extract authorized by this section is employed, the appellant, within 30 days after the filing of the record, shall file four page-proof copies of the brief if the case is in the Court of Special Appeals, or one copy if the case is in the Court of Appeals, and shall serve two copies on the appellee. Within 30 days after the filing of the page-proof copies of the appellant's brief, the appellee shall file one page-proof copy of the brief and shall serve two copies on the appellant. The page-proof copies shall contain appropriate references to the pages of the parts of the record involved.

(3) Within 25 days after the filing of the page-proof copy of the appellee's brief, the appellant shall file the deferred record extract, and the appellant's final briefs. Within five days after the filing of the deferred record extract, the appellee shall file its final briefs.

(4) The appellant may file a reply brief in final form within 20 days after the filing of the appellee's final brief, but not later than ten days before the date of scheduled argument.

(5) In a cross-appeal:

(A) within 30 days after the filing of the page-proof copies of the appellee/cross-appellant's brief, the

appellant/cross-appellee shall file one page-proof copy of 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;

(B) within 25 days after the filing of the cross-appellee/appellant's reply brief, the appellant shall file the deferred record extract, the appellant's final briefs, and the final cross-appellee's/appellant's reply briefs;

(C) within five days after the filing of the deferred record extract, the appellee shall file its final appellee/cross-appellant's briefs; and

(D) the appellee/cross-appellant may file in final form a reply to the cross-appellee's response within 20 days after the filing of the cross-appellee's final brief, but not later than ten days before the date of scheduled argument.

(6) The deferred record extract and final briefs shall be filed in the number of copies required by Rules 8-502 (c) and 8-501 (a). The briefs shall contain appropriate references to the pages of the record extract. The deferred record extract shall contain only the items required by Rule 8-501 (c), those parts of the record actually referred to in the briefs, and any material needed to put those references in context. No changes may be made in the briefs as initially served and filed except (A) to insert the references to the pages of the record extract, (B) to correct typographical errors, and (C) to take account of a change in the law occurring since the filing of the page-proof

briefs.

(7) The time for filing page-proof copies of a brief or final briefs may be extended by stipulation of counsel filed with the clerk so long as the final briefs set out in subsections (3) and (5) of this section are filed at least 30 days, and any reply brief set out in subsections (4) and (5) of this section is filed at least ten days, before the scheduled argument.

(m) Sanctions for Noncompliance

Ordinarily, an appeal will not be dismissed for failure to file a record extract in compliance with this Rule. If a record extract is not filed within the time prescribed by Rule 8-502, or on its face fails to comply with this Rule, the appellate court may direct the filing of a proper record extract within a specified time and, subject to Rule 8-607, may require a non-complying attorney or unrepresented party to advance all or part of the cost of printing the extract. The appellate court may dismiss the appeal for non-compliance with an order entered under this section.

Source: This Rule is derived from former Rules 1028 and 828 with the exception of section (1) which is derived from former Rule 833.

REPORTER'S NOTE

The Rules Committee recommends that Rule 8-501 be amended by combining subsections (b) (2) and (b) (3) for clarity and by moving the last phrase of section (b) to the beginning of the section because the phrase applies to the entire section.

At the request of Leslie Gradet, Esq., Clerk of the Court of Special Appeals, the Committee recommends that language be added to section (c) that expands the contents of the record extract to

include the circuit court docket entries. Ms. Gradet explained that when a case in the Court of Special Appeals is assigned to a three-judge panel, only one of the judges receives the actual record. The other two judges receive only the record extract. Including the docket entries of the circuit court would add to the overview of the case for those two judges.

Ms. Gradet also pointed out that in 1993, the last sentence of section (c) was added. Before this change, attorneys were fearful that they might be penalized for leaving something out of the record extract and tended to put too many items in it. The new language was intended to let attorneys know that they would not necessarily be penalized if they inadvertently left something out of the record extract. However, some attorneys are interpreting the last sentence to mean that they need not be concerned about the contents of the record extract and can simply cite to the record or transcript pursuant to Rule 8-503 (b). In some cases, substantial portions of the record that should have been included in the record extract are omitted entirely.

To address this problem, the Committee recommends several amendments to Rule 8-501, as well as a related amendment to Rule 8-503 (b). The last sentence of Rule 8-501 (c) is proposed to be amended so that a party no longer is entitled to rely on material that is in the record but not in the record extract. As amended, the sentence allows, but does not require, the appellate court to consider such material. This change is counterbalanced by the proposed addition of the phrase "or an appendix to a brief" to the last sentence of section (c) and a new first sentence of section (j) that allows a party to include in an appendix to a brief, including a reply brief, any material that inadvertently was omitted from the record extract. An additional change to the Rule moves the second sentence of section (d) to section (c), deletes as inapplicable the language that states that the parties should have regard for the fact that the entire record is always available to the appellate court for reference and examination, and makes the stylistic change of substituting the phrase "refrain from" for the phrase "not engage in."

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 allow certain references in briefs only under certain circumstances and to require certain information on the cover page of a brief in an appeal from a decision of a trial court, as follows:

Rule 8-503. STYLE AND FORM OF BRIEFS

(a) Numbering of Pages; Binding

The pages of a brief shall be consecutively numbered. The brief shall be securely bound along the left margin.

(b) References

References to the record extract shall be indicated as (E .....), to any appendix to appellant's brief as (App .....), to an appendix to appellee's brief as (Apx .....), and to an appendix to a reply brief as (Rep. App .....). ~~Any~~ If the case falls within an exception listed in Rule 8-501 (b), ~~references to material not included in the record extract or an appendix to the transcript of testimony contained in the record shall be indicated as (T .....)~~ for references to the transcript of testimony contained in the record and other references to the record shall be indicated as (R .....) ~~for other references to the record.~~

(c) Covers

A brief shall have a back and cover of the following color:

(1) In the Court of Special Appeals:

- (A) appellant's brief - yellow;
- (B) appellee's brief - green;
- (C) reply brief - light red;
- (D) amicus curiae brief - gray.

(2) In the Court of Appeals:

- (A) appellant's brief - white;
- (B) appellee's brief - blue;
- (C) reply brief - tan;
- (D) amicus curiae brief - gray.

The cover page shall contain the name, address, and telephone number of at least one attorney for a party represented by an attorney or of the party if not represented by an attorney. If the appeal is from a decision of a trial court, the cover page shall also name the trial court and each judge of that court whose ruling is at issue in the appeal. The name typed or printed on the cover constitutes a signature for purposes of Rule 1-311.

(d) Length

Except as otherwise provided in section (e) of this Rule or with permission of the Court, a brief of the appellant and appellee shall not exceed 35 pages in the Court of Special Appeals or 50 pages in the Court of Appeals. This limitation

does not apply to (1) the table of contents and citations required by Rule 8-504 (a) (1); (2) the citation and text required by Rule 8-504 (a) (7); and a motion to dismiss and argument supporting or opposing the motion. Except with permission of the Court, any portion of a brief pertaining to a motion to dismiss shall not exceed an additional ten pages in the Court of Special Appeals or 25 pages in the Court of Appeals. Any reply brief filed by the appellant shall not exceed 15 pages in the Court of Special Appeals or 25 pages in the Court of Appeals.

(e) Briefs of Cross-appellant and Cross-appellee

In cases involving cross-appeals, the brief filed by the appellee/cross-appellant shall have a back and cover the color of an appellee's brief and shall not exceed 50 pages. The responsive brief filed by the appellant/cross-appellee shall have a back and cover the color of a reply brief and shall not exceed (1) 50 pages in the Court of Appeals or (2) in the Court of Special Appeals (A) 35 pages if no reply to the appellee's answer is included or (B) 50 pages if a reply is included.

(f) Incorporation by Reference

In a case involving more than one appellant or appellee, any appellant or appellee may adopt by reference any part of the brief of another.

(g) Effect of Noncompliance

For noncompliance with this Rule, the appellate court may dismiss the appeal or make any other appropriate order with

respect to the case, including an order that an improperly prepared brief be reproduced at the expense of the attorney for the party for whom the brief was filed.

Source: This Rule is derived as follows:

Section (a) is derived from former Rules 831 a and 1031 a.

Section (b) is derived from former Rules 831 a and 1031 a.

Section (c) is derived from former Rules 831 a and 1031 a.

Section (d) is in part derived from Rule 831 b and 1031 b and in part new.

Section (e) is new.

Section (f) is derived from FRAP 28 (i).

Section (g) is derived from former Rules 831 g and 1031 f.

#### REPORTER'S NOTE

In conjunction with proposed amendments to Rule 8-501, Rule 8-503 (b) is proposed to be amended to make clear that "T" references (to the transcript of testimony contained in the record) and "R" references (to other references in the record) may be used in a brief only when the case falls within an exception listed in Rule 8-501 (b) (cases in which no record extract is filed). When a record extract is required to be filed, all references in the brief must be to "E..." (for the record extract), "App..." (for an appendix to the appellee's brief), or "Rep. App..." (for an appendix to a reply brief).

Additionally, the Rules Committee recommends that Rule 8-503 (c) be amended to add a requirement that the cover page of the appellate brief identify the trial court and the name of each trial judge whose ruling is at issue in the appeal. Leslie Gradet, Esq., Clerk of the Court of Special Appeals, requested this addition because there may be more than one trial judge involved in a case, and the Court of Special Appeals needs to know to which judge the opinion is to be sent. It will also aid the clerk's staff in identifying potential conflicts that may occur in the designation of a panel to hear a case.

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 8-504 to add a cross reference following subsection (a) (1) and to add a Committee note following section (b), as follows:

Rule 8-504. CONTENTS OF BRIEF

(a) Contents

A brief shall comply with the requirements of Rule 8-112 and include the following items in the order listed:

(1) A table of contents and a table of citations of cases, constitutional provisions, statutes, ordinances, rules, and regulations, with cases alphabetically arranged. When a reported Maryland case is cited, the citation shall include a reference to the official Report.

Cross reference: Citation of unreported opinions is governed by Rules 1-104 and 8-114.

(2) A brief statement of the case, indicating the nature of the case, the course of the proceedings, and the disposition in the lower court, except that the appellee's brief shall not contain a statement of the case unless the appellee disagrees with the statement in the appellant's brief.

(3) A statement of the questions presented, separately

numbered, indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail.

(4) A clear concise statement of the facts material to a determination of the questions presented, except that the appellee's brief shall contain a statement of only those additional facts necessary to correct or amplify the statement in the appellant's brief. Reference shall be made to the pages of the record extract supporting the assertions. If pursuant to these rules or by leave of court a record extract is not filed, reference shall be made to the pages of the record or to the transcript of testimony as contained in the record.

Cross reference: Rule 8-111 (b).

(5) Argument in support of the party's position.

(6) A short conclusion stating the precise relief sought.

(7) The citation and verbatim text of all pertinent constitutional provisions, statutes, ordinances, rules, and regulations except that the appellee's brief shall contain only those not included in the appellant's brief.

(8) If the brief is prepared with proportionally spaced type, the font used and the type size in points shall be stated on the last page.

Cross reference: For requirements concerning the form of a brief, see Rule 8-112.

(b) Appendix

The appellant shall reproduce, as an appendix to the

brief, the pertinent part of every ruling, opinion, or jury instruction of each lower court that deals with points raised by the appellant on appeal. If the appellee believes that the part reproduced by the appellant is inadequate, the appellee shall reproduce, as an appendix to the appellee's brief, any additional part of the instructions or opinion believed necessary by the appellee.

Committee note: Rule 8-501 (j) allows a party to include in an appendix to a brief any material that inadvertently was omitted from the record extract.

(c) Effect of Noncompliance

For noncompliance with this Rule, the appellate court may dismiss the appeal or make any other appropriate order with respect to the case, including an order that an improperly prepared brief be reproduced at the expense of the attorney for the party for whom the brief was filed.

Source: This Rule is derived as follows:

Section (a) is derived from former Rules 831 c and d and 1031 c 1 through 5 and d 1 through 5, with the exception of subsection (a)(6) which is derived from FRAP 28 (a)(5).

Section (b) is derived from former Rule 1031 c 6 and d 6.

Section (c) is derived from former Rules 831 g and 1031 f.

REPORTER'S NOTE

Concerning the proposed new cross reference following subsection (a)(1) of Rule 8-504, see the Reporter's note to the proposed amendments to Rule 8-114.

A proposed Committee note following section (b) highlights the proposed amendment to Rule 8-501 (j) that allows a party to include in an appendix to a brief any material that inadvertently was omitted from the record extract.

MARYLAND RULES OF PROCEDURE  
TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS  
AND COURT OF SPECIAL APPEALS  
CHAPTER 600 - DISPOSITION

AMEND Rule 8-608 to require the Clerk to identify if a transcript was paid for by the Office of the Public Defender, as follows:

Rule 8-608. COMPUTATION OF COSTS

(a) Costs Generally Allowed

The Clerk shall include in the costs the allowance determined pursuant to section (c) of this Rule for reproducing the briefs, the record extract, and any necessary appendices to briefs and any other costs prescribed by these rules or other law. Unless the case is in the Court of Appeals and was previously heard and decided by the Court of Special Appeals, the Clerk shall also include the amount paid by or on behalf of the appellant for the original and the copies of the stenographic transcript of testimony furnished pursuant to section (a) of Rule 8-411. If the transcript was paid for by the Office of the Public Defender, the Clerk shall so state.

(b) Costs Generally Excluded

Unless the Court orders otherwise, the Clerk shall exclude from the costs the costs of reproducing the record if it was reproduced without order of the Court.

(c) Allowance for Reproduction

The Clerk shall determine the allowance for reproduction by multiplying the number of pages in the briefs, the record extract, and any necessary appendices to briefs by the standard page rate established from time to time by the Court of Appeals.

Annotations

Source: This Rule is derived from former Rules 1080, 880, 1081, and 881.

REPORTER'S NOTE

Nancy S. Forster, Esq., Deputy Public Defender, sent a letter to the Rules Committee, explaining that there are cases in which the Office of the Public Defender pays \$3.75 per page for the transcript when a defendant notes an appeal. Then private counsel enters an appearance, but he or she does not reimburse the Office of the Public Defender for the cost of the transcript. Instead private counsel obtains a copy of the transcript from the court reporter at the much lower rate of 75 cents per page. Ms. Forster requested an amendment to Rule 8-402 (b) that would require private counsel to certify that he or she already had reimbursed the Office of the Public Defender for the cost of the transcript before the attorney is permitted to enter an appearance. Instead of this change, the Rules Committee recommends that Rule 8-608 (a) be amended to require the Clerk of the appellate court, when computing costs, to state that the Office of the Public Defender paid for the transcript, so that this cost can be reimbursed to that Office, if possible.

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

AMEND Rule 10-301 (d) to add language providing for substitution for physician's certificates, as follows:

Rule 10-301. PETITION FOR APPOINTMENT OF A GUARDIAN OF PROPERTY

(a) Who May File

Any interested person may file a petition requesting a court to appoint a guardian of the property of a minor or an alleged disabled person.

(b) Venue

(1) Resident

If the minor or alleged disabled person is a resident of Maryland, the petition shall be filed in the county where the minor or alleged disabled person resides, even if the person is temporarily absent.

(2) Nonresident

If the minor or disabled person does not reside in this State, the petition shall be filed in the county in which a petition for guardianship of the person may be filed, or in the county where any part of the property is located. For purposes of determining the situs of property, the situs of tangible personal property is its location; the situs of intangible personal property is the location of the instrument, if any,

evidencing a debt, obligation, stock or chose in action, or the residence of the debtor if there is no instrument evidencing a debt, obligation, stock, or chose in action; and the situs of an interest in property held in trust is located where the trustee may be sued.

(c) Contents

The petition shall be captioned "In the Matter of . . ." [stating the name of the minor or alleged disabled person]. It shall be signed and verified by the petitioner and shall contain at least the following information:

(1) The petitioner's name, address, age, and telephone number;

(2) The petitioner's familial or other relationship to the alleged disabled person;

(3) Whether the person who is the subject of the petition is a minor or an alleged disabled person and, if an alleged disabled person, a brief description of the alleged disability;

(4) The reasons why the court should appoint a guardian of the property and, if the subject of the petition is an alleged disabled person, allegations demonstrating an inability of the alleged disabled person to manage the person's property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance;

Cross reference: Code, Estates and Trusts Article, §13-201 (b) and (c).

(5) An identification of any instrument nominating a guardian for the minor or alleged disabled person or constituting a durable power of attorney;

Cross reference: Code, Estates and Trusts Article, §13-207 (a) (2) and (5).

(6) If a guardian or conservator has been appointed for the alleged disabled person in another proceeding, the name and address of the guardian or conservator and the court that appointed the guardian or conservator. If a guardianship or conservatorship proceeding was previously filed in any other court, the name and address of the court, the case number, if known, and whether the proceeding is still pending in that court.

(7) The name, age, sex, and address of the minor or alleged disabled person, the name and address of the persons with whom the minor or alleged disabled person resides, and if the minor or alleged disabled person resides with the petitioner, the name and address of another person on whom service can be made;

(8) To the extent known or reasonably ascertainable, the name, address, telephone number, and nature of interest of all interested persons and all others exercising any control over the property of the estate;

(9) If the minor or alleged disabled person is represented by an attorney, the name, address, and telephone number of the attorney.

(10) The nature, value, and location of the property of the minor or alleged disabled person;

(11) A brief description of all other property in which the minor or alleged disabled person has a concurrent interest with one or more individuals;

(12) A statement that the exhibits required by section (d) of this Rule are attached or, if not attached, the reason that they are absent; and

(13) A statement of the relief sought.

(d) Required Exhibits

The petitioner shall attach to the petition as exhibits (1) a copy of any instrument nominating a guardian; (2) (A) any physician's or psychologist's certificates required by Rule 10-202, or (B) if guardianship of the property of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought, in lieu of the certificates required by Rule 10-202, a certificate of the Administrator of that Department or an authorized representative of the Administrator stating that the person has been rated as disabled by the Department in accordance with the laws and regulations governing the Department of Veterans Affairs; and (3) if the petition is for the appointment of a guardian for a minor who is a beneficiary of the Department of Veterans Affairs, a certificate of the Secretary of that Department or any authorized representative of the Secretary, in accordance with Code, Estates and Trusts Article, §13-802.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule R71 a.

Section (b) is derived from former Rule R72 a and b.

Section (c) is in part derived from former Rule R73 a and is in part new.

Section (d) is new.

#### REPORTER'S NOTE

Former Rule R73 b 2 allowed the Department of Veterans Affairs to substitute its own internal procedures in place of the requirement that two physicians must certify that the person who is the subject of the guardianship petition is disabled. At first this provision was not carried forward when the Fiduciary Rules were revised, but in 1998, Rule 10-202 (a)(2) was changed so that when a guardianship of the person of a Department of Veterans Affairs beneficiary is filed, a certificate of the Veterans Affairs Administrator may substitute for physician's certificates setting forth the fact that the person has been rated disabled. A request has been made on behalf of the Department of Veterans Affairs to extend the Veterans Administrator beneficiary exception to guardianships of the property of an alleged disabled person. This would entail a change to Rule 10-301 (d), so that it is consistent with subsection (a)(2) of Rule 10-202. The lawyer requesting this change had intended for it to be made at the time Rule 10-202 (a)(2) was modified. The Committee recommends that Rule 10-301 (d) be so changed.

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

AMEND Rule 10-202 (a) (2) to make stylistic changes to conform to changes to Rule 10-301 (d), as follows:

Rule 10-202. CERTIFICATES - REQUIREMENT AND CONTENT

(a) To be Attached to Petition

(1) Generally

If guardianship of the person of a disabled person is sought, the petitioner shall file with the petition signed and verified certificates of (A) two physicians licensed to practice medicine in the United States who have examined the disabled person, or (B) one licensed physician who has examined the disabled person and one licensed psychologist who has seen and evaluated the disabled person. An examination or evaluation by at least one of the health care professionals under this subsection shall occur within 21 days before the filing of a petition for guardianship of a disabled person. Each certificate shall state the name, address, and qualifications of the physician or psychologist, a brief history of the physician's or psychologist's involvement with the disabled person, the date of the physician's last examination of the disabled person or the psychologist's last evaluation of the disabled person, and the physician's or psychologist's opinion as to: (1) the cause,

nature, extent, and probable duration of the disability, (2) whether the person requires institutional care, and (3) whether the person has sufficient mental capacity to understand the nature of and consent to the appointment of a guardian.

(2) Beneficiary of the Department of Veterans Affairs

If guardianship of the person of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought, the petitioner shall file with the petition, in lieu of the two certificates required by subsection (1) of this section, a certificate of the Administrator of ~~the~~ that Department of Veterans Affairs or a duly an authorized representative ~~setting forth the fact of the Administrator~~ stating that the person has been rated as disabled by the Department in accordance with the laws and regulations governing the Department of Veterans Affairs. The certificate shall be prima facie evidence of the necessity for the appointment. Cross reference: Code, Estates and Trusts Article, §13-705.

. . .

REPORTER'S NOTE

The proposed amendment to subsection (a)(2) of Rule 10-202 conforms it stylistically to the proposed amendment to Rule 10-301 (d).

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-723 to add language to subsection (b) (1) clarifying that a complaint is confidential, to correct a reference to a certain subsection, and to add a new section (d) concerning notice by Bar Counsel to the Court of Appeals and to the Commission under certain circumstances, and to make certain stylistic changes, as follows:

Rule 16-723. CONFIDENTIALITY

. . .

(b) Other Confidential ~~Proceedings and Records~~ Matters

Except as otherwise provided in these Rules, the following records and proceedings are confidential and not open to public inspection or disclosure:

(1) the records of an investigation by Bar Counsel, including the existence and content of any complaint;

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

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

(4) the contents of a warning issued by Bar Counsel pursuant to Rule 16-735 (b), but the fact that a warning was issued shall be disclosed to the complainant;

(5) 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: 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;

(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 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) (7)~~ (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 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; 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 Disclosure to Disciplinary Authorities 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 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 Disclosure by the 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.

~~(e)~~ (f) Permitted Disclosure

. . .

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

#### REPORTER'S NOTE

At the open meeting on the 151<sup>st</sup> Report of the Rules Committee, the Court of Appeals asked the Chair of the Attorney Grievance Commission to consider whether the mere fact that a complaint was filed against an attorney can be disclosed. The Commission and the Rules Committee are in agreement that the fact that a complaint has been filed and the contents of any complaint should be confidential. They recommend that language referring to the complaint be added to Rule 16-723 (b) (1) to make this clear.

In subsection (c) (1) of the Rule, the reference to "subsection (b) (7)" is corrected to read "subsection (b) (8)."

The Court of Appeals sua sponte amended current section (d) of Rule 16-723 to change "Bar Counsel" to "the Clerk of the Court of Appeals." The amendment requires the latter to notify the National Lawyer Regulatory Data Bank of the American Bar Association and the disciplinary authority of other jurisdictions concerning the resignation or discipline of an attorney in Maryland. In light of this change in procedure, the Committee recommends parallel changes to Rules 16-760, 16-775, and 16-781, as well as the addition of new subsection (d) (1) to Rule 16-723 to provide a mechanism by which the Clerk of the Court of Appeals is notified that an attorney has been reprimanded by the Commission.

Additionally, in light of the proposed amendment to Rule 16-771 that changes the word "shall" to the word "may" in the first and second sentences of section (b), proposed new subsection (d) (2) requires Bar Counsel to notify the Commission and the Clerk of the Court of Appeals if Bar Counsel has received and verified information that an attorney has been convicted of a serious crime.

Current section (d) is relettered section (e) and the tagline is changed, and current section (e) is relettered section (f).

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-751 (a) to allow Bar Counsel to file a Petition for Disciplinary or Remedial Action without the prior approval of the Attorney Grievance Commission under certain circumstances, as follows:

Rule 16-751. PETITION FOR DISCIPLINARY OR REMEDIAL ACTION

(a) Commencement of Disciplinary or Remedial Action

(1) Upon Approval of Commission

Upon approval or direction of the Commission, Bar Counsel 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), Bar Counsel 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.

Cross reference: See Rule 16-723 (b) (7) 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) Form of Petition

The petition shall be sufficiently clear and specific to inform the respondent of any professional misconduct charged and the basis of any allegation that the respondent 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.

REPORTER'S NOTE

The proposed amendments to Rules 16-751, 16-771, and 16-773 allow Bar Counsel to file a Petition for Disciplinary or Remedial Action without obtaining the prior approval of the Attorney Grievance Commission when an attorney has been convicted of a serious crime or, in another jurisdiction, disciplined or placed on inactive status. Proceeding without prior approval allows serious cases to proceed more quickly. Because there may be situations in which a more thorough investigation into the underlying facts of the discipline in another jurisdiction or conviction is warranted, the proposed amendments to Rules 16-771 and 16-773 give Bar Counsel discretion as to the filing of a Petition under proposed new subsection (a)(2) of Rule 16-751.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-760 to require that a certain notification be given by the Clerk of the Court of Appeals, as follows:

Rule 16-760. ORDER IMPOSING DISCIPLINE OR INACTIVE STATUS

. . .

(b) Reprimand

Unless accompanied by a reported opinion, an order that reprimands the respondent shall summarize the misconduct for which the reprimand is imposed, include specific reference to any rule or statute violated by the respondent, and state any conditions imposed upon the respondent pursuant to section (h) of this Rule. Upon the entry of an order that reprimands a respondent, the Clerk of the Court of Appeals shall give the notice required by Rule 16-723 (e).

. . .

(e) Duties of Clerk

On the effective date of an order that disbars, suspends, or places the respondent on inactive status, the Clerk of the Court of Appeals shall strike the name of the respondent 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

of the Court of Appeals also shall give the notice required by Rule 16-723 (e).

(f) Duties of Bar Counsel

Bar Counsel shall enforce the order of the Court of Appeals and the provisions of this Rule. In enforcing section (c) of this Rule, Bar Counsel may designate an attorney to monitor the respondent's compliance and to receive the list and copies of letters described in subsections (c)(4) and (c)(5) of this Rule. If Rule 16-777 is applicable, Bar Counsel may request the appointment of a conservator in accordance with that Rule. ~~Bar Counsel shall give the notice required by Rule 16-723 (d).~~

. . .

(k) Non-admitted Attorney

(1) Duties of Clerk ~~and Bar Counsel~~

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 ~~shall~~ also shall forward a copy of the order to the clerks of all courts in this State 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. ~~Bar Counsel~~  
The Clerk shall give the notice required by Rule 16-723 ~~(d)~~ (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.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 16-723.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-771 (b) to make discretionary the filing of a Petition for Disciplinary or Remedial Action that is based on a conviction of a serious crime and to make a certain stylistic change, as follows:

Rule 16-771. DISCIPLINARY OR REMEDIAL ACTION UPON CONVICTION OF CRIME

. . .

(b) Petition in Court of Appeals

Upon receiving and verifying information from any source that an attorney has been convicted of a serious crime, Bar Counsel ~~shall~~ may file a Petition for Disciplinary or Remedial Action in the Court of Appeals pursuant to Rule 16-751 (a) (2) ~~and serve the attorney in accordance with Rule 16-753~~. The petition ~~shall~~ 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. 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.

. . .

REPORTER'S NOTE

See the Reporter's Note to Rule 16-751, concerning the proposed change of the word "shall" to the word "may" in each of the first two sentences of Rule 16-771 (b).

Additionally, the phrase "and serve the attorney in accordance with Rule 16-753" is proposed to be deleted from the first sentence of Rule 16-771 (b), because the phrase is believed to be unnecessary. The filing of a Petition for Disciplinary or Remedial Action under Rule 16-751 automatically triggers the service provisions of Rule 16-753.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-773 (b) to make discretionary the filing of a Petition for Disciplinary or Remedial Action that is based on corresponding discipline or inactive status in another jurisdiction, as follows:

Rule 16-773. RECIPROCAL DISCIPLINE OR INACTIVE STATUS

. . .

(b) ~~Duty of Bar Counsel~~ 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 ~~shall obtain a certified copy of the disciplinary or remedial order and~~ may file it with a Petition for Disciplinary or Remedial Action in the Court of Appeals pursuant to Rule 16-751 (a) (2), ~~and shall serve copies of the petition and order upon the attorney in accordance with Rule 16-753.~~ 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.

. . .

REPORTER'S NOTE

See the Reporter's Note to Rule 16-751.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-775 to require that a certain notification be given by the Clerk of the Court of Appeals, as follows:

Rule 16-775. RESIGNATION OF ATTORNEY

. . .

(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).

(f) Effect of Resignation

An attorney may not practice law in this State after entry of an order accepting the attorney's resignation. ~~Bar Counsel shall give any notice required by Rule 16-723 (d).~~

. . .

REPORTER'S NOTE

See the Reporter's Note to Rule 16-723 (d).

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-781 to require that a certain notification be given by the Clerk of the Court of Appeals, as follows:

Rule 16-781. REINSTATEMENT

. . .

(1) 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).

~~(1)~~ (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.

~~(2)~~ (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.

~~(m) Duty of Bar Counsel~~

~~Promptly after the effective date of an order that reinstates a petitioner, Bar Counsel shall give any notice required by Rule 16-723 (d) and shall request the Clerk of the Court of Appeals to notify the disciplinary authority of any other jurisdiction in which the petitioner may be admitted to practice.~~

~~(n)~~ (m) 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.

~~(o)~~ (n) Costs

In proceedings for reinstatement, unless the Court of Appeals orders otherwise, the petitioner 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 expenditures incurred by Bar Counsel that were reasonably necessary to evaluate the petition.

. . .

REPORTER'S NOTE

See the Reporter's Note to Rule 16-723.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-761 (a) for conformity with proposed amendments to Rule 16-781, as follows:

Rule 16-761. COSTS

(a) Allowance and Allocation

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

. . .

REPORTER'S NOTE

The proposed amendment to Rule 16-761 conforms the Rule to proposed changes to Rule 16-781.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-821, as follows:

Rule 16-821. PERFORMANCE OF MARRIAGE CEREMONIES BY JUDGES --  
APPLICABILITY OF RULES

Rules 16-821 through 16-824 apply to all Maryland judges of the District Court, a circuit court, the Court of Special Appeals, and the Court of Appeals, including retired judges, who wish to perform marriage ceremonies.

Cross reference: Code, Family Law Article, §2-406.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rules 16-821 through 16-824 are based on the recommendations of the Conference of Circuit Judges.

Chapter 207, Acts of 2002, added judges to the list of persons who may perform marriage ceremonies in Maryland. The proposed Rules contain certain proscriptions and provide procedural details that apply to the performance of marriage ceremonies by judges.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-822, as follows:

Rule 16-822. SCHEDULING

(a) Clerk's Responsibilities

A judge who has agreed to perform a marriage ceremony shall notify the clerk of the circuit court for the county in which the ceremony is to take place. The clerk is responsible for recording and reporting the marriage. The parties are responsible for making all other arrangements.

Committee note: Except for communications necessary to determine a judge's willingness and availability to perform the ceremony, a judge's staff should not be used to make arrangements for a marriage ceremony.

(b) Non-Interference with Court Functions

Ceremonies shall be scheduled so as not to interfere with the prompt disposition of cases and other judicial and administrative duties of the judge, and the use of public resources shall be reasonable and consistent with the security of the courthouse.

(c) Place of Ceremony

A judge may perform a marriage ceremony at a location other than in a Courthouse.

(d) Time of Ceremony

A judge may perform a marriage ceremony at any time,

including on a court holiday or after regular court hours.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's Note to proposed new Rule 16-821.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-823, as follows:

Rule 16-823. JUDICIAL ACTION

(a) Ceremony

A judge who performs a marriage ceremony shall include substantially the form of ceremony used by the clerk of the circuit court for the county where the marriage is to be performed. If the parties request, the ceremony may include religious references. A judge may perform the ceremony in conjunction with an official of a religious order or body.

(b) License

A judge may not perform a marriage ceremony unless a license has been issued by the clerk of the circuit court in the county where the ceremony is to be performed. A judge who performs a marriage ceremony shall (1) complete the certificate of marriage, (2) provide a copy of the certificate to the parties, and (3) return the completed certificate to the issuing clerk of court for recordation and reporting of the marriage as required by law. A judge who grants a request for the issuance of a marriage license under Code, Family Law Article, §2-405 (d) also may perform the marriage.

(c) Refusal to Perform Ceremony

A judge may decline to perform a marriage ceremony.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's Note to proposed new Rule 16-821.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-824, as follows:

Rule 16-824. RESTRICTIONS

(a) Judge's Own Ceremony

A judge may not perform his or her own marriage ceremony.

(b) Compensation

A judge may receive no compensation, remuneration, or gift for performing a marriage ceremony.

Committee note: See Code, Family Law Article, §2-410, as to the fees a clerk or deputy clerk may collect for performing a marriage ceremony.

(c) Advertising or Other Solicitations

A judge may not give or offer to give any reward to any person as an inducement to have the judge perform a marriage ceremony. A judge may not advertise or otherwise solicit individuals contemplating marriage to choose the judge to perform the ceremony.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's Note to proposed new Rule 16-821.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE, JUDICIAL  
DUTIES, ETC.

AMEND Rule 16-101 to add certain provisions concerning Circuit Administrative Judges and to clarify and restate the authority of County Administrative Judges with respect to certain matters, as follows:

Rule 16-101. ADMINISTRATIVE RESPONSIBILITY

. . .

d. County Administrative Judge.

1. Designation.

After considering the recommendation of the Circuit Administrative Judge, The the Chief Judge of the Court of Appeals may appoint a judge of the Circuit Court for any county to be County Administrative Judge of the Circuit Court for that county. A County Administrative Judge shall serve in that capacity at the pleasure of the Chief Judge of the Court of Appeals.

2. Duties.

Subject to the supervision of the ~~Chief Judge of the Court of Appeals~~ Circuit Administrative Judge, a County Administrative Judge shall be responsible for the administration of justice and for the administration of the court for that county. The duties shall include:

(i) supervision of all judges, officers, and employees of the court, including the authority to assign judges within the court pursuant to Rule 16-103 (Assignment of Judges);

(ii) supervision and expeditious disposition of cases filed in the court and the control of the trial calendar and other calendars, including the authority to assign cases for trial and hearing pursuant to Rule 16-102 (Chambers Judge) and Rule 16-202 (Assignment of Actions for Trial);

(iii) preparation of the court's budget;

(iv) ordering the purchase of all equipment and supplies for the court and its ancillary services, such as master, auditor, examiner, court administrator, court stenographer, jury commissioner, staff of the medical and probation offices, and all additional court personnel other than personnel comprising the Clerk of Court's office;

(v) ~~subject to the approval of a majority of the judges of the court,~~ supervision of and responsibility for the employment, discharge, and classification of court personnel and personnel of its ancillary services and the maintenance of personnel files, unless a majority of the judges of the court disapproves of a specific action. However, each judge (subject to budget limitations) shall have the exclusive right to employ and discharge the judge's personal secretary and law clerk; and

Committee note: Article IV, §9, of the Constitution gives the judges of any court the power to appoint officers and, thus, requires joint exercise of the personnel power. A similar provision was included in the July 17, 1967 Administrative and Procedure Regulation.

(vi) implementation and enforcement of all policies, rules and directives of the Court of Appeals, its Chief Judge, and the State Court Administrator, and performance of any other duties necessary for the effective administration of the judicial business of the court and the prompt disposition of litigation.

Cross reference: See also Rule 16-102 (Chambers Judge); Rule 16-103 (Assignment of Judges); Rule 16-201 (Motion Day - Calendar); Rule 16-202 (Assignment of Actions for Trial).

3. Power to Delegate.

(i) A County Administrative Judge may delegate to any judge, to any committee of judges, or to any officer or employee any of the administrative responsibilities, duties and functions of the County Administrative Judge.

(ii) In the implementation of Code, Criminal Procedure Article, §6-103 and Rule 4-271 (a), a County Administrative Judge may authorize (A) with the approval of the Chief Judge of the Court of Appeals, one or more judges to postpone criminal cases on appeal from the District Court or transferred from the District Court because of a demand for jury trial, and (B) not more than one judge at a time to postpone all other criminal cases.

4. Single Judge Counties.

In a county that has only one resident judge of the Circuit Court, that judge shall exercise the power and authority of a County Administrative Judge.

Source: This Rule is derived from former Rule 1200.

REPORTER'S NOTE

The amendments to Rule 16-101 are proposed at the request of the Conference of Circuit Judges, which unanimously voted to recommend the proposed revisions. The amendments (1) provide for the recommendation of the Circuit Administrative Judge in the appointment process of county administrative judges, (2) clarify the supervisory role of the Circuit Administrative Judge, and (3) restate the provision relating to the appointment and discharge of court personnel in the event a majority of a bench is not attained in such matters.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT AND OTHER PERSONS

AMEND Rule 16-406 c to allow the Commission on Judicial Disabilities or its designee access to copies of certain videotape recordings, as follows:

Rule 16-406. ACCESS TO VIDEOTAPE RECORDINGS OF PROCEEDINGS IN THE CIRCUIT COURT

. . .

c. Right to Copy; Restrictions.

1. Upon written request and the payment of reasonable costs, the authorized custodian of an official videotape recording shall make a copy of the recording, or any part requested, available to:

(A) a party to the action or the party's attorney; ~~and~~

(B) a stenographer or transcription service designated by the court for the purpose of preparing an official transcript from the recording; and

(C) the Commission on Judicial Disabilities or its designee.

2. Unless authorized by an order of court, a person who receives a copy of a videotape recording pursuant to this section shall not (A) make or cause to be made any additional copy of the recording or (B) except for a non-sequestered witness or an

agent, employee, or consultant of the attorney, make the recording available to any person not entitled to it pursuant to this section.

. . .

#### REPORTER'S NOTE

On behalf of the Commission on Judicial Disabilities, Steven P. Lemmey, Esq., Investigative Counsel, has requested a change to Rule 16-406 c that would permit the Commission access to videotape recordings of proceedings in the Maryland circuit courts. Mr. Lemmey points out that the Committee note to Rule 16-805, Complaints; Preliminary Investigations, provides that Investigative Counsel may obtain transcripts of court proceedings. He states that after reading written transcripts, listening to audiotapes, or viewing videotapes, the Commission often is able to determine that the complaint against a judge lacks merit, and the case is dismissed. Some Maryland jurisdictions are not making the videotapes available to the Commission, and the requested change to Rule 16-406 would make it clear that the Commission has a right to obtain a copy of the videotapes of proceedings in circuit court.

Although a comprehensive overhaul of Rule 16-406 may be necessary as a result of the recommendations of a committee of the Court currently studying the topic of access to court records, the Rules Committee believes that the Commission's request merits consideration prior to the completion of that study.

MARYLAND RULES OF PROCEDURE  
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION  
CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-104 to change the language in subsection (a) (3) broadening the scope of continuing mediation-related education and to add a new section (c) providing for additional qualifications for mediators in the Business and Technology Case Management Program, as follows:

Rule 17-104. QUALIFICATIONS AND SELECTION OF MEDIATORS

(a) Qualifications in General

To be designated by the court as a mediator, other than by agreement of the parties, a person must:

(1) unless waived by the court, be at least 21 years old and have at least a bachelor's degree from an accredited college or university;

Committee note: This subsection permits a waiver because the quality of a mediator's skill is not necessarily measured by age or formal education.

(2) have completed at least 40 hours of mediation training in a program meeting the requirements of Rule 17-106;

(3) complete in every two-year period eight hours of continuing mediation-related education in ~~a program meeting the requirements of one or more of the topics set forth in~~ Rule 17-106;

(4) abide by any standards adopted by the Court of Appeals;

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

(6) comply with procedures and requirements prescribed in the court's case management plan filed under Rule 16-203 b. relating to diligence, quality assurance, and a willingness to accept a reasonable number of referrals on a reduced-fee or pro bono basis upon request by the court.

(b) Additional Qualifications - Child Access Disputes

To be designated by the court as a mediator with respect to issues concerning child access, the person must:

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

(2) have completed at least 20 hours of training in a family mediation training program meeting the requirements of Rule 17-106; and

(3) have observed or co-mediated at least eight hours of child access mediation sessions conducted by persons approved by the county administrative judge, in addition to any observations during the training program.

(c) Additional Qualifications - Business and Technology Case Management Program Cases

To be designated by the court as a mediator of Business and Technology Program cases, other than by agreement of the parties, the person must:

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

Rule;

(2) within the two-year period preceding application for approval pursuant to Rule 17-107, have completed as a mediator at least five non-domestic circuit court mediations or five non-domestic non-circuit court mediations of comparable complexity (A) at least two of which are among the types of cases that are assigned to the Business and Technology Case Management Program or (B) have co-mediated, on a non-paid basis, an additional two cases from the Business and Technology Case Management Program with a mediator already approved to mediate these cases;

(3) agree to serve as co-mediator with at least two mediators each year who seek to meet the requirements of subsection (c) (2) (B) of this Rule; and

(4) agree to complete any continuing education training required by the Circuit Administrative Judge or that judge's designee.

~~(c)~~ (d) Additional Qualifications - Marital Property Issues

To be designated by the court as a mediator in divorce cases with marital property issues, the person must:

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

(2) have completed at least 20 hours of skill-based training in mediation of marital property issues; and

(3) have observed or co-mediated at least eight hours of divorce mediation sessions involving marital property issues conducted by persons approved by the county administrative judge,

in addition to any observations during the training program.

Source: This Rule is new.

REPORTER'S NOTE

Rachel Wohl, Esq., Executive Director of the Maryland Mediation and Conflict Resolution Office, raised the issue of the wording in subsection (a) (3) of Rule 17-104 concerning the eight-hour continuing mediation-related education requirement for mediators. The current language indicates that the eight-hour training sessions must cover the same topics as the 40-hour basic training for mediators. The provision was intended to be broader and include a wide variety of continuing self-improvement training for mediators. The Rules Committee is proposing a language change in subsection (a) (3) to achieve this goal.

Because of the complexity of cases in the Business and Technology Case Management Program, the Committee proposes the addition of a new section (c) to Rule 17-104 that sets forth additional qualifications for mediators of cases in that Program. The list of additional qualifications is based on the recommendations of the Implementation Committee of the Business and Technology Case Management Program.

MARYLAND RULES OF PROCEDURE  
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION  
CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-105 to change the name of the Rule, as follows:

Rule 17-105. QUALIFICATIONS AND ~~SELECTIONS~~ SELECTION OF PERSONS  
OTHER THAN MEDIATORS AND NEUTRAL EXPERTS

. . .

REPORTER'S NOTE

The proposed amendment to Rule 17-105 changes its Title to reflect that neither the selection of mediators nor the selection of neutral experts is included in the Rule. The selection process for mediators is set forth in Rule 17-104 and the selection process for neutral experts is set forth in proposed new Rule 17-105.1.

MARYLAND RULES OF PROCEDURE  
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION  
CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

ADD new Rule 17-105.1, as follows:

Rule 17-105.1. NEUTRAL EXPERTS

(a) Definition

A "neutral expert" means a person who has special expertise to provide impartial technical background information, an impartial opinion, or both in a specific area.

(b) Selection

When a court-appointed alternative dispute resolution practitioner or one or both of the parties believe that it would be helpful to have the assistance of a neutral expert, the practitioner may select a neutral expert, with the consent of the parties and at their expense, to be present at or participate in the mediation at the request of the practitioner.

(c) Confidentiality

(1) Mediation Proceedings

In a mediation, the provisions of sections (a), (b), and (e) of Rule 17-109 apply to the neutral expert.

(2) Other Alternative Dispute Resolution Proceedings

In all other alternative dispute resolution proceedings, the parties and the alternative dispute resolution practitioner may require the neutral expert to enter into a written agreement binding the neutral expert to confidentiality. The written

agreement may include provisions stating that the expert may not disclose or be compelled to disclose any communications related to the alternative dispute resolution proceeding in any judicial, administrative, or other proceedings. Communications related to the alternative dispute resolution proceeding that are confidential under an agreement allowed by this subsection are privileged and not subject to discovery, but information otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use related to the alternative dispute resolution proceeding.

Source: This Rule is new.

#### REPORTER'S NOTE

Based on a recommendation by the Implementation Committee of the Maryland Business and Technology Case Management Program concerning the use of neutral experts in cases assigned to that Program, the Rules Committee is proposing that the use of neutral experts be allowed in any alternative dispute resolution proceeding and that a new Rule be added to Title 17. Proposed new Rule 17-105.1 contains a definition of the term "neutral expert," a procedure for selecting the expert, and a provision pertaining to the confidentiality of the expert's communications.

MARYLAND RULES OF PROCEDURE  
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION  
CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-107 to add a new section (b) concerning approval to conduct alternative dispute resolution proceedings in the Business and Technology Case Management Program and to make certain stylistic changes, as follows:

Rule 17-107. PROCEDURE FOR APPROVAL

(a) Generally

(1) Filing Application

A person seeking designation to conduct alternative dispute resolution proceedings pursuant to Rule 2-504 in actions other than those assigned to the Business and Technology Case Management Program shall file an application with the clerk of the circuit court from which the person is willing to accept referrals. The application shall be substantially in the form approved by the State Court Administrator and shall be available from the clerk of each circuit court. ~~shall be accompanied by documentation demonstrating that the applicant has the qualifications required by Rule 17-104, if~~ If the person is applying for designation as a mediator, the application shall be accompanied by documentation demonstrating that the applicant has the qualifications required by Rule 17-104. ~~or Rule 17-105 (a),~~ ~~if~~ If the person is applying for designation to conduct

alternative dispute resolution proceedings other than mediation, the application shall be accompanied by documentation demonstrating that the applicant has the qualifications required by Rule 17-105 (a). The State Court Administrator may require the application and documentation to be ~~in a form that can be stored in a computer~~ provided in a word processing file or other electronic format.

~~(b)~~ (2) Approved Lists Action on Application

After any investigation that the county administrative judge ~~chooses to make~~ deems appropriate, the county administrative judge shall notify each applicant of the approval or disapproval of the application and the reasons for a disapproval.

(3) Approved Lists

The clerk shall prepare a list of mediators found by the county administrative judge to meet the qualifications required by Rule 17-104 and a ~~separate~~ list of persons found by the county administrative judge to meet the qualifications required by Rule 17-105 (a) ~~for conducting other alternative dispute resolution proceedings.~~ ~~Those~~ The lists, together with the applications of the persons on the lists, shall be kept current by the clerk and be available in the clerk's office to the public.

~~(c)~~ (4) Removal from List

After notice and a reasonable opportunity to respond, the county administrative judge shall remove a person from a list ~~if the person ceases to meet~~ for failure to maintain the applicable

qualifications of Rule 17-104 or Rule 17-105 (a) ~~and may remove a person or~~ for other good cause.

(b) Business and Technology Case Management Program

(1) Filing Application

A person seeking designation to conduct alternative dispute resolution proceedings pursuant to Rule 2-504 in actions assigned to the Business and Technology Case Management Program shall file an application with the Administrative Office of the Courts, which shall transmit the application to the Committee of Program Judges appointed pursuant to Rule 16-108 b. 4. The application shall be substantially in the form approved by the State Court Administrator and shall be available from the clerk of each circuit court. If the person is applying for designation as a mediator, the application shall be accompanied by documentation demonstrating that the applicant has the qualifications required by Rule 17-104. If the person is applying for designation to conduct alternative dispute resolution proceedings other than mediation, the application shall be accompanied by documentation demonstrating that the applicant has the qualifications required by Rule 17-105 (a). The State Court Administrator may require the application and documentation to be provided in a word processing file or other electronic format.

(2) Action on Application

After any investigation that the Committee of Program Judges deems appropriate, the Committee shall notify the

Administrative Office of the Courts that the application has been approved or disapproved, and if disapproved, shall state the reasons for the disapproval. The Administrative Office of the Courts shall notify each applicant of the action of the Committee and the reasons for a disapproval.

(3) Approved Lists

The Administrative Office of the Courts shall prepare a list of mediators found by the Committee to meet the qualifications required by Rule 17-104 and a list of persons found by the Committee to meet the qualifications required by Rule 17-105 (a). The Administrative Office of the Courts shall (A) attach to the lists such additional information as the State Court Administrator specifies; (B) keep the lists current; and (C) transmit a copy of each current list to the clerk of each circuit court, who shall make them available to the public.

Committee note: Examples of information that the State Court Administrator may specify as attachments to the lists made pursuant to this subsection include information about the person's qualifications, experience, and background and any other information that would be helpful to litigants selecting a person best qualified to conduct alternative dispute resolution proceedings in a specific case.

(4) Removal from List

After notice and a reasonable opportunity to respond, the Committee of Program Judges shall remove a person from a list for failure to maintain the applicable qualifications of Rule 17-104 or Rule 17-105 (a) or for other good cause.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new section (b) adds to Rule 17-107 a procedure for approval of persons seeking to conduct alternative dispute resolution ("ADR") proceedings in actions assigned to the Business and Technology Case Management Program. Under this section, the ADR practitioner files an application with the Administrative Office of the Courts ("AOC"). A Committee of Program Judges appointed pursuant to Rule 16-108 b. 4. approves or disapproves each application. The AOC maintains current lists of persons who are approved for designation to conduct ADR proceedings in the Business and Technology Case Management Program. The AOC provides a copy of the current lists to the clerk of each circuit court, who makes the lists available to the public.

The proposed changes to section (a) are stylistic, only.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-108 to change "county administrative judge" to "circuit administrative judge" and to add a certain Committee note, as follows:

Rule 17-108. FEE SCHEDULES

Subject to the approval of the Chief Judge of the Court of Appeals, the ~~county~~ circuit administrative judge of each circuit court may develop and adopt maximum fee schedules for persons conducting each type of alternative dispute resolution proceeding other than on a volunteer basis. In developing the fee schedules, the ~~county~~ circuit administrative judge shall take into account the availability of qualified persons willing to provide those services and the ability of litigants to pay for those services. A person designated by the court, other than ~~on~~ with the agreement of the parties, to conduct an alternative dispute resolution proceeding under Rule 2-504 may not charge or accept a fee for that proceeding in excess of that allowed by the applicable schedule. Violation of this Rule shall be cause for removal from all lists.

Committee note: The rates in a fee schedule may vary based on the type the alternative dispute resolution proceeding, the complexity of the action, and the qualifications of the alternative dispute resolution practitioner.

Source: This Rule is new.

REPORTER'S NOTE

Rule 17-108 currently gives authority to the county administrative judge to set fee schedules for persons conducting court-referred alternative dispute resolution ("ADR") proceedings, subject to the approval of the Chief Judge of the Court of Appeals. The Rules Committee recommends that fee schedules be set instead by the circuit administrative judge, subject to the Chief Judge's approval. The proposed change is intended to facilitate a uniform approach to fee schedules within each circuit, generally, and in particular with respect to ADR proceedings in cases assigned to the Business and Technology Case Management Program.

A Committee note is proposed to be added to make clear that the rates in the fee schedule may be based not only on the type of ADR proceeding but also on the complexity of the action and the qualifications of the ADR practitioner.

MARYLAND RULES OF PROCEDURE  
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION  
CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-109 to add the phrase "or otherwise participating in the mediation" to sections (a) and (b) and to add a Committee note following section (e), as follows:

Rule 17-109. MEDIATION CONFIDENTIALITY

(a) Mediator

Except as provided in sections (c) and (d) of this Rule, a mediator and any person present or otherwise participating in the mediation at the request of the mediator shall maintain the confidentiality of all mediation communications and may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.

(b) Parties

Subject to the provisions of sections (c) and (d) of this Rule, (1) the parties may enter into a written agreement to maintain the confidentiality of all mediation communications and to require any person present or otherwise participating in the mediation at the request of a party to maintain the confidentiality of mediation communications and (2) the parties and any person present or otherwise participating in the mediation at the request of a party may not disclose or be compelled to disclose mediation communications in any judicial, administrative,

or other proceeding.

(c) Signed Document

A document signed by the parties that reduces to writing an agreement reached by the parties as a result of mediation is not confidential, unless the parties agree in writing otherwise.

Cross reference: See Rule 9-205 (d) concerning the submission of a memorandum of the points of agreement to the court in a child access case.

(d) Permitted Disclosures

In addition to any disclosures required by law, a mediator and a party may disclose or report mediation communications to a potential victim or to the appropriate authorities to the extent that they believe ~~it~~ necessary to help:

(1) prevent serious bodily harm or death, or

(2) assert or defend against allegations of mediator misconduct or negligence.

Cross reference: For the legal requirement to report suspected acts of child abuse, see Code, Family Law Article, §5-705.

(e) Discovery; Admissibility of Information

Mediation communications that are confidential under this Rule are privileged and not subject to discovery, but information otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

Committee note: A neutral expert appointed pursuant to Rule 17-105.1 is subject to the provisions of sections (a), (b), and (e) of this Rule.

Source: This Rule is new.

REPORTER'S NOTE

The Implementation Committee of the Maryland Business and Technology Case Management Program recommended adding to the Rules in Title 17 provisions concerning the "neutral expert," including language clarifying that the expert is to be bound by confidentiality requirements.

The proposed amendments to Rule 17-109 add to sections (a) and (b) the phrase "or otherwise participating in the mediation" to encompass the situation where a neutral expert provides technical background information in conjunction with the mediation, but is not present during the mediation. The proposed Committee note following section (e) draws attention to the applicability of sections (a), (b), and (e) to neutral experts.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE, JUDICIAL  
DUTIES, ETC.

AMEND Rule 16-108 to add a new subsection concerning the appointment of a Business and Technology Case Management Committee, as follows:

Rule 16-108. CONFERENCE OF CIRCUIT JUDGES

a. Purpose.

There shall be a Conference of Circuit Judges that represents the interests of the circuit courts and is a policy advisory body to the Chief Judge of the Court of Appeals, the Court of Appeals, and other judicial branch agencies in all circuit court matters.

b. Powers.

1. Administration Policies.

To fulfill its purpose, the Conference shall work collaboratively and in consultation with the Chief Judge of the Court of Appeals in developing policies affecting the administration of the circuit courts, including but not limited to:

(A) programs and practices that will enhance the administration of justice;

(B) the level of operational and judicial resources to be included in the Judiciary Budget;

- (C) legislation that may affect the circuit courts; and
- (D) the compensation and benefits of circuit court judges.

2. Consultants.

With the approval of the Chief Judge, the Conference may retain consultants in matters relating to the circuit courts.

3. Consultation with Chief Judge of the Court of Appeals.

The Conference shall consult with the Chief Judge of the Court of Appeals:

(A) on the appointment of circuit judges to committees of the Judicial Conference in accordance with Rule 16-802 f 2; and

(B) to recommend circuit judges for membership on other committees and bodies of interest to the circuit courts.

4. Business and Technology Case Management Committee of Program Judges.

The Conference shall appoint a committee of not less than three program judges to perform the duties required by Rule 17-107 (b) and generally to advise the Conference regarding the Business and Technology Case Management Program.

Cross reference: For the definition of "program judge," see Rule 16-205 (a)(3).

~~4.~~ 5. Majority Vote.

The Conference and the Executive Committee of the Conference each shall exercise its powers and carry out its duties pursuant to a majority vote of its authorized membership.

c. Membership and Operation.

1. Composition.

The Conference shall comprise 16 members including the circuit administrative judge from each judicial circuit and one circuit judge from each judicial circuit who shall be elected every two years by majority vote of the circuit judges then authorized in the circuit.

2. Chair and Vice-Chair.

The Conference shall elect from its members every two years a Chair and Vice-chair.

3. Quorum.

A majority of the authorized membership of the Conference shall constitute a quorum.

4. Meetings.

The Conference shall meet at least four times a year.

d. Executive Committee.

1. Power and Composition.

There shall be an Executive Committee of the Conference. It shall consist of the Conference Chair and Vice-Chair and such other members as may be designated by the Conference and shall be empowered to act with the full authority of the Conference when the Conference is not in session. The actions of the Executive Committee will be reported fully to the Conference at its next meeting.

2. Quorum.

A majority of the authorized membership of the Executive Committee shall constitute a quorum.

3. Convening the Executive Committee.

The Executive Committee shall convene at the call of the Conference Chair. In the absence of the Chair, the Vice-Chair is authorized to convene the Executive Committee.

e. Conference Staff.

The Administrative Office of the Courts shall serve as staff to the Conference and its Executive Committee.

Source: This Rule is new.

#### REPORTER'S NOTE

The proposed amendment to Rule 16-108 requires that the Conference appoint a committee of program judges who will serve generally as a policy advisory body with respect to the Business and Technology Case Management Program and perform the specific duties set forth in Rule 17-107 (b).

MARYLAND RULES OF PROCEDURE  
RULES GOVERNING ADMISSION TO THE  
BAR OF MARYLAND

AMEND Bar Admission Rule 6 to delete a certain certification requirement, to change the time for filing the petition, to add a certain provision concerning affirmation and certification of the petitioner's eligibility, and to add a certain provision concerning the voiding of examination results, as follows:

Rule 6. PETITION TO TAKE A SCHEDULED EXAMINATION

(a) Filing

An applicant may file a petition to take a scheduled bar examination if the applicant (1) is eligible under Rule 4 to take the bar examination and (2) has applied for admission pursuant to Rule 2 and the application has not been withdrawn or rejected pursuant to Rule 5. The petition shall be under oath and shall be filed on the form prescribed by the Board.

~~(b) Certification by Law School~~

~~The petition shall include a certification, on a form prescribed by the Board, signed by the dean or other authorized official of the law school attended by the petitioner, showing (1) that the law school meets the requirements of Rule 4 (a) unless the requirements have been waived by the Board pursuant to Rule 4 (b); (2) that the petitioner either graduated on a stated date or is unqualifiedly eligible for graduation at the next commencement~~

~~exercise, naming the date; and (3) that the petitioner, so far as is known to that official, has not been guilty of any criminal or dishonest conduct other than minor traffic offenses, except as noted on the certification, and is of good moral character.~~

~~(c) (b) Time for Filing~~

~~The petition shall be filed at least 20 days before the scheduled examination. A petitioner who intends to take the examination in July shall file the petition no later than the preceding May 20. A petitioner who intends to take the examination in February shall file the petition no later than the preceding December 20. Upon written request of a petitioner and for good cause shown, the Board may accept a petition filed after that deadline. If the Board rejects the petition, the petitioner may file an exception with the Court within five days after notice of the rejection.~~

~~(c) Affirmation and Verification of Eligibility~~

~~The petition to take an examination shall contain a signed, notarized statement affirming that the petitioner is eligible to take the examination. No later than the first day of September following an examination in July or the fifteenth day of March following an examination in February, the petitioner shall cause to be sent to the Office of the State Board of Law Examiners a transcript that reflects the date of the award of a Juris Doctor degree to the petitioner.~~

~~(d) Voiding of Examination Results for Ineligibility~~

~~If an applicant who is not eligible under Rule 4 takes an~~

examination, the applicant's petition will be deemed invalid and the applicant's examination results will be voided. No fees will be refunded.

~~(d)~~ (e) Refunds

If a petitioner withdraws the petition or fails to attend and take the examination, the examination fee will not be refunded except for good cause shown. The examination fee may not be applied to a subsequent examination unless the petitioner is permitted by the Board to defer taking the examination.

Source: This Rule is ~~derived from former Rule 5 a with the exception of section (d), which is new,~~ except that section (a) is derived from former Rule 5 (a).

REPORTER'S NOTE

Amendments to Rules 6 and 9 of the Rules Governing Admission to the Bar of Maryland are proposed at the request of the State Board of Law Examiners.

To allow the Board sufficient time to process a petition to take an examination, in light of increases in the number of candidates and the number of requests for accommodation under the Americans With Disabilities Act, the time for filing the petition is proposed to be changed from 20 days before the scheduled examination to no later than the preceding May 20<sup>th</sup> for the July examination or the preceding December 20<sup>th</sup> for the February examination.

The existing requirement set forth in Rule 6 (b) that a certain certification by the petitioner's law school be included in the petition is proposed to be deleted. In its place are proposed new sections (c) and (d). New section (c) requires the petitioner to affirm the petitioner's eligibility to take the examination and provide a law school transcript to the Board within a certain time after the examination. New section (d) voids the examination results of any applicant who is found to have been ineligible to take the examination.

MARYLAND RULES OF PROCEDURE  
RULES GOVERNING ADMISSION TO THE  
BAR OF MARYLAND

AMEND Bar Admission Rule 9 to change the time for filing the petition, as follows:

Rule 9. RE-EXAMINATION AFTER FAILURE

(a) Petition for Re-examination

An unsuccessful examinee may file a petition to take another scheduled examination. The petition shall be on the form prescribed by the Board and shall be accompanied by the required examination fee.

(b) Time for Filing

~~The petition shall be filed at least 20 days before the scheduled examination.~~ A petitioner who intends to take the July examination shall file the petition, together with the prescribed fee, no later than the preceding May 20. A petitioner who intends to take the examination in February shall file the petition, together with the prescribed fee, no later than the preceding December 20. Upon written request of a petitioner and for good cause shown, the Board may accept a petition filed after that deadline. If the Board rejects the petition, the petitioner may file an exception with the Court within five days after notice of the rejection.

(c) Deferment of Re-examination

To meet scheduling needs at either the July or the February examination, the Board may require a petitioner to defer re-examination for one setting.

(d) Three or More Failures - Re-examination Conditional

If a person fails three or more examinations, the Board may condition retaking of the examination on the successful completion of specified additional study.

(e) No Refunds

If a petitioner withdraws the petition or fails to attend and take the examination, the examination fee will not be refunded and may not be applied to a subsequent examination unless the petitioner is required by the Board to defer retaking the examination or establishes good cause for the withdrawal or failure to attend.

Source: This Rule is derived as follows:

Sections (a) and (b) ~~are~~ is derived from former Rule 8 a.  
Section (b) is new.

Sections (c) and (d) are derived from former Rule 8 c.

REPORTER'S NOTE

See the Reporter's Note to the proposed amendment to Rule 6 of the Rules Governing Admission to the Bar of Maryland.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-201 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 1-201. RULES OF CONSTRUCTION

. . .

Source: This Rule is derived as follows:

Section (a) is in part consistent with ~~FRCP 1~~ the 1966 version of Fed. R. Civ. P. 1 and is derived from former Rule 701. The last two sentences are new.

Section (b) is derived from former Rule 1 h and i.

Section (c) is derived from former Rules 1 g and 701.

Section (d) is derived from former Rule 2 c.

Section (e) is derived from former Rule 2 b.

REPORTER'S NOTE

The amendments to Rules 1-201, 1-202, 1-203, 1-204, 1-301, 1-311, 1-321, 1-404, 2-112, 2-121, 2-126, 2-201, 2-211, 2-212, 2-213, 2-214, 2-221, 2-241, 2-301, 2-302, 2-303, 2-304, 2-305, 2-322, 2-323, 2-324, 2-325, 2-403, 2-404, 2-414, 2-418, 2-433, 2-506, 2-510, 2-511, 2-519, 2-520, 2-522, 2-532, 2-533, 2-534, 2-535, 2-601, 2-602, 2-613, 2-632, 2-648, 3-112, 3-121, 3-126, 3-201, 3-211, 3-212, 3-213, 3-214, 3-241, 3-301, 3-302, 3-303, 3-305, 3-506, 3-510, 3-519, 3-533, 3-534, 3-535, 3-601, 3-602, 3-632, 3-648, 15-504, and 15-505 are proposed to clarify the source of Maryland Rules that are derived from or otherwise based on federal rules. Because some federal rules have been renumbered, the source notes to some Maryland Rules no longer are accurate. By adding to the source note the date of the version of the federal rule that corresponds to the Maryland Rule, the source notes are made historically accurate.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-202 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 1-202. DEFINITIONS

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 5 a.

Section (b) is derived from former Rule 5 c.

Section (c) is new.

Section (d) is derived from former Rule 5 aa.

Section (e) is derived from former Rule 5 e.

Section (f) is derived from former Rule 5 f.

Section (g) is derived from former Rule 5 g.

Section (h) is derived from former Rule 5 h.

Section (i) is new.

Section (j) is derived from former Rule 5 m.

Section (k) is new.

Section (l) is derived from former Rule 5 r.

Section (m) is derived from former Rule 5 n.

Section (n) is derived from former Rule 5 o.

Section (o) is new.

Section (p) is new.

Section (q) is derived from the last sentence of former Rule 5 v.

Section (r) is derived from former Rule 5 q.

Section (s) is new and adopts the concept of federal practice set forth in ~~FRCP 7 (a)~~ the 1963 version of Fed. R. Civ. P. 7 (a).

Section (t) is derived from former Rule 5 w.

Section (u) is derived from former Rule 5 y.

Section (v) is derived from former Rule 5 z.

Section (w) is new.

Section (x) is derived from former Rule 5 cc.

Section (y) is derived from former Rule 5 ee.

Section (z) is new.

Section (aa) is derived from former Rule 5 ff.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-203 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 1-203. TIME

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 8 a.

Section (b) is derived from former Rule 8 b.

Section (c) is new and is derived from ~~FRCP 6 (e)~~ the 1971 version of Fed. R. Civ. P. 6 (e).

Section (d) is new.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-204 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 1-204. MOTION TO SHORTEN OR EXTEND TIME REQUIREMENTS

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 309 and ~~FRCP 6 (b)~~ the 1971 version of Fed. R. Civ. P. 6 (b).

Section (b) is new.

Section (c) is new.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 1 - GENERAL PROVISIONS  
CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-301 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 1-301. FORM OF COURT PAPERS

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 301 e and h, ~~and FRCP 10 (a) and 7 (b) (2)~~ the 1937 version of Fed. R. Civ. P. 10 (a), and the 1963 version of Fed. R. Civ. P. 7 (b) (2).

Section (b) is new.

Section (c) is new.

Section (d) is new.

Section (e) is new.

Section (f) is derived from former Rules 303 a and 301 k.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 1 - GENERAL PROVISIONS  
CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-311 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 1-311. SIGNING OF PLEADINGS AND OTHER PAPERS

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rules 302 a<sub>1</sub> and 301 f<sub>1</sub> and ~~FRCP-11~~ the 1937 version of Fed. R. Civ. P. 11.

Section (b) is derived from former Rule 302 b and ~~FRCP-11~~ the 1937 version of Fed. R. Civ. P. 11.

Section (c) is derived from ~~FRCP-11~~ the 1937 version of Fed. R. Civ. P. 11.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 1 - GENERAL PROVISIONS  
CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-321 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 1-321. SERVICE OF PLEADINGS AND PAPERS OTHER THAN ORIGINAL PLEADINGS

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 306 a 1 and c and ~~FRCP-5~~ (a) the 1980 version of Fed. R. Civ. P. 5 (a).

Section (b) is derived from former Rule 306 b and ~~FRCP-5~~ (a) the 1980 version of Fed. R. Civ. P. 5 (a).

Section (c) is new

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 1 - GENERAL PROVISIONS  
CHAPTER 400 - BOND

AMEND Rule 1-404 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 1-404. PROCEEDING AGAINST SURETY

. . .

Source: This Rule is derived from ~~FRCP 65.1~~ the 1966 version of Fed. R. Civ. P. 65.1.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-112 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-112. PROCESS - ISSUANCE OF SUMMONS

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 103 c and e and ~~FRCP-4~~  
~~(a)~~ the 1980 version of Fed. R. Civ. P. 4 (a).

Section (b) is derived from former Rule 103 j.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-121 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-121. PROCESS - SERVICE - IN PERSONAM

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rules 104 b 1 and 2, 105 a, and 107 a 1, 2 and 4 and from the 1993 version of Fed. R. Civ. P. 4 (e) (2).

Section (b) is derived from former Rules 104 h 1 and 107 a 3.

Section (c) is new.

Section (d) is derived from former Rules 104 i and 107 c.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-126 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-126. PROCESS - RETURN

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rules 104 b 2, 107 a 2 and 116 c 1 and 2.

Section (b) is derived from former Rule 105 b 1 (a) and b 2.

Section (c) is new.

Section (d) is new.

Section (e) is new.

Section (f) is derived from former Rules 104 a (2) and 622 h 2.

Section (g) is derived from ~~FRCP 4 (g)~~ the 1980 version of Fed. R. Civ. P. 4 (g) and former Rules 104 h 3 (c) and 116 c 3.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 200 - PARTIES

AMEND Rule 2-201 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-201. REAL PARTY IN INTEREST

. . .

Source: This Rule is derived from former Rule 203 a, b, and c and ~~FRCP 17 (a)~~ the 1966 version of Fed. R. Civ. P. 17 (a).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 200 - PARTIES

AMEND Rule 2-211 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-211. REQUIRED JOINDER OF PARTIES

. . .

Source: This Rule is derived as follows:

Section (a) is derived from ~~FRCP 19 (a)~~ the 1966 version of Fed. R. Civ. P. 19 (a).

Section (b) is derived from ~~FRCP 19 (c)~~ the 1966 version of Fed. R. Civ. P. 19 (c).

Section (c) is derived from ~~FRCP 19 (b)~~ the 1966 version of Fed. R. Civ. P. 19 (b).

Section (d) is derived from ~~FRCP 19 (d)~~ the 1966 version of Fed. R. Civ. P. 19 (d).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 200 - PARTIES

AMEND Rule 2-212 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-212. PERMISSIVE JOINDER OF PARTIES

. . .

Source: This Rule is derived as follows:

Section (a) is derived from ~~FRCP 20 (a)~~ the 1966 version of Fed. R. Civ. P. 20 (a) and former Rule 313 a, c, d and e.

Section (b) is derived from ~~FRCP 20 (b)~~ the 1966 version of Fed. R. Civ. P. 20 (b) and former Rule 501 b.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 200 - PARTIES

AMEND Rule 2-213 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-213. MISJOINDER AND NONJOINDER OF PARTIES

. . .

Source: This Rule is derived from ~~FRCP 21~~ the 1937 version of Fed. R. Civ. P. 21.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 200 - PARTIES

AMEND Rule 2-214 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-214. INTERVENTION

. . .

Source: This Rule is derived as follows:

Section (a) is derived from ~~FRCP 24 (a)~~ the 1966 version of Fed. R. Civ. P. 24 (a).

Section (b) ~~is derived from FRCP 24 and former Rule 208.~~

Subsection (b)(1) is derived from former Rule 208 b 1.

Subsection (b)(2) is derived from former Rule 208 b 2.

Subsection (b)(3) is derived from the last sentence of ~~FRCP 24 (b)~~ the 1966 version of Fed. R. Civ. P. 24 (b).

Section (c) is derived from ~~FRCP 24 (c)~~ the 1966 version of Fed. R. Civ. P. 24 (c) and former Rule 208 c.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 200 - PARTIES

AMEND Rule 2-221 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-221. INTERPLEADER

. . .

Source: This Rule is derived as follows:

Section (a) is derived from ~~FRCP 22 (1)~~ the 1948 version of Fed. R. Civ. P. 22 (1) and former Rule BU 70.

Section (b) is derived from former Rule BU 72.

Section (c) is derived from former Rule BU 73.

Section (d) is derived from former Rule BU 74.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 200 - PARTIES

AMEND Rule 2-241 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-241. SUBSTITUTION OF PARTIES

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rules 220, 222, and 240 and ~~FRCP 25 (a), (b), (c), and (d)~~ the 1963 version of Fed. R. Civ. P. 25 (a), (b), (c), and (d).

Section (b) is derived from former Rule 220 c, d and e.

Section (c) is new.

Section (d) is derived from former Rule 220 f.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-301 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-301. FORM OF ACTION

. . .

Source: This Rule is new and is derived from ~~FRCP-2~~ the 1937 version of Fed. R. Civ. P. 2.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-302 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-302. PLEADINGS ALLOWED

. . .

Source: This Rule is new and is derived from ~~FRCP~~<sup>7</sup> the 1963 version of Fed. R. Civ. P. 7.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-303 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-303. FORM OF PLEADINGS

. . .

Source: This Rule is derived as follows:

Section (a) is new but is derived from former Rules 340 c, 370 a 1, and 372 a 1 and from ~~FRCP 10 (b)~~ the 1937 version of Fed. R. Civ. P. 10 (b).

Section (b) is derived from former Rule 301 b.

Section (c) is derived from former Rules 301 d and 313 a.

Section (d) is derived from the last sentence of Rule 301 b.

Section (e) is new and is derived from ~~FRCP 8 (f)~~ the 1966 version of Fed. R. Civ. P. 8 (f).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-304 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-304. PLEADING CERTAIN MATTERS

. . .

Source: This Rule is derived as follows:

Section (a) is new and is derived from ~~FRCP 9 (a)~~ the 1970 version of Fed. R. Civ. P. 9 (a).

Section (b) is new and is derived from ~~FRCP 9 (c)~~ the 1970 version of Fed. R. Civ. P. 9 (c).

Section (c) is derived from the exception in former Rule 301 c.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-305 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-305. CLAIMS FOR RELIEF

. . .

Source: This Rule is derived in part from former Rules 301 c, 340 a, and 370 a 3 and ~~FRCP 8 (a)~~ the 1966 version of Fed. R. Civ. P. 8 (a) and is in part new.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-322 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-322. PRELIMINARY MOTIONS

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 323 (a) (1), (2), (3) and (4), and the last sentence of (b).

Section (b) is new and is derived in part from ~~FRCP 12 (b)~~ the 1966 version of Fed. R. Civ. P. 12 (b). Subsection (b) (2) replaces former Rules 345 (Demurrer) and 371 b (Demurrer).

Section (c) is new.

Section (d) is new and is derived from ~~FRCP 12 (e)~~ the 1966 version of Fed. R. Civ. P. 12 (e). It replaces former Rule 346 (Bill of Particulars).

Section (e) is derived from ~~FRCP 12 (f)~~ the 1966 version of Fed. R. Civ. P. 12 (f), and in part from former Rules 301 j and 322.

Section (f) is new and is derived from ~~FRCP 12 (g)~~ the 1966 version of Fed. R. Civ. P. 12 (g).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-323 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-323. ANSWER

. . .

Source: This Rule is derived as follows:

Section (a) is new.

Section (b) is new.

Section (c) is derived from ~~FRCP 8 (b)~~ the 1966 version of Fed. R. Civ. P. 8 (b) and former Rule 372 a 2.

Section (d) is derived from former Rule 342 b 1 and 2.

Section (e) is derived from ~~FRCP 8 (d)~~ the 1966 version of Fed. R. Civ. P. 8 (d) and former Rules 372 b and b 1 and 312 b.

Section (f) is derived from former Rules 311 a, 342 c 1, and 2, and 323 a 5 and from ~~FRCP 9 (a)~~ the 1970 version of Fed. R. Civ. P. 9 (a).

Section (g) is derived from ~~FRCP 8 (c)~~ the 1966 version of Fed. R. Civ. P. 8 (c) and former Rule 342 c 1 and 2.

Section (h) is new.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-324 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-324. PRESERVATION OF CERTAIN DEFENSES

. . .

Source: This Rule is derived as follows:

Section (a) is derived from ~~FRCP 12 (h) (2)~~ the 1966 version of Fed. R. Civ. P. 12 (h) (2) and former Rule 323 b.

Section (b) is derived from ~~FRCP 12 (h) (3)~~ the 1966 version of Fed. R. Civ. P. 12 (h) (3).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-325 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-325. JURY TRIAL

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 343 a and ~~FRCP 38 (b)~~ the 1966 version of Fed. R. Civ. P. 38 (b).

Section (b) is new and is derived from ~~FRCP 38 (b) and (d)~~ the 1966 version of Fed. R. Civ. P. 38 (b) and (d).

Section (c) is new.

Section (d) is derived from former Rule 343 d.

Section (e) is derived from former Rule 545.

Section (f) is derived from former Rule 343 e and from ~~FRCP 38 (d)~~ the 1966 version of Fed. R. Civ. P. 38 (d).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND Rule 2-403 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-403. PROTECTIVE ORDERS

. . .

Source: This Rule is derived as follows:

Section (a) is derived from ~~FRCP 26 (c)~~ the 1980 version of Fed. R. Civ. P. 26 (c) and ~~FRCP 33 (b)~~ the 1980 version of Fed. R. Civ. P. 33 (b) and from former Rule 406 a.

Section (b) is derived from ~~FRCP 26 (c)~~ the 1980 version of Fed. R. Civ. P. 26 (c).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND Rule 2-404 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-404. PERPETUATION OF EVIDENCE

. . .

Source: This Rule is derived as follows:

Section (a)

Subsection (a)(1) is derived from ~~FRCP-27~~ the 1971 version of Fed. R. Civ. P. 27 and former Rule 402.

Subsection (a)(2) is new.

Subsection (a)(3) is new and replaces former Rule 402 d.

Subsection (a)(4) is new.

Subsection (a)(5) is new.

Subsection (a)(6) is new and replaces former Rule 402 e.

Section (b) is derived from ~~FRCP-27 (b)~~ the 1971 version of Fed. R. Civ. P. 27 (b).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND Rule 2-414 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-414. DEPOSITION - OFFICER BEFORE WHOM TAKEN

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 403 a.

Section (b) is derived from former Rule 403 b.

Section (c) is derived from ~~FRCP 28 (b)~~ the 1980 version of Fed. R. Civ. P. 28 (b) and former Rule 403 c.

Section (d) is derived from former Rule 403 d and ~~FRCP 28 (c)~~ the 1980 version of Fed. R. Civ. P. 28 (c).

Section (e) is derived from former Rule 412 b.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND Rule 2-418 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-418. DEPOSITION - BY TELEPHONE

. . .

Source: This Rule is new and is derived from ~~FRCP 30 (b) (7)~~ the 1980 version of Fed. R. Civ. P. 30 (b) (7).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND Rule 2-433 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-433. SANCTIONS

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 422 c 1 and 2.

Section (b) is derived from former Rule 422 b.

Section (c) is derived from ~~FRCP 37 (a) (4)~~ the 1980 version of Fed. R. Civ. P. 37 (a) (4) and former Rule 422 a 5, 6 and 7.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-506 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-506. VOLUNTARY DISMISSAL

. . .

Source: This Rule is derived as follows:

Section (a) is derived from ~~FRCP 41 (a) (1)~~ the 1968 version of Fed. R. Civ. P. 41 (a) (1).

Section (b) is derived from former Rule 541 b and ~~FRCP 41 (a) (2)~~ the 1968 version of Fed. R. Civ. P 41 (a) (2).

Section (c) is derived from former Rule 541 c.

Section (d) is derived from former Rules 541 d and 582 b.

Section (e) is derived from ~~FRCP 41 (c)~~ the 1968 version of Fed. R. Civ. P. 41 (c).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-510 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-510. SUBPOENAS

. . .

Source: This Rule is derived as follows:

Section (a) is new but the second sentence is derived in part from former Rule 407 a.

Section (b) is new.

Section (c) is derived from former Rules 114 a and b, 115 a and 405 a 2 (b).

Section (d) is derived from former Rules 104 a and b and 116 b.

Section (e) is derived from former Rule 115 b.

Section (f) is derived from ~~FRCP 45 (d) (1)~~ the 1980 version of Fed. R. Civ. P. 45 (d) (1).

Section (g) is derived from ~~FRCP 45 (c) (1)~~ the 1991 version of Fed. R. Civ. P. 45 (c) (1).

Section (h) is new.

Section (i) is derived from former Rules 114 d and 742 e.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-511 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-511. TRIAL BY JURY

. . .

Source: This Rule is derived as follows:

Section (a) is new and is derived in part from ~~FRCP 38 (a)~~ the 1966 version of Fed. R. Civ. P. 38 (a).

Section (b) is derived from former Rule 544 and ~~FRCP 48~~ the 1991 version of Fed. R. Civ. P. 48.

Section (c) is derived from former Rule 543 a 8.

Section (d) is derived from former Rule 517.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-519 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-519. MOTION FOR SUMMARY JUDGMENT

. . .

Source: This Rule is new but is derived in part as follows:

Section (a) is new and replaces former Rules 535 and 552 a.

Section (b) is in part derived from ~~FRCP 41 (b)~~ the 1968 version of Fed. R. Civ. P. 41 (b) and is in part new.

Section (c) is derived from former Rule 552 b.

Section (d) is derived from former Rule 552 c.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-520 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-520. INSTRUCTIONS TO THE JURY

. . .

Source: This Rule is derived as follows:

Section (a) is new.

Section (b) is derived from former Rule 554 a.

Section (c) is derived from former Rule 554 b 1.

Section (d) is derived from former Rules 554 b 2 and 757 c.

Section (e) is derived from former Rule 554 d and ~~FRCP 51~~ the 1937 version of Fed. R. Civ. P. 51.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-522 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-522. COURT DECISION - JURY VERDICT

. . .

Source: This Rule is derived as follows:

Section (a) replaces former Rule 18 b from which it is in part derived.

Section (b) is derived from former Rule 759 a and e and from ~~FRCP 48~~ the 1937 version of Fed. R. Civ. P. 48.

Section (c) is derived from former Rule 560 and ~~FRCP 49 (a)~~ the 1963 version of Fed. R. Civ. P. 49 (a).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-532 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-532. MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

. . .

Source: This Rule is derived as follows:

Section (a) is derived in part from former Rule 563 a and is in part new.

Section (b) is derived from ~~FRCP 50 (b)~~ the 1963 version of Fed. R. Civ. P. 50 (b) and in part from former Rule 563 a 2.

Section (c) is derived from former Rule 563 a 3.

Section (d) is derived from former Rule 563 a 4.

Section (e) is derived from former Rule 563 b.

Section (f) is derived from former Rule 563 c and ~~FRCP 50 (c) and (d)~~ the 1963 version of Fed. R. Civ. P. 50 (c) and (d).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-533 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-533. MOTION FOR NEW TRIAL

. . .

Source: This Rule is derived as follows:

Section (a) is derived in part from ~~FRCP 59 (b)~~ the 1966 version of Fed. R. Civ. P. 59 (b) and is in part new. It replaces former Rules 567 a and 690.

Section (b) is derived from former Rule 567 b.

Section (c) is derived from former Rules 567 c and 563 b 3.

Section (d) is derived from former Rule 567 e.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-534 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-534. MOTION TO ALTER OR AMEND A JUDGMENT - COURT DECISION

. . .

Source: This Rule is derived from ~~FRCP 52 (b) and 59 (a)~~ the 1963 version of Fed. R. Civ. P. 52 (b) and the 1966 version of Fed. R. Civ. P. 59 (a).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-535 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-535. REVISORY POWER

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 625 a.

Section (b) is derived from former Rule 625 a.

Section (c) is derived from former Rule 625 b.

Section (d) is derived from ~~FRCP 60 (a)~~ the 1948 version of Fed. R. Civ. P. 60 (a) and former Rule 681.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 2-601 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-601. ENTRY OF JUDGMENT

. . .

Source: This Rule is derived as follows:

Section (a) is new and is derived from ~~FRCP-58~~ the 1993 version of Fed. R. Civ. P. 58.

Section (b) is new.

Section (c) is new.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 2-602 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-602. JUDGMENTS NOT DISPOSING OF ENTIRE ACTION

. . .

Source: This Rule is derived from former Rule 605 a and ~~FRCP 54~~ (b) the 1961 version of Fed. R. Civ. P. 54 (b).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 2-613 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-613. DEFAULT JUDGMENT

. . .

Source: This Rule is derived as follows:

Section (a) is new.

Section (b) is new.

Section (c) is new.

Section (d) is new.

Section (e) is new.

Section (f) is new. The second sentence is derived from the last sentence of ~~FRCP 55 (b) (2)~~ the 1937 version of Fed. R. Civ. P. 55 (b) (2).

Section (g) is new.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 2-632 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-632. STAY OF ENFORCEMENT

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 1019.

Section (b) is derived from ~~FRCP 62 (a)~~ the 1961 version of Fed. R. Civ. P. 62 (a).

Section (c) is derived from ~~FRCP 62 (b)~~ the 1961 version of Fed. R. Civ. P. 62 (b).

Section (d) is derived from former Rule 607 and ~~FRCP 62 (h)~~ the 1961 version of Fed. R. Civ. P. 62 (h).

Section (e) is in part new and in part derived from former Rule 1017 e.

Section (f) is derived from ~~FRCP 62 (c)~~ the 1961 version of Fed. R. Civ. P. 62 (c).

Section (g) is derived from ~~FRCP 62 (g)~~ the 1961 version of Fed. R. Civ. P. 62 (g).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 2-648 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 2-648. ENFORCEMENT OF JUDGMENT PROHIBITING OR MANDATING ACTION

. . .

Source: This Rule is in part new and in part derived from former Rule 685 a and ~~FRCP-70~~ the 1937 version of Fed. R. Civ. P. 70.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-112 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-112. PROCESS - ISSUANCE OF SUMMONS

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 103 c and e and ~~FRCP-4~~  
(a) the 1980 version of Fed. R. Civ. P. 4 (a).

Section (b) is derived from former Rule 103 j.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-121 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-121. PROCESS - SERVICE - IN PERSONAM

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 104 b 1 and 2, and 107 a 1 and 2 and the 1993 version of Fed. R. Civ. P. 4 (e) (2).

Section (b) is derived from former M.D.R. 104 h 1 and 107 a 3.

Section (c) is new.

Section (d) is derived from former M.D.R. 104 i and 107 b.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-126 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-126. PROCESS - RETURN

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 104 b 2 and h 3 (a), 107 a 2 and 116 c 1 and 2.

Section (b) is derived from former Rule 105 b 1 (a) and b 2.

Section (c) is new.

Section (d) is derived from former M.D.R. 103 d 2.

Section (e) is new.

Section (f) is derived from former M.D.R. 104 a (ii) and 622 h 2.

Section (g) is derived from ~~FRCP 4 (g)~~ the 1980 version of Fed. R. Civ. P. 4 (g) and former M.D.R. 104 h 3 (c) and 116 c 3.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 200 - PARTIES

AMEND Rule 3-201 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-201. REAL PARTY IN INTEREST

. . .

Source: This Rule is derived from former M.D.R. 203 and ~~FRCP 17~~  
(a) the 1966 version of the Fed. R. Civ. P. 17 (a).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 200 - PARTIES

AMEND Rule 3-211 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-211. REQUIRED JOINDER OF PARTIES

. . .

Source: This Rule is derived as follows:

Section (a) is derived from ~~FRCP 19 (a)~~ the 1966 version of Fed. R. Civ. P. 19 (a).

Section (b) is derived from ~~FRCP 19 (c)~~ the 1966 version of Fed. R. Civ. P. 19 (c).

Section (c) is derived from ~~FRCP 19 (b)~~ the 1966 version of Fed. R. Civ. P. 19 (b).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 200 - PARTIES

AMEND Rule 3-212 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-212. PERMISSIVE JOINDER OF PARTIES

. . .

Source: This Rule is derived as follows:

Section (a) is derived from ~~FRCP 20 (a)~~ the 1966 version of Fed. R. Civ. P. 20 (a) and former Rule 313 a, c, d and e.

Section (b) is derived from ~~FRCP 20 (b)~~ the 1966 version of Fed. R. Civ. P. 20 (b).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 200 - PARTIES

AMEND Rule 3-213 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-213. MISJOINDER AND NONJOINDER OF PARTIES

. . .

Source: This Rule is derived from ~~FRCP 21~~ the 1937 version of Fed. R. Civ. P. 21.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 200 - PARTIES

AMEND Rule 3-214 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-214. INTERVENTION

. . .

Source: This Rule is derived as follows:

Section (a) is derived from ~~FRCP 24 (a)~~ the 1966 version of Fed. R. Civ. P. 24 (a).

Section (b) ~~is derived from FRCP 24 and former M.D.R. 208.~~

Subsection (b)(1) is derived from former M.D.R. 208 b 1.

Subsection (b)(2) is derived from former M.D.R. 208 b 2.

Subsection (b)(3) is derived from the last sentence of ~~FRCP 24 (b)~~ the 1966 version of Fed. R. Civ. P. 24 (b).

Section (c) is derived from ~~FRCP 24 (c)~~ the 1966 version of Fed. R. Civ. P. 24 (c) and former M.D.R. 208 c.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 200 - PARTIES

AMEND Rule 3-241 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-241. SUBSTITUTION OF PARTIES

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 220 and 240, former Rule 222, and ~~FRCP 25 (a), (b), (c), and (d)~~ the 1963 version of Fed. R. Civ. P. 25 (a), (b), (c), and (d).

Section (b) is derived from former M.D.R. 220 b, c, and d.

Section (c) is new.

Section (d) is derived from former M.D.R. 220 e.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-301 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-301. FORM OF ACTION

. . .

Source: This Rule is new and is derived from ~~FRCP-2~~ the 1937 version of Fed. R. Civ. P. 2.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-302 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-302. PLEADINGS ALLOWED

. . .

Source: This Rule is new and is derived from former M.D.R. 300 a and ~~FRCP~~<sup>7</sup> the 1983 version of Fed. R. Civ. P. 7.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-303 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-303. FORM OF PLEADINGS

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 300 b.

Section (b) is derived from former M.D.R. 301 a.

Section (c) is derived from former Rules 301 d and 313 a.

Section (d) is derived from the last sentence of Rule 301 b.

Section (e) is new and is derived from ~~FRCP 8 (f)~~ the 1966 version of Fed. R. Civ. P. 8 (f).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-305 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-305. CLAIMS FOR RELIEF

. . .

Source: This Rule is derived from former M.D.R. 301 a (ii) and ~~FRCP 8 (a)~~ the 1966 version of Fed. R. Civ. P. 8 (a).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 3-506 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-506. VOLUNTARY DISMISSAL

. . .

Source: This Rule is derived as follows:

Section (a) is derived from ~~FRCP 41 (a) (1)~~ the 1968 version of Fed. R. Civ. P. 41 (a) (1).

Section (b) is derived from former Rule 541 b and ~~FRCP 41 (a) (2)~~ the 1968 version of Fed. R. Civ. P. 41 (a) (2).

Section (c) is derived from former M.D.R. 541 b.

Section (d) is derived from former Rule 541 b and ~~FRCP 41 (a) (2)~~ the 1968 version of Fed. R. Civ. P. 41 (a) (2).

Section (e) is derived from former Rules 541 d and 582 b.

Section (f) is derived from ~~FRCP 41 (c)~~ the 1968 version of Fed. R. Civ. P. 41 (c).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 3-510 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-510. SUBPOENAS

. . .

Source: This Rule is derived as follows:

Section (a) is new but the second sentence is derived in part from former Rule 407 a.

Section (b) is new.

Section (c) is derived from former M.D.R. 114 a and b and 115 a.

Section (d) is derived from former M.D.R. 104 a and b and 116 b.

Section (e) is derived from former M.D.R. 115 b.

Section (f) is derived from ~~FRCP 45 (d) (1)~~ the 1980 version of Fed. R. Civ. P. 45 (d) (1).

Section (g) is derived from ~~FRCP 45 (c) (1)~~ the 1991 version of Fed. R. Civ. P. 45 (c) (1).

Section (h) is new.

Section (i) is derived from former M.D.R. 114 d and 742 e.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 3-519 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-519. MOTION FOR JUDGMENT

. . .

Source: This Rule is new but is derived in part as follows:

Section (a) is new and replaces former M.D.R. 535.

Section (b) is in part derived from ~~FRCP 41 (b)~~ the 1968 version of Fed. R. Civ. P. 41 (b) and is in part new.

Section (c) is derived from former Rule 552 b.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 3-533 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-533. MOTION FOR NEW TRIAL

. . .

Source: This Rule is derived as follows:

Section (a) is derived in part from ~~FRCP 59 (b)~~ the 1966 version of Fed. R. Civ. P. 59 (b) and is in part new. It replaces former M.D.R. 567 a.

Section (b) is derived from former M.D.R. 567 b.

Section (c) is derived from former M.D.R. 567 c.

Section (d) is derived from former M.D.R. 567 d.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 3-534 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-534. MOTION TO ALTER OR AMEND A JUDGMENT

. . .

Source: This Rule is derived from ~~FRCP 52 (b) and 59 (a)~~ the 1983 version of Fed. R. Civ. P. 52 (b) and the 1966 version of Fed. R. Civ. P. 59 (a).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 3-535 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-535. REVISORY POWER

. . .

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 625 a.

Section (b) is derived from former M.D.R. 625 a.

Section (c) is derived from former M.D.R. 625 b.

Section (d) is derived from ~~FRCP 60 (a)~~ the 1948 version of Fed. R. Civ. P. 60 (a) and former Rule 681.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 3-601 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-601. ENTRY OF JUDGMENT

. . .

Source: This Rule is derived as follows:

Section (a) is new and is derived from ~~FRCP-58~~ the 1963 version of Fed. R. Civ. P. 58.

Section (b) is new.

Section (c) is derived from former M.D.R. 619 b.

Section (d) is new.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 3-602 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-602. JUDGMENTS NOT DISPOSING OF ENTIRE ACTION

. . .

Source: This Rule is derived from former M.D.R. 605 a and ~~FRCP 54~~ (b) the 1987 version of Fed. R. Civ. P. 54 (b).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 3-632 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-632. STAY OF ENFORCEMENT

. . .

Source: This Rule is derived as follows:

Section (a) is derived from ~~FRCP 62 (a)~~ the 1961 version of Fed. R. Civ. P. 62 (a).

Section (b) is derived from ~~FRCP 62 (b)~~ the 1961 version of Fed. R. Civ. P. 62 (b).

Section (c) is derived from former M.D.R. 605 b and ~~FRCP 62 (h)~~ the 1961 version of Fed. R. Civ. P. 62 (h).

Section (d) is in part new and in part derived from former Rule 1017 e.

Section (e) is derived from ~~FRCP 62 (c)~~ the 1961 version of Fed. R. Civ. P. 62 (c).

Section (f) is derived from ~~FRCP 62 (g)~~ the 1961 version of Fed. R. Civ. P. 62 (g).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 3-648 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 3-648. ENFORCEMENT OF JUDGMENT PROHIBITING OR MANDATING ACTION

. . .

Source: This Rule is in part new and in part derived from former Rule 685 a and ~~FRCP-70~~ the 1937 version of Fed. R. Civ. P. 70.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 15 - OTHER SPECIAL PROCEEDINGS  
CHAPTER 500 - INJUNCTIONS

AMEND Rule 15-504 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 15-504. RECORDING OF PROCEEDINGS

. . .

Source: This Rule is derived from former Rules BB72, 73, and 79, and the 1987 version of Fed. R. Civ. P. 65 (b).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 15 - OTHER SPECIAL PROCEEDINGS  
CHAPTER 500 - INJUNCTIONS

AMEND Rule 15-505 to change the source note to reflect the corresponding federal rule as of the date of adoption of the Maryland Rule, as follows:

Rule 15-505. PRELIMINARY INJUNCTION

. . .

Source: This Rule is derived from former Rule BB74 and the 1987 version of Fed. R. Civ. P. 65 (a).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 1-201.

MARYLAND RULES OF PROCEDURE  
TITLE 1 - GENERAL PROVISIONS  
CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-322 to make clear that a paper or pleading that is filed must be in writing and placed in the official custody of the court, as follows:

Rule 1-322. FILING OF PLEADINGS AND OTHER PAPERS

(a) Generally

~~The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with~~ Whenever these rules require the filing of a pleading, motion, or other paper with the court, the pleading, motion, or other paper shall be in writing and filed by delivery to the clerk of the court, except that a judge of that court may accept the filing, in which event the judge shall note on the papers the filing date and forthwith transmit them to the office of the clerk. No filing of a pleading or paper may be made by transmitting it directly to the court by electronic transmission, except pursuant to an electronic filing system approved under Rule 16-307 or 16-506.

(b) Photocopies; Facsimile Copies

A photocopy or facsimile copy of a pleading or paper, once filed with the court, shall be treated as an original for all court purposes. The attorney or party filing the copy shall retain the original from which the filed copy was made for

production to the court upon the request of the court or any party.

Cross reference: See Rule 1-301 (d), requiring that court papers be legible and of permanent quality.

Source: This Rule is derived in part from ~~F.R.C.P. 5 (e)~~ the 1980 version of Fed. R. Civ. P. 5 (e) and Rule 102 1 d of the Rules of the United States District Court for the District of Maryland and is in part new.

#### REPORTER'S NOTE

The proposed amendment to Rule 1-322 is prompted by the holding in Beyer v. Morgan State, 369 Md. 335 (2002) that allows a motion for summary judgment to be filed orally. The amendment makes clear that when a rule, such as Rule 2-501 (a), requires that a pleading or paper be "filed," the pleading or paper must be in writing and delivered to the clerk of the court or a judge of that court.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-541 by adding the word "only" to section (b) to clarify that no domestic relations matter may be referred to a master except in accordance with Rule 9-208, as follows:

Rule 2-541. MASTERS

. . .

(b) Referral of Cases

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

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

. . .

REPORTER'S NOTE

The proposed amendment to Rule 2-541 clarifies that any referral of a domestic relations matter to a master must be in accordance with Rule 9-208 and may not be made under Rule 2-541. The proposed change is recommended by the Rules Committee in response to a letter from Chief Judge Robert M. Bell, concerning a potential loophole in Rule 2-541 that could provide a way around the limitations imposed by Rule 9-208.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 2-644 (d) to correct an internal reference, as follows:

Rule 2-644. SALE OF PROPERTY UNDER LEVY

. . .

(d) Transfer of Real Property Following Sale

The procedure following the sale of an interest in real property shall be as prescribed by Rule 14-305, except that (1) the provision of Rule 14-305 ~~(c)(4)~~ (f) for referral to an auditor does not apply and (2) the court may not ratify the sale until the judgment creditor has filed a copy of the public assessment record for the real property kept by the supervisor of assessments in accordance with Code, Tax-Property Article, §2-211. After ratification of the sale by the court, the sheriff shall execute and deliver to the purchaser a deed conveying the debtor's interest in the property, and if the interests of the debtor included the right to possession, the sheriff shall place the purchaser in possession of the property. It shall not be necessary for the debtor to execute the deed.

. . .

REPORTER'S NOTE

The amendment to Rule 2-644 (d) corrects a reference to Rule 14-305 (c)(4), which should be a reference to Rule 14-305 (f).

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 2-645 to delete the word "contingent" from section (a), as follows:

Rule 2-645. GARNISHMENT OF PROPERTY - GENERALLY

(a) Availability

This Rule governs garnishment of any property of the judgment debtor, other than wages subject to Rule 2-646 and a partnership interest subject to a charging order, in the hands of a third person for the purpose of satisfying a money judgment. Property includes any debt owed to the judgment debtor, whether immediately payable, or unmatu~~red~~, ~~or contingent~~.

. . .

REPORTER'S NOTE

The proposed amendments to Rules 2-645 and 3-645 delete the word "contingent" from section (a) of each Rule and conform the Rules to the Court's holding in *Consolidated Construction v. Simpson*, 372 Md. 434 (2002), that contingent debts are not attachable.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 3-645 to delete the word "contingent" from section (a), as follows:

Rule 3-645. GARNISHMENT OF PROPERTY - GENERALLY

(a) Availability

This Rule governs garnishment of any property of the judgment debtor, other than wages subject to Rule 3-646 and a partnership interest subject to a charging order, in the hands of a third person for the purpose of satisfying a money judgment. Property includes any debt owed to the judgment debtor, whether immediately payable, or unmatured, ~~or contingent~~.

. . .

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 2-645.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 2-649 to conform the language of a certain Committee note to the language of the Committee note that follows Rule 2-124, as follows:

Rule 2-649. CHARGING ORDER

(a) Issuance of Order

Upon the written request of a judgment creditor of a partner, the court where the judgment was entered or recorded may issue an order charging the partnership interest of the judgment debtor with payment of all amounts due on the judgment. The court may order such other relief as it deems necessary and appropriate, including the appointment of a receiver for the judgment debtor's share of the partnership profits and any other money that is or becomes due to the judgment debtor by reason of the partnership interest.

(b) Service

The order shall be served on the partnership in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction. The order may be served in or outside the county. Promptly after service of the order upon the partnership, the person making service shall mail a copy of the request and order to the judgment debtor's last known address.

Proof of service and mailing shall be filed as provided in Rule 2-126. Subsequent pleadings and papers shall be served on the creditor, debtor, and partnership in the manner provided by Rule 1-321.

Committee note: ~~Although this Rule does not preclude service upon a partner who is also the person whose partnership interest is being charged, the validity of such service in giving notice to the partnership is subject to appropriate due process constraints.~~ If a person served pursuant to this Rule is a plaintiff as well as a person upon whom service on a defendant entity is authorized by the Rule, the validity of service on the plaintiff to give notice to the defendant entity is subject to appropriate due process constraints.

Source: This Rule is new.

#### REPORTER'S NOTE

The proposed amendments to Rules 2-649 and 3-649 conform the language of the Committee notes that follow the Rules to the language of the Committee note that follows Rules 2-124 and 3-124, which were included in the One Hundred Forty-Ninth Report of the Rules Committee.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 3-649 to conform the language of a certain Committee note to the language of the Committee note that follows Rule 3-124, as follows:

Rule 3-649. CHARGING ORDER

(a) Issuance of Order

Upon the written request of a judgment creditor of a partner, the court where the judgment was entered or recorded may issue an order charging the partnership interest of the judgment debtor with payment of all amounts due on the judgment. The court may order such other relief as it deems necessary and appropriate, including the appointment of a receiver for the judgment debtor's share of the partnership profits and any other money that is or becomes due to the judgment debtor by reason of the partnership interest.

(b) Service

The order shall be served on the partnership in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction. The order may be served in or outside the county. Promptly after service of the order upon the partnership, the person making service shall mail a copy of the request and order to the judgment debtor's last known address.

Proof of service and mailing shall be filed as provided in Rule 3-126. Subsequent pleadings and papers shall be served on the creditor, debtor, and partnership in the manner provided by Rule 1-321.

Committee note: ~~Although this Rule does not preclude service upon a partner who is also the person whose partnership interest is being charged, the validity of such service in giving notice to the partnership is subject to appropriate due process constraints.~~ If a person served pursuant to this Rule is a plaintiff as well as a person upon whom service on a defendant entity is authorized by the Rule, the validity of service on the plaintiff to give notice to the defendant entity is subject to appropriate due process constraints.

Source: This Rule is new.

#### REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 2-649.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 700 - SPECIAL PROCEEDINGS

AMEND Rule 3-731 to conform to a certain Constitutional amendment and legislation, as follows:

Rule 3-731. PEACE ORDERS

Proceedings for ~~a temporary peace order~~ and a peace order are governed by Code, Courts Article, Title 3, Subtitle 15. A petition for relief under that statute shall be in substantially the following form:

(Caption)

PETITION FOR ~~PROTECTION AND TEMPORARY PEACE ORDER~~

*(Note: Fill in the following, checking the appropriate boxes. IF YOU NEED ADDITIONAL PAPER, ASK THE CLERK.)*

1. I want protection from \_\_\_\_\_.  
Respondent

The Respondent committed the following acts against \_\_\_\_\_  
\_\_\_\_\_  
Victim

within the past 30 days on the dates stated below.

*(Check all that apply)*

- |   |  |                                   |                                   |
|---|--|-----------------------------------|-----------------------------------|
| <input type="checkbox"/> kicking                | <input type="checkbox"/> punching                                  | <input type="checkbox"/> choking  | <input type="checkbox"/> slapping |
| <input type="checkbox"/> shooting               | <input type="checkbox"/> rape or other sexual offense (or attempt) |                                   |                                   |
| <input type="checkbox"/> hitting with object    | <input type="checkbox"/> stabbing                                  | <input type="checkbox"/> shoving  |                                   |
| <input type="checkbox"/> threats of violence    | <input type="checkbox"/> harassment                                | <input type="checkbox"/> stalking |                                   |
| <input type="checkbox"/> detaining against will | <input type="checkbox"/> trespass                                  |                                   |                                   |

malicious destruction of property

other \_\_\_\_\_

The details of what happened are: *(Describe injuries. State the date(s) and place(s) where these acts occurred. Be as specific as you can):*

---

---

---

2. I know of the following court cases involving the Respondent and me:

Court	Kind of Case	Year Filed	Results or Status (if you know)
_____	_____	_____	_____
_____	_____	_____	_____

3. Describe all other harm the Respondent has caused you and give date(s), if known.

---

---

---

4. I want ~~the court to order~~ the Respondent to be ordered:

NOT to commit or threaten to commit any of the acts listed in paragraph 1 against \_\_\_\_\_  
Name

NOT to contact, attempt to contact, or harass \_\_\_\_\_  
Name

NOT to go to the residence(s) at \_\_\_\_\_  
Address

NOT to go to the school(s) at \_\_\_\_\_  
Name of school and address

NOT to go to the work place(s) at \_\_\_\_\_

To go to counseling                       To go to mediation

To pay the filing fees and court costs

Other specific relief: \_\_\_\_\_

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Petitioner

**NOTICE TO PETITIONER**

Any individual who knowingly provides false information in a Petition for ~~Protection and Temporary~~ Peace Order is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 90 days or both.

Source: This Rule is new.

REPORTER'S NOTE

The proposed amendment to Rule 3-731 conforms the Rule to Chapters 587 and 235 (HB 6 and HB 663), Acts of 2002, the provisions of which are contingent on ratification by the voters in the November 2002 election. The constitutional amendment and amendments to Code, Courts Article, Title 3, Subtitle 15, allow a District Court Commissioner to issue an "interim peace order" under certain circumstances when the District Court clerk's office is not open for business. Only a judge may issue a "temporary

peace order" or a "final peace order." Code, Courts Article, §3-1509 (b) requires that the Court of Appeals adopt a form for a petition under the Subtitle. The form set forth in the Rule is revised so that it is applicable to the interim peace order that may be issued by a Commissioner as well as to the two forms of peace orders that may be issued by a judge.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 400 - RELEVANCY AND ITS LIMITS

AMEND Rule 5-407 (b) to clarify it, as follows:

Rule 5-407. SUBSEQUENT REMEDIAL MEASURES

(a) In General

When, after an event, measures are taken which, if in effect at the time of the event, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event.

(b) Admissibility for Other Purposes

This Rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as (1) impeachment or (2) proving if controverted, ownership, control, or feasibility of precautionary measures, ~~if controverted, or impeachment.~~

Source: This Rule is derived from F.R.Ev. 407.

REPORTER'S NOTE

The proposed amendment to Rule 5-407 makes clear that the phrase "if controverted" modifies not only "feasibility of precautionary measures" but also "ownership" and "control."

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 400 - RELEVANCY AND ITS LIMITS

AMEND Rule 5-412 by deleting the list of crimes and substituting a reference to all sex offenses in Title 3, Subtitle 3 of the Criminal Law Article and to two other crimes, and by changing the statutory reference, as follows:

Rule 5-412. SEX OFFENSE CASES; RELEVANCE OF VICTIM'S PAST BEHAVIOR

In prosecutions for ~~rape, sexual offense in the first or second degree, attempted rape, or attempted sexual offense in the first or second degree~~ any sex offense under Code, Criminal Law Article, Title 3, Subtitle 3 or a lesser included crime; the sexual abuse of a minor under Code, Criminal Law Article, §3-602 or a lesser included crime; or the sexual abuse of a vulnerable adult under Code, Criminal Law Article, §3-604 or a lesser included crime, admissibility of evidence relating to the victim's sexual history is governed by Code, Criminal Law Article, ~~§3-317~~ §3-319 (b).

~~Committee note: Code, Criminal Law Article, §3-317 (b) governs the admissibility of sexual history evidence only in prosecutions for rape, sexual offense in the first or second degree, attempted rape, or attempted sexual offense in the first or second degree. The admissibility of such evidence in other sexual offense cases is governed by the rules of this Title.~~

Source: This Rule is new.

REPORTER'S NOTE

Chapter 89 (SB 453), Acts of 2003, expanded the list of crimes to which Code, Criminal Law Article, §3-317 (b) refers regarding the admissibility of evidence of a victim's sexual history in cases prosecuted for those crimes. This change in the statute requires a change to Rule 5-412 which is based on the former language of the Code. The Committee note is no longer necessary because the Code provision has been broadened to include all sex offenses in Title 3, Subtitle 3, of the Criminal Law Article.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 200 - DIVORCE, ANNULMENT AND ALIMONY

AMEND Rule 9-208 (a) to delete a certain phrase as unnecessary, as follows:

Rule 9-208. REFERRAL OF MATTERS TO MASTERS

(a) Referral

(1) As of Course

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

- (A) uncontested divorce, annulment, or alimony;
- (B) alimony pendente lite;
- (C) child support pendente lite;
- (D) support of dependents;
- (E) preliminary or pendente lite possession or use of the family home or family-use personal property;
- (F) subject to Rule 9-205, pendente lite custody of or visitation with children or modification of an existing order or judgment as to custody or visitation;
- (G) subject to Rule 9-205 as to child access disputes, constructive civil contempt by reason of noncompliance with an

order or judgment relating to custody of or visitation with a minor child, the payment of alimony or support, or the possession or use of the family home or family-use personal property, following service of a show cause order upon the person alleged to be in contempt;

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

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

(J) stay of an earnings withholding order; and

(K) such other matters arising under this Chapter and set forth in the court's case management plan filed pursuant to Rule 16-202 b.

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

(2) By Order on Agreement of the Parties

By agreement of the parties, any other matter or issue arising under this Chapter ~~that is not triable of right before a jury~~ may be referred to the master by order of the court.

. . .

REPORTER'S NOTE

Rule 9-208 (a) is proposed to be amended to delete the phrase "that is not triable of right before a jury" as unnecessary, because no matter or issue arising under Title 9, Chapter 200 is triable of right before a jury.

MARYLAND RULES OF PROCEDURE  
TITLE 12 - PROPERTY ACTIONS  
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 12-103 to add a cross reference to Code, Real Property Article, §3-105.1 (e)(1), as follows:

Rule 12-103. ACTION FOR RELEASE OF LIEN INSTRUMENT

When a mortgage or deed of trust remains unreleased of record, the mortgagor, grantor, or a successor in interest entitled by law to a release may file a complaint for release of the lien instrument in any county where the lien instrument is recorded. The person bringing the action shall include as defendants all other parties to the instrument unless their interest has been assigned or transferred of record, and in that case their successors in interest. If the court orders the lien instrument released of record, the clerk shall record the release in the manner prescribed by law.

Cross reference: Code, Real Property Article, §7-106 (e), ~~and §3-105 (d)~~, and 3-105.1 (e)(1).

Source: This Rule is new.

REPORTER'S NOTE

Chapter 348 (HB 1054), Acts of 2003 changed the time for the holder of a mortgage to record the release of a mortgage from seven to 45 days. The Rules Committee recommends adding a cross reference to the modified statute.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-206 by adding a new subsection (b) (3) pertaining to notice to counties or municipal corporations, as follows:

Rule 14-206. PROCEDURE PRIOR TO SALE

(a) Bond

Before making a sale of property to foreclose a lien, the person authorized to make the sale shall file a bond to the State of Maryland conditioned upon compliance with any court order that may be entered in relation to the sale of the property or distribution of the proceeds of the sale. Unless the court orders otherwise, the amount of the bond shall be the amount of the debt plus the estimated expenses of the proceeding. On application by a person having an interest in the property or by the person authorized to make the sale, the court may increase or decrease the amount of the bond pursuant to Rule 1-402 (d).

(b) Notice

(1) By Publication

After commencement of an action to foreclose a lien and before making a sale of the property subject to the lien, the person authorized to make the sale shall publish notice of the time, place, and terms of sale in a newspaper of general

circulation in the county in which the action is pending.

"Newspaper of general circulation" means a newspaper satisfying the criteria set forth in Code, Article 1, Section 28. A newspaper circulating to a substantial number of subscribers in a county and customarily containing legal notices with respect to property in the county shall be regarded as a newspaper of general circulation in the county, notwithstanding that (1) its readership is not uniform throughout the county, or (2) its content is not directed at all segments of the population. For the sale of an interest in real property, the notice shall be given at least once a week for three successive weeks, the first publication to be not less than 15 days prior to sale and the last publication to be not more than one week prior to sale. For the sale of personal property, the notice shall be given not less than five days nor more than 12 days before the sale.

(2) By Certified and First Class Mail

(A) Before making a sale of the property, the person authorized to make the sale shall send notice of the time, place, and terms of sale by certified mail and by first class mail to the last known address of (i) the debtor, (ii) the record owner of the property, and (iii) the holder of any subordinate interest in the property subject to the lien.

(B) The notice of the sale shall be sent not more than 30 days and not less than ten days before the date of the sale to all such persons whose identity and address are actually known to the person authorized to make the sale or are reasonably ascertainable

from a document recorded, indexed, and available for public inspection 30 days before the date of the sale.

(3) To Counties or Municipal Corporations

In addition to any other required notice, not less than 15 days prior to the sale of the property, the person authorized to make the sale shall send written notice to the county or municipal corporation where the property subject to the lien is located as to:

(A) the name, address, and telephone number of the person authorized to make the sale; and

(B) the time, place, and terms of sale.

~~(3)~~ (4) Other Notice

If the person authorized to make the sale receives actual notice at any time before the sale is held that there is a person holding a subordinate interest in the property and if the interest holder's identity and address are reasonably ascertainable, the person authorized to make the sale shall give notice of the time, place, and terms of sale to the interest holder as promptly as reasonably practicable in any manner, including by telephone or electronic transmission, that is reasonably calculated to apprise the interest holder of the sale. This notice need not be given to anyone to whom notice was sent pursuant to subsection (b) (2) of this Rule.

~~(4)~~ (5) Return Receipt or Affidavit

The person giving notice pursuant to subsections (b) (2), ~~and (b) (3)~~, and (b) (4) of this Rule shall file in the proceedings

an affidavit (A) that the person has complied with the provisions of those subsections or (B) that the identity or address of the debtor, record owner, or holder of a subordinate interest is not reasonably ascertainable. If the affidavit states that an identity or address is not reasonably ascertainable, the affidavit shall state in detail the reasonable, good faith efforts that were made to ascertain the identity or address. If notice was given pursuant to subsection ~~(b) (3)~~ (b) (4), the affidavit shall state the date, manner, and content of the notice given.

(c) Postponement

If the sale is postponed, notice of the new date of sale shall be published in accordance with subsection (b) (1) of this Rule. No new or additional notice under subsection (b) (2) or (b) (3) of this Rule need be given to any person to whom notice of the earlier date of sale was sent, but notice shall be sent to persons entitled to notice under subsections (b) (2) (B) and ~~(3)~~ (4) of this Rule to whom notice of the earlier date of sale was not sent.

Source: This Rule is derived in part from former Rule W74 and is in part new.

REPORTER'S NOTE

Recent legislation added a requirement that when there is a foreclosure sale, the person making the sale must notify the county or municipal corporation where the property is located as to the person's name, address, and telephone number as well as the time, place, and terms of sale. The Rules Committee is recommending that the language pertaining to this notice be added to Rule 14-206 (b) and conforming changes made to other sections of the Rule.

MARYLAND RULES OF PROCEDURE  
TITLE 14 - SALES OF PROPERTY  
CHAPTER 300 - JUDICIAL SALES

AMEND Rule 14-306 by adding a Committee note referring to Code, Real Property Article, §14-103 (f), as follows:

Rule 14-306. REAL PROPERTY - RECORDING

Upon the entry of a final order of ratification, the person making a sale of an interest in real property in a county other than one in which all of the property is located shall cause to be recorded among the land records of each county where any part of the property is located a certified copy of the docket entries, any complaint, the report of sale, the final order of ratification, and any other orders affecting the property.

Committee note: For special rules applying to properties in Baltimore City, see Code, Real Property Article, §14-103 (f).

Source: This Rule is derived from former Rule BR5.

REPORTER'S NOTE

Chapter 465, (HB 1049), Acts of 2003 added a new section pertaining to recordation of final orders of ratification of foreclosure sales of interest in Baltimore City. The Rules Committee recommends that a Committee note be added to Rule 14-306 directing attention to this new provision.

MARYLAND RULES OF PROCEDURE  
TITLE 15 - OTHER SPECIAL PROCEEDINGS  
CHAPTER 500 - INJUNCTIONS

AMEND Rule 15-502 to conform the Rule to the "separate document" requirement of Rule 2-601 and to require that the reasons for the issuance or denial of an injunction be stated in writing or on the record, as follows:

Rule 15-502. INJUNCTIONS - GENERAL PROVISIONS

(a) Exception to Applicability - Labor Disputes

Rules 15-501 through 15-505 do not modify or supersede Code, Labor and Employment Article, Title 4, Subtitle 3 or affect the prerequisites for obtaining, or the jurisdiction to grant, injunctions under those Code sections.

(b) Issuance at Any Stage

Subject to the rules in this Chapter, the court, at any stage of an action and at the instance of any party or on its own initiative, may grant an injunction upon the terms and conditions justice may require.

(c) Adequate Remedy at Law

The court may not deny an injunction solely because the party seeking it has an adequate remedy in damages unless the adverse party has filed a bond with security that the court finds adequate to provide for the payment of all damages and costs that the adverse party might be adjudged to pay by reason of the

alleged wrong.

(d) Not Binding Without Notice

An injunction is not binding on a person until that person has been personally served with it or has received actual notice of it by any means.

(e) Form and Scope

The reasons for issuance or denial of an injunction shall be stated in writing or on the record. An order granting an injunction shall (1) be in writing ~~or on the record,~~ (2) ~~set forth the reasons for issuance;~~ (3) (2) be specific in terms~~;~~, and ~~(4)~~ (3) describe in reasonable detail, and not by reference to the complaint or other document, the act sought to be mandated or prohibited.

(f) Modification or Dissolution

A party or any person affected by a preliminary or a final injunction may move for modification or dissolution of an injunction.

Cross reference: For enforcement of an injunction, see Rule 2-648.

Source: This Rule is derived from former Rules BB71, 76, 77, 78, and 79.

REPORTER'S NOTE

The proposed amendments to Rule 15-502 conform the Rule to the "separate document" requirement of Rule 2-601 (a), which is applicable when the injunction is a judgment. Even when an injunction is interlocutory, an appeal may be taken as provided in Code, Courts Article, §3-303, and it is therefore preferable that all orders granting injunctions be in writing, rather than dictated into the record.

Additionally, the amendments require that the reasons for the denial of an injunction, as well as for the issuance of an injunction, be stated in writing or on the record.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT AND OTHER PERSONS

AMEND Rule 16-401 to correct a cross reference, to delete obsolete language, and to correct a Code reference in the Committee note, as follows:

Rule 16-401. PROSCRIBED ACTIVITIES - GRATUITIES, ETC.

a. Giving Prohibited

No attorney shall give, either directly or indirectly, to an officer or employee of a court, or of an office serving a court, a gratuity, gift or any compensation related to his official duties and not expressly authorized by rule or law.

b. Receiving Prohibited

No officer or employee of any court, or of any office serving a court, shall accept a gratuity or gift, either directly or indirectly, from a litigant, an attorney or any person regularly doing business with the court, or any compensation related to such officer's or employee's official duties and not expressly authorized by rule or law.

Cross reference: For definition of "person," see Rule 1-202 ~~(q)~~ (r).

Committee note: This Rule is based in part on New Jersey Rule 1:34. It is intended as a broad prohibition against the exchange of gratuities, gifts or any compensation not expressly authorized by rule or law as between attorneys and court officials and employees, in connection with the official functions of such persons. The Rule covers sheriffs and deputy sheriffs, as well as regular court officers, employees and other persons. ~~Among other~~

~~things, it will prevent the practice, now existing in the courts of the Supreme Bench of Baltimore City, whereby certain portions of appearance fees are retained by the clerks by way of extra compensation or gratuities for the performance of their official duties.~~ This Rule is not intended to preclude contributions to or for elected public officials as authorized by and in conformance with the provisions of ~~Article 33, §§26-1 through 26-20, Annotated Code of Maryland (1968 Cum. Supp.)~~ Code, Election Law Article, Title 13.

Source: This Rule is derived from former Rule 1220.

#### REPORTER'S NOTE

The reference to Rule 1-202 (q) in the cross reference has been modified to reflect its new designation as Rule 1-202 (r). Obsolete references to the Supreme Bench of Baltimore City have been deleted, and the references to Article 33 have been deleted because it has been replaced by the Election Law Article pursuant to Chapter 291 (SB 1), Acts of 2002.

MARYLAND RULES OF PROCEDURE

APPENDIX: FORMS

FORM INTERROGATORIES

AMEND Form No. 5 - Domestic Relations Interrogatories to correct an obsolete reference in Standard Domestic Relations Interrogatory No. 12, to restate Standard Domestic Relations Interrogatory No. 15 in terms of a contention of entitlement to a divorce, and to conform Standard Domestic Relations Interrogatory No. 15 to recent legislation, as follows:

Form No. 5 - Domestic Relations Interrogatories

Interrogatories

. . .

12. If the information contained on your financial statement submitted pursuant to Rule ~~9-203 f.~~ 9-202 (e) or (f) has changed, describe each change. (Standard Domestic Relations Interrogatory No. 12.)

. . .

15. If you contend that you are entitled to a divorce because your spouse's conduct toward you or your minor child was excessively cruel or vicious or that your spouse ~~acted with extreme cruelty or~~ constructively deserted you, describe your spouse's conduct and state the date and nature of any injuries sustained by you or your minor child and the date, nature, and provider of health care services rendered ~~to you~~ regarding the

injuries. **Identify** all **persons** with personal knowledge of your spouse's conduct and all **persons** with knowledge of any injuries you or your minor child sustained as a result of that conduct.

(Standard Domestic Relations Interrogatory No. 15.)

. . .

#### REPORTER'S NOTE

Amendments are proposed to two Form Interrogatories set forth in Form No. 5, Domestic Relations Interrogatories.

The proposed amendment to Standard Domestic Interrogatory No. 12 corrects an obsolete reference to Rule 9-203 f. The requirement that a financial statement be filed under certain circumstances currently is set forth in sections (e) and (f) of Rule 9-202.

Standard Domestic Relations Interrogatory No. 15 is proposed to be amended in light of Chapter 419, Acts of 2003 (HB 346), which adds cruelty of treatment toward a minor child of the complaining party and excessively vicious treatment toward a minor child of the complaining party to the grounds for absolute divorce set forth in Code, Family Law Article, §7-103, conforming that Code provision to comparable grounds for a limited divorce set forth in Code, Family Law Article, §7-102 (a). Also, Franklin B. Olmstead, Esq., has pointed out that the language "extreme cruelty" in the Interrogatory does not track the statutory language, "cruelty of treatment," set forth in Code, Family Law Article, §§ 7-102 (a)(1) and 7-103 (a)(7). The Committee recommends that the Interrogatory be revised and restyled so that the information sought is keyed to a contention of entitlement to a divorce.