COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms UL6 and 7 of the Judicial Education and Conference Center, 2011-D Commerce Park Drive, Annapolis, Maryland on May 5, 2017.

Members present:

Hon. Alan M. Wilner, Chair

Robert R. Bowie, Jr., Esq.
Hon. Yvette M. Bryant
James E. Carbine, Esq.
Hon. John P. Davey
Mary Anne Day, Esq.
Hon. Angela M. Eaves
Hon. JoAnn M. Ellinghaus-Jones
Alvin I. Frederick, Esq.
Ms. Pamela Q. Harris
Victor H. Laws, III, Esq.
Hon. Danielle M. Mosley
Hon. Douglas R. M. Nazarian
Sen. H. Wayne Norman
Hon. Paula A. Price
Steven M. Sullivan, Esq.
Dennis J. Weaver, Clerk
Robert Zarbin, Esq.
Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
David R. Durfee, Jr., Esq., Assistant Reporter
Sherie B. Libber, Esq., Assistant Reporter
Hon. Athena Malloy Groves, Orphans' Court for Prince George's County
Ria P. Rochvarg, Esq.
Hon. Louis Becker, Circuit Court for Howard County
Nisa C. Subasinghe, Esq., Family Administration, Administrative Office of the Courts
Thomas B. Stahl, Esq., Spencer & Stahl, P.C.
Marianne J. Lee, Esq., Executive Secretary, Attorney Grievance Commission
Raymond Hein, Esq., Acting Bar Counsel, Attorney Grievance Commission
Janet C. Moss, Executive Director, Client Protection Fund
Andrea Parks, Adoption/Guardianship Case Manager, Anne Arundel County
Kim Klein, Esq., Anne Arundel County Circuit Court
Ms. Dionne Smith

Brian Young, Esq., Senator Norman's Associate
Pamela C. Ortiz, Esq., Director, Access to Justice Department

The Chair convened the meeting. He announced that Agenda Item 4 would be deferred. Proposed new Title 15, Chapter 1400 was drafted to address procedural gaps in the 2014 statute, Code, Labor and Employment Article, Title 3, Subtitle 11, which governs liens for unpaid wages. Unfortunately, the statute was not well drafted in some respects, and the Subcommittee had made a truly heroic effort to address the problems. Some questions still linger, however, and more information is needed before the Rules can be finalized.

The Chair said that some Subcommittee meetings will be needed. This past session 940 bills were passed by the General Assembly. About 15 or 20 of them need to be looked at for purposes of implementing rules.

The Reporter reminded those in attendance that they should have picked up two additional agenda items. Rules 10-202 and 10-301 have been added to Agenda Item 1. The consultants from the Guardianship Work Group of the Domestic Law Committee have revised the three sets of guidelines that are in the meeting materials, *Maryland Guidelines for Practice for Court-appointed Counsel Representing Alleged Disabled Persons and Minors in Guardianship Proceedings*; *Maryland Guidelines for the Appointment and Training of Guardians of the Person*; and

Maryland Guidelines for the Appointment and Training of Guardians of the Property. The agenda item pertaining to Chapter 205, which renamed the Department of Human Resources and the Child Support Enforcement Administration, includes a number of Rules changes, so a summary of the Rules affected by that renaming has been included in the meeting materials. (See Appendix 1). All of the necessary changes will be made. Everyone should have a copy of this. The Chair noted that this will be looked at by the Style Subcommittee. The changes are not substantive.

Agenda Item 1. Consideration of proposed amendments to Rules in Title 10 (Guardians and Other Fiduciaries)

Rule 10-101 (Applicability of Title; Jurisdiction)
Rule 10-106 (Attorney for Minor or Disabled Person)
New Rule 10-106.1 (Appointment of Investigator)
Rule 10-108 (Orders)
Rule 10-111 (Petition for Guardianship of Minor)
Rule 10-112 (Petition for Guardianship of Alleged Disabled Person)
New Rule 10-113 (Disqualifying Offenses; Waiver)
New Rule 10-205.1 (Appointment of Guardian – Criteria; Order)
New Rule 10-304.1 (Appointment of Guardian – Criteria; Order)
Rule 10-702 (Bond – Fiduciary Estate)

Judge Eaves told the Committee that the genesis of the proposed amendments to Rules in Title 10 is to add more

structure and substance to the Guardianship Rules and to make certain clarifications. The amendments also align the Rules with statutes in the Estates and Trusts Article of the Code as well as other statutes to make clear what the role of a guardian is, to add more specificity as to the findings judges are required to make, and to provide training for people who are guardians of the person or of the property.

The Chair commented that the proposed Rules changes are a product of a Work Group of the Judicial Council. The Work Group is chaired by the Honorable Kathleen G. Cox, of the Circuit Court of Baltimore County. Also serving on it were the Honorable Cynthia Callahan, of the Circuit Court of Montgomery County; the Honorable Karen Murphy Jensen, retired from the Circuit Court of Caroline County; and the Honorable Patrick Woodward, soon to be the Chief Judge of the Court of Special Appeals. The Honorable Louis Becker, retired from the Circuit Court of Howard County, was present at the meeting on behalf of the Work Group. They had worked for more than a year on this. Their recommendations have been approved by the Judicial Council, but they require some changes to the Rules to implement them.

Judge Becker said that on behalf of his colleagues, he wanted to thank the Rules Committee for promptly looking at the work of the Work Group on the Guardianship Rules. They had been

working on this since 2012. Many of his colleagues could not attend the meeting because of other commitments. Judge Becker remarked that he had been Guardianship Judge of the Howard County Circuit Court. Adding clarifications to the Rules and providing for the training of judges are areas that really need to be addressed.

Judge Eaves presented Rule 10-101, Applicability of Title; Jurisdiction, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

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

Rule 10-101. APPLICABILITY OF TITLE; JURISDICTION

(a) Applicability

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

property belonging to an absent or unknown person.

(b) Scope of Jurisdiction

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

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

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

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

Rule 10-101 was accompanied by the following Reporter's note.

The Guardianship Work Group of the Domestic Law Committee of the Judicial Council recommended amendments to the Guardianship Rules. Based upon those

recommendations, the Probate/Fiduciary and Family/Domestic Subcommittees of the Rules Committee proposed numerous amendments to the Rules in Title 10.

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

Judge Eaves told the Committee that Rule 10-101 has clarifying language in terms of the applicability of the Rule. It makes clear that guardianships of minors and their property can be considered both in the Orphans' Court and the circuit court. The Committee note at the end of the Rule adds to what the Chair had already said and Judge Becker had emphasized about the Guardianship Work Group.

By consensus, the Committee approved Rule 10-101 as presented.

Judge Eaves presented Rule 10-106, Attorney for Minor or Disabled Person, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-106 by changing the title, by deleting the second sentence in

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

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

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

(1) Minor Persons

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

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

circumstances that may warrant the appointment of an attorney for the minor.

(2) Alleged Disabled Persons

Upon the filing of a petition for guardianship of the person, ~~or~~ the property, or both, of ~~a~~ an alleged disabled person who is not represented by an attorney of the alleged disabled person's own choice, the court shall promptly appoint an attorney for the alleged disabled person ~~and may require the deposit of an appropriate sum into the court registry or the appointed attorney's escrow account within 30 days after the order of appointment has been entered, subject to further order of the court. If the person is indigent, the State shall pay a reasonable attorney's fee. The court may not require the deposit of an appropriate sum into the court registry or the appointed attorney's escrow account under this section if payment for the services of the court-appointed attorney for the alleged disabled person is the responsibility of (A) a government agency paying benefits to the disabled person, (B) a local department of Social Services, or (C) an agency eligible to serve as the guardian of the disabled person under Code, Estates and Trusts Article, §13-707~~.

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

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

investigator pursuant to Rule 10-106.1 or as a guardian pursuant to Rule 10-108.

(b) Eligibility for Appointment

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

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

(B) have and maintain in effect standard professional liability insurance; and

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

(2) Exercise of Discretion

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

(c) Fees

(1) Generally

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

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

(2) Determination and Payment of Fee

Unless the attorney has agreed to serve on a pro bono basis or is serving under a contract with the Department of Human Services, the court, in determining the reasonableness of the attorney's fee, shall apply the factors set forth Rule 2-703 (f)(3) and in the *Guidelines Regarding Compensable and Non-Compensable Attorneys' Fees and Related Expenses,* contained in an Appendix to the Rules in Title 2, Chapter 700.

(3) Disabled Person – Security for Payment of Fee

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

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

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

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

(1) Generally

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

(2) Other Reason for Termination

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

(3) Representation if Public Guardian Appointed

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

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

(4) Appointment After Establishment of Guardianship

Nothing in this section precludes a court from appointing, reappointing, or continuing the appointment of an attorney for a minor or disabled person after a

guardianship has been established if the court finds that such appointment or continuation is in the best interest of the minor or disabled person. An order of appointment after a guardianship has been established shall state the scope of the representation and may include specific duties the attorney is directed to perform.

~~(c) Investigator~~

~~The court may appoint an independent investigator to investigate the facts of the case and report written findings to the court. The fee of an appointed investigator shall be fixed by the court and shall be paid out of the fiduciary estate or as the court shall direct. To the extent the estate is insufficient, the fee of an independent investigator appointed by the court shall be paid by the State.~~

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

Rule 10-106 was accompanied by the following Reporter's note.

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

The Work Group suggested adding language to Rule 10-106 that would be similar to the language in the Comment after section (b) of Rule 9-205.1, Appointment of Child's Attorney, which provides that a court should only appoint attorneys who have agreed to serve in child custody and child access cases and have been trained in accordance with Guideline 4 of the Maryland Guidelines for Practice for Court-Appointed Attorneys Representing Children in Cases involving Child Custody or Child Access. Subsection (b)(1) of Rule 10-106 is based on this and adds basic requirements for eligibility of an attorney. Subsection (b)(2) is also based on language in the Comment after section (b) of Rule 9-205.1. Subsection (c)(1) is derived from the language of former section (c) of Rule 10-106 pertaining to investigators, but the Work Group suggested that the language be revised to provide that, rather than fixing the fee, the court shall order payment of reasonable and necessary fees that may be paid from the estate of the alleged disabled person. The Work Group has drafted guidelines for court-appointed attorneys in guardianship proceedings that the Work Group proposes should be added to the Rules or to the Code. Subsection (c)(2) of Rule 10-106 is derived from those proposed guidelines. Subsection (c)(3) is derived from the language that had been in section (a) pertaining to the court requiring a deposit of an appropriate sum into the court's registry or the attorney's escrow account. This is taken from Code, Estates and Trusts Article, §13-705 (d)(1), and a cross reference to that provision is added after subsection (c)(3).

Subsection (d)(2) is added because of a suggestion by the Work Group that Rule 10-106 should address what happens when there is a conflict of interest on the part of the attorney. The Subcommittees propose the addition of new subsection (d)(4). In a

> public agency guardianship, the appointment of an attorney for the disabled person can be automatically renewed. The thought is that it would be helpful to indicate in the Rule that the court can appoint, reappoint, or continue the appointment of an attorney for a disabled person after a private guardianship has been established if the court finds that this is in the best interest of the disabled person.

Judge Eaves said that Rule 10-106 clarifies the procedure for the appointment of an attorney for a minor. The appointment of an attorney is discretionary. Usually, a parent or someone fairly close to the child is appointed as the guardian and there is no need to appoint an attorney. The thought is that if a parent or someone else who is close to the child is appointed, there is no need to appoint an attorney, because the parent is already going to do what is in the best interests of that child. There is still a requirement to appoint an attorney for an alleged disabled person. The Chair added that this is a statutory requirement.

Judge Eaves noted that Rule 10-106 clarifies what the eligibility requirements are for an appointment. It also provides some information about the *Guidelines for Court-Appointed Attorneys in Guardianship Proceedings*. In section (c), the Rule provides for payment of fees where that is applicable. Section (d) of the Rule not only provides how to

terminate the appointment but also how to continue the appointment.

Senator Norman referred to subsection (b)(1)(C) of Rule 10-106, which read: "[t]o be eligible for appointment, an attorney shall...unless waived by the court for good cause, have been trained in aspects of guardianship law and practice...". He asked whether there had been any discussion about allowing attorneys who were proficient in guardianship law and had done many guardianships to waive the training requirement. Many people who have done a large number of guardianships do not need to be trained. Ms. Subasinghe, an attorney who works in the Family Administration Department of the Administrative Office of the Courts, explained that the *Guidelines* provide that attorneys who have been practicing this type of law for a specified time do not need the training.

Judge Becker noted that subsection (b)(2) provides that the court should fairly distribute appointments among eligible attorneys, taking into account the attorney's relevant experience and availability. In Howard County, the attorneys are trained. The court can take into account the appointment of an attorney who has a great deal of experience in elder law.

Mr. Frederick commended the Chair and the Work Group who had worked on these Rules. He referred to the language in subsection (b)(1)(B) of Rule 10-106, which provides that to be

eligible for appointment, an attorney shall have and maintain in effect standard professional liability insurance. Mr. Frederick said that he does not know what that is. Insurance policies at usual customary rates are available; some can be bought in a select market. In his experience, there is no "standard" legal malpractice policy, and he is unaware of any requirement for the maintenance of professional negligence insurance in order for an attorney to do or not do anything.

Mr. Frederick remarked that he is concerned about this requirement as a matter of policy. Periodically, people suggest to the legislature that this kind of insurance should be mandatory. He speaks with insurance brokers frequently, and from this, he estimated that 32 to 33% of the members of the Maryland bar are without insurance. In a minority of situations, those without insurance have made an intelligent decision based on the nature of their practice, the potential frequency of claims, and the potential severity of such claims, and they have decided to be self-insured. Other people do not have insurance, because they cannot afford it. Mr. Frederick commented that, anecdotally, he feared that this is a huge number of people, including those just starting out in the practice of law.

Mr. Frederick noted that the insurance requirement in subsection (b)(1)(B) concerns him. He prefers that an attorney

have to demonstrate financial responsibility to the court. He suggested that subsection (b)(1)(B) be reworded to the effect of requiring an attorney to have "assets, a bond, or appropriate insurance."

Mr. Frederick pointed out that a similar issue, which is even more troubling, is in subsection (b)(7) of Rule 10-702, Bond – Fiduciary Estate, under the category of factors for the court to consider. This read as follows: "whether the guardian, if a professional capable of having professional malpractice insurance, maintains such insurance that would cover losses to the guardianship estate caused by conduct of the guardian." He does not know what the term "professional malpractice insurance" means. He has presented seminars to many attorneys over the years, often with 400 to 500 at a time present. He had asked them if any of them had actually read his or her own insurance policy. No more than two people had read it.

Mr. Frederick asked the Committee to think about whether any of them had ever read their insurance policy. Even if someone had read it, would they have had any idea of what it meant? As an example, if an attorney gets charged by the Attorney Grievance Commission, most insurance policies provide for the payment of an attorney to defend the attorney who was charged. This would be very difficult to find in the insurance

policy. An attorney who files an application to be appointed could, in the application, inadvertently make a misrepresentation by stating that his or her policy covers certain losses, when, in fact, the policy does not cover those losses. Books have been written on what is covered and not covered, and some attorneys understand it, but Mr. Frederick said that he knows only three attorneys who are knowledgeable about this.

Mr. Frederick remarked that his final comment is about subsection (d)(2) of Rule 10-106. This reads as follows: "A court-appointed attorney who perceives a present or impending conflict of interest or other inability to continue serving as attorney for the minor or disabled person shall immediately notify the court in writing and request termination of the appointment." This is addressed in the Maryland Rules of Professional Conduct in Rule 19-301.7, Conflict of Interest – General Rule (1.7). Mr. Frederick expressed his concern about the conflict issue. Nearly all attorneys know what to do when they figure out that a conflict exists; the problem is trying to perceive a conflict. What one person sees as a conflict may be different than what another person may see. It is not a good idea to create more cases for Bar Counsel. He suggested that this provision be deleted as unnecessary.

Mr. Laws asked Mr. Frederick what he was suggesting as to amending the language pertaining to the malpractice coverage. Mr. Frederick replied that he would eliminate all references to "insurance," in particular, malpractice insurance. He suggested that Rule 10-106 (b) could provide that the attorney shall demonstrate that he or she is financially responsible. This may be done in one of several ways, for example, but not limited to, financial statements, posting of a bond, and having appropriate insurance.

Mr. Frederick noted that a secondary issue regarding the insurance is exemplified by the following scenario: A circuit court judge has before him or her a guardianship that is going to carry over for several years. The mere fact that the person being appointed by the judge has insurance at the beginning does not mean that he or she is going to renew it, and that the insurance will remain in effect. This is part of the intricate world of insurance. Forms can be required that would cause the insurer to notify the presiding judge as well as the insured if a policy is going to lapse and will not be renewed. If a judge is appointing someone on the basis that the person has insurance, but the policy is not renewed or it lapses, or the carrier ceases to write policies in Maryland, it could lead to unintended consequences. An insurance requirement, while laudable, could be a trap for the unwary.

Judge Becker said that he wanted to address the genesis of the insurance requirement. Montgomery County had this in its protocol for employment attorneys. The Work Group had wrestled with this. Judge Becker agreed with Mr. Frederick's suggestion for alternative language. It could be something to the effect of proof that the attorney has insurance that is acceptable to the court. One aspect of this is that the court is the guardian, and the person appointed is really the agent of the court. The court has a stake in this. It is a different situation than a neutral referee. Judge Becker liked Mr. Frederick's language for section (b) of Rule 10-106.

Judge Becker remarked that as far as the conflict of interest issue, the court is like a third party in a guardianship. He acknowledged Mr. Frederick's point that an attorney has a responsibility under the ethical rules when there is a conflict of interest, but an alleged disabled person may be incompetent to understand that a conflict exists. If the attorney is the guardian, it is important to require that the court be notified immediately of a conflict. The problem is that in many guardianships, issues do not arise until once a year when the account is filed, and the trust clerk as well as the judge's law clerk has had a chance to screen it. Then a hearing can be set in. This may involve issues that are a year-and-a-half old by the time they come to the court's attention.

The Chair commented that in addressing the appointment of an attorney for the alleged disabled person or minor in Rule 10-106, prior to establishing the guardianship, the hearing is to determine whether there should be a guardianship. The attorney is appointed to represent the alleged disabled person. The issues are whether there should be a guardianship, what it should look like, who should be the guardian, etc. Although Rule 10-106 permits the continuation of the appointment after a guardianship is established, the real thrust of this is before the guardian is appointed. In that case, unlike where a guardian has been appointed already, and the guardian has to post a bond in the amount and form that the court approves to protect the ward's assets, there is no bond prior to the appointment. Discussions of this issue with Judge Jensen and Judge Cox indicated that they were looking for something in lieu of that bond to make sure that the client's assets are protected. It does not have to be professional malpractice insurance. They did want to make sure that a financial statement filed by the attorney is not accessible to the public. It should not be in a file that anyone can get to. The Chair remarked that he wanted the Committee to consider this when making a decision about Rule 10-106.

Judge Eaves noted that there could be some kind of certification by the attorney, whether it is a bond, malpractice

insurance, or something else that would demonstrate the attorney's financial responsibility. Once the guardian's appointment ends, if there is a need for the attorney to be reappointed, the attorney can file a similar oath or certification. Senator Norman agreed with Judge Eaves. He said that there are other matters that are more complicated that attorneys are involved in, and they are not required to prove that they have insurance. If someone has the ability to be bonded, then he or she would have the ability to be a guardian.

The Chair suggested that subsection (b)(1)(B) of Rule 10-106 could read: "provide evidence satisfactory to the court of financial responsibility." Mr. Frederick expressed the view that this would solve the problem and still satisfy the objective of this provision. Mr. Laws asked whether it would be helpful to add that evidence may include proof of liability insurance. Mr. Frederick inquired where this would be added. The Chair noted that it could be put into a Committee note. Mr. Laws said that at least that part involves the attorney-client relationship. The issue in Rule 10-702 is a guardianship-bond issue. It goes a step beyond to provide that not only does the attorney have a malpractice policy, but he or she would warrant what it covers. This is the part that is troublesome in Rule 10-702.

Mr. Frederick moved to modify subsection (b)(1)(B) as the Chair had suggested. The motion was seconded. Judge Becker suggested that the language "as acceptable to the court" be added. This Rule involves a court-appointed attorney. The Reporter stated that subsection (b)(1)(B) could read: "provide evidence satisfactory to the court of financial responsibility." The Committee note added could provide that an example of evidence is professional liability insurance. Mr. Frederick said that it should be "appropriate insurance."

Mr. Zarbin remarked that when attorneys renew their malpractice insurance each year, they have to report to the insurance carrier what is being covered. In theory, if the attorney does not report that he or she is doing guardianship work, because it began mid-year, would the attorney still be covered? Mr. Frederick answered that it depends on which insurance company it is. With most of the companies, the attorney would not be covered. What often happens is that the insurance company will tell the attorney that everything is covered, and then there is a claim. They hire an out-of-state investigator who looks at cases in another state and decides that the attorney is not covered. If the carrier wants to file a declaratory judgment on a factually determined issue, the carrier would have a 10-day window from the time the verdict is hearkened to file it or they waive it. This was the holding in

Allstate Insurance Company v. Atwood, 319 Md. 247 (1990). It is just one example of all of the hoops one would have to jump through.

The Chair called for a vote on Mr. Frederick's motion. The motion carried on a unanimous vote.

The Chair noted that a change had been proposed for subsection (d)(2) of Rule 10-106. Mr. Frederick commented that with deference to Judge Becker, this provision is already in the Rules of Professional Conduct. Judge Becker said that he did not disagree with Mr. Frederick. Mr. Weaver commented that subsection (d)(2) provides that the attorney referred to is a court-appointed attorney who has to notify the court. In other situations, the attorney would notify his or her client.

The Chair commented that a conflict of interest can be waived by the client. Subsection (d)(2) pertains to an alleged disabled person. It is a difficult situation when an alleged disabled person is waiving his or her attorney's conflict of interest. It may be better for the attorney to report to the court and let the court decide about whether the conflict of interest can be waived.

Judge Becker remarked that he approved of this. One of the classic situations is when an attorney represents a family, and one of the members is alleged to be disabled. The attorney continues to represent that individual, but the interests of

another family member differ from the interests of the disabled person. This often surfaces later. Judge Becker added that he did not disagree that the attorneys have a responsibility under the Rules of Professional Conduct, but since the court is involved, the idea of subsection (d)(2) was that a rule needed to be added. Mr. Weaver observed that the court could substitute someone for the attorney who has the conflict.

The Chair said that the duty to send notice and to get out of the appointment is the duty to the client. Mr. Frederick pointed out that there could be more than one client. Judge Becker remarked that the other aspect of this is that conflicts can be waived, but if an alleged disabled person is involved, the attorney can tell the court about a possible conflict, so it may be useful to require the attorney to tell the court. Mr. Frederick reiterated that Rule 19-301.7 already addresses this. Mr. Zarbin expressed the view that putting this requirement into Rule 10-106 is a more obvious warning.

The Reporter noted that Judge Becker had raised a different issue, which goes back to subsection (a)(2). This provides that the alleged disabled person can be represented by an attorney of his or her own choice. Subsection (d)(2) provides that the alleged disabled person may have an attorney who is not of his or her own choice. The Chair commented that the language providing that the alleged disabled person may have an attorney

of his or her own choice is taken from Code, Estates and Trusts Article, §13-705. Judge Becker suggested that language could be added to provide that the attorney should notify the court of a possible conflict of interest, and the court could decide.

The Chair said that subsection (d)(2) is a notice provision on the theory that it is the court's appointment, and the court has some responsibility. Mr. Laws expressed the opinion that the language at the end of subsection (d)(2) that reads: "and request termination of the appointment" is too strong, because the notification may not necessarily lead to termination. Judge Becker remarked that some conflicts are able to be waived, and the court could acknowledge that there may be a conflict but still decide that it does not cause a problem.

The Chair inquired whether it would cause any harm to delete the language "and request termination of the appointment." Mr. Laws suggested adding in its place the language "for appropriate action." Ms. Rochvarg told the Committee that she is an attorney with a private practice. If an attorney is court-appointed, it is always up to the judge to decide if there is an issue with the representation. The attorney can get instructions from the court. Ms. Rochvarg had had a case where she represented a husband and a wife. Often, the interests of a husband and a wife are not aligned. Ms. Rochvarg had asked the court for guidance. The court is the

final decision-maker of all of the issues in a case. The Rule should provide that the court be alerted, but the court may not terminate the appointment, so the Rule should not require that termination be requested.

The Reporter said that subsection (d)(2) could read: "...in writing and request that the court take appropriate action with respect to the appointment." Ms. Rochvarg agreed with this language. Judge Eaves moved to change the language of subsection (d)(2) as the Reporter had just stated. The motion was seconded, and it carried unanimously.

Judge Eaves referred to the second sentence of the Reporter's note at the end of Rule 10-106, and she asked whether the word "Subcommittees" should be singular. The Reporter responded that two Subcommittees were involved in the proposed changes to these Rules.

By consensus, the Committee approved Rule 10-106 as amended.

Judge Eaves presented Rule 10-106.1, Appointment of Investigator, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10- GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

ADD new Rule 10-106.1, as follows:

Rule 10-106.1. APPOINTMENT OF INVESTIGATOR

(a) In Connection with Petition to Establish Guardianship

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

(b) After Guardianship Established

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

(c) Selection of Investigator

If the court concludes that it is appropriate to appoint an independent investigator, it shall appoint an individual particularly qualified to perform the tasks to be assigned. If there is an issue as to abuse, neglect, or exploitation of the disabled person, the court may refer the matter to an appropriate public agency to conduct the investigation.

(d) Fee

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

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

Rule 10-106.1 was accompanied by the following Reporter's note.

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

Judge Eaves explained that the provisions of Rule 10-106 pertaining to the appointment of an investigator and the role of an attorney as an investigator were moved to new Rule 10-106.1.

There being no motion to amend or reject the proposed new Rule, the Committee approved Rule 10-106.1 as presented.

Judge Eaves presented Rule 10-108, Orders, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10- GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

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

Rule 10-108. ORDERS

(a) Order Appointing Guardian

(1) Generally

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

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

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

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

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

(5) (E) ~~The~~ state (i) the amount of the guardian's bond~~,~~ or that ~~the~~ a bond is waived and (ii) the date by which proof of bond shall be filed with the court;
Cross reference: See Rule 10-702 (a), requiring the bond to be filed before the guardian commences the performance of any fiduciary duties.

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

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

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

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

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

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

(2) Confidential Information

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

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

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

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

(b) Letters of Guardianship

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

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

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

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

(d) Modifications

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

Source: This Rule is derived as follows:
Section (a) is derived in part from Code, Estates and Trusts Article, §§13-208 and 13-708 and is in part new.
Section (b) is ~~derived from former Rule V77 c 3~~ new.
Section (c) is derived from former Rules V71 f 1 and f 2.

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

Rule 10-108 was accompanied by the following Reporter's note.

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

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

There had been a suggestion to delete section (b), because courts do not use

> letters of guardianship, but the Work Group felt that since "letters of guardianship" are still referred to in the Code, it would be better to provide in the Rule that an order appointing a guardian constitutes letters of guardianship.

Judge Eaves told the Committee that one of the proposed amendments to Rule 10-108 is to include the guardian's e-mail address in the order appointing a guardian, if available. With the rollout of the Maryland Electronic Courts system ("MDEC"), this will provide additional information to the court for parties who are required to file electronically. Judge Mosley asked why the number "(5)" is before the letter "(E)" in subsection (a)(1)(E). The Reporter responded that the number "(5)" should have been deleted. Judge Mosley added that subsection (a)(1)(E) might read better as, "state (i) the amount of the guardian's bond and the date by which the bond shall be filed by the court or if the bond is waived." The Reporter suggested that subsection (a)(1)(E) could read, "state (i) the amount of the guardian's bond or that the bond is waived and (ii) the date by which proof of any bond shall be filed with the court." The Chair said that his recollection of the discussion on this provision was that the time to file the bond is a matter of statute. What is required in subsection (a)(1)(E) is the actual date. By consensus, the Committee approved the Reporter's suggested change.

Assistant Reporter Durfee noted that subsection (a)(1)(D), as amended, says, "state whether the appointment of a guardian is solely due to a physical disability, and if not, the reason for the guardianship." Rule 10-103 (b) defines a "disabled person" to include a mental disability. The Chair responded that this is statutory. The Reporter noted that in subsection (a)(1)(H), the language should be "in conformance with the applicable *Guidelines for Court-Appointed Guardians*," because there are two sets of *Guidelines*: one for guardians of the person and one for guardians of the property. By consensus, the Committee agreed to add "applicable" to subsection (a)(1)(H).

The Chair pointed out that section (b) pertains to letters of guardianship. That term is still in the statute even though courts are not issuing letters of guardianship. The Rule will now provide that the order appointing a guardian constitutes letters of guardianship. The Reporter asked whether other states have these letters. Judge Eaves answered that she had never captioned an order that way nor had she ever seen one.

The Reporter noted that the cross reference located at the end of section (a) should be placed after new subsection (a)(1)(H). She added that staff will review the cross reference to determine if any updates are required.

By consensus, the Committee approved Rule 10-108 as amended.

Judge Eaves presented Rule 10-111, Petition for Guardianship of Minor, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

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

Rule 10-111. PETITION FOR GUARDIANSHIP OF MINOR

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

[CAPTION]

In the Matter of _____ (Name of minor)

In the _____ Court for _____ (County)

_____ (docket reference)

PETITION FOR GUARDIANSHIP OF MINOR

Note: This form is to be used where the only ground for the petition is minority.

[ ] Guardianship of Person [ ] Guardianship of Property [ ] Guardianship of Person and Property

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

_____, and whose telephone number is

_____, represents to the court that:

1. The minor _____, age _____,

born on the _____ day of _____, _____,
(month) (year)

a [ ] male or [ ] female child of _____

and _____, resides at

_____. A birth certificate of the

minor is attached.

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

_____.

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

3. The relationship of petitioner to the minor is _____

_____.

4. The minor

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

[ ] is not a beneficiary of the Veterans Administration.

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

(Check only one of the following boxes)

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

[ ] I was convicted of such a crime, namely _____ _____.

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

in the _____, but
(Name of court)

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

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

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

(Check only one of the following boxes)

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

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

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

namely _____.

The conviction occurred in _____ in the _____
(year)

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

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

_____.

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

_____

_____.

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

List of Interested Persons

	Name	Address	Telephone Number	E-mail Address (if known)
Parents:	_____	_____	_____	_____
	_____	_____	_____	_____
Siblings:	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
Any Other Heirs at Law:	_____	_____	_____	_____
Guardian (if appointed):	_____	_____	_____	_____
Any Person Holding a Power of Attorney of the Minor:	_____	_____	_____	_____
Minor's Attorney:	_____	_____	_____	_____
Any Other Person Having Assumed Responsibility for the Minor:	_____	_____	_____	_____
Any Government Agency Paying Benefits to or for the Minor:	_____	_____	_____	_____

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

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

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

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

Names	Addresses	~~State Time Frame~~ Approximate Dates
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

_____

_____

_____.

~~10.~~ 11. If this Petition is for Guardianship of the Property, the following is the list of all the property in which the minor

has any interest including an absolute interest, a joint interest, or an interest less than absolute (e.g. trust, life estate).

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

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

_____.

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

_____

_____

_____.

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

_____

_____

_____.

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

attached.

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

_____ _____
Attorney's Signature Petitioner's Name

_____
Attorney's Name

_____
Address

_____
Telephone Number

_____
~~Facsimile Number~~

_____
E-mail Address

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

_____
Petitioner's Name

_____

Petitioner's Signature

INSTRUCTIONS

1. The required exhibits are as follows:

   (a) A copy of any instrument nominating a guardian [Code, Estates and Trusts Article, §13-701 and Maryland Rule 10-301 (d)];
   (b) If the petition is for the appointment of a guardian for a minor who is a beneficiary of the Department of Veterans Affairs, a certificate of the Administrator or the Administrator's authorized representative, setting forth the age of the minor as shown by the records of the Veterans Administration, and the fact that appointment of a guardian is a condition precedent to the payment of any moneys due the minor from the Veterans Administration shall be prima facie evidence of the necessity for the appointment [Code, Estates and Trusts Article, §13-802 and Maryland Rule 10-301 (d)].

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

Source: This Rule is new.

Rule 10-111 was accompanied by the following Reporter's note.

> Several changes to the Petition for Guardianship of a Minor form set forth in Rule 10-111 are proposed. In Section 2., the word "jurisdiction" is changed to the word "county" for clarity. A "NOTE" is added to inform petitioners, many of whom may be *pro* se, that for purposes of the Form, "county" includes Baltimore City. A new Section 4. Is added, requiring the petitioner to indicate by checking boxes whether the minor is a beneficiary of the Veterans Administration and noting that, if so, the guardian may expect to receive benefits. This is added to alert the clerk

and all parties that the requirements of Code, Estates and Trusts Article, §13-801 may need to be complied with. Language is added to Sections 5. and 6. pertaining to a request for the year and the name of the court if the individual requested by the petitioner to be the guardian has been convicted of a crime. This provides more information for the court in making the decision as to the appointment of the guardian. A request for the e-mail addresses, if known, of the interested persons is added to Section 8. The requirement at the end of the form that a facsimile number be provided is deleted as unnecessary.

Judge Eaves noted that Rule 10-111 had several changes. The word "jurisdiction" has been changed to the word "county," among other stylistic changes. One substantive change is to ask for an e-mail address as part of the information requested pertaining to interested persons. The Chair commented that there had been a question about the Veterans Administration that had been sent to the Work Group. The name of the Veterans Administration has been changed according to federal law. Judge Becker remarked that he was not familiar with the name change. Ms. Subasinghe said that the question had been sent to her, and she and her colleagues had decided to stay with the name that is in the Maryland statute, which is the "Veterans Administration."

There being no motion to amend or reject the proposed amendments to Rule 10-111, the Rule was approved as presented.

Judge Eaves presented Rule 10-112, Petition for Guardianship of Alleged Disabled Person, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

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

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

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

[CAPTION]

In the Matter of _____ (Name of Alleged Disabled Individual)

In the Circuit Court for _____ (County)

_____ (docket reference)

PETITION FOR GUARDIANSHIP OF ALLEGED DISABLED PERSON

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

[ ] Guardianship of Person [ ] Guardianship of Property [ ] Guardianship of Person and Property

The petitioner, _____ (name), _____ (age), whose address is _____, and whose telephone number is _____, represents to the court that:

1. The alleged disabled person _____, age _____, born on the _____ day of _____ (month), _____ (year), a [ ] male or [ ] female resides at _____ _____.

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

_____.

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

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

4. The alleged disabled person

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

[ ] is not a beneficiary of the Veteran's Administration.

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

(Check only one of the following boxes)

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

[ ] I was convicted of such a crime, namely _____ _____.

The conviction occurred in _____ (year) in the _____ _____ (name of court), but the following good cause exists for me to be appointed as guardian: _____

_____

_____

_____.

~~5.~~ 6. *Complete Section ~~5.~~ 6. if the petitioner is asking the*

court to appoint an individual other than the petitioner as the guardian.

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

(Check only one of the following boxes)

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

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

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

~~7.~~ 8. The following is a list of the names, addresses, ~~and~~

telephone numbers, and e-mail addresses, if known of all interested persons (see Code, Estates and Trusts Article, §13-101 ~~(j)~~ (k)):

	Name	Address	Telephone Number	E-mail Address (if known)
Person or Health Care Agent Designated in Writing by Alleged Disabled Person:	_____	_____	_____	_____
Spouse:	_____	_____	_____	_____
Parents:	_____	_____	_____	_____
	_____	_____	_____	_____
Adult Children:	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
Adult Grandchildren*:	_____	_____	_____	_____
	_____	_____	_____	_____
Siblings*:	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

Any Other Heirs at Law:	_____	_____	_____	_____
Guardian (If appointed):	_____	_____	_____	_____
Any Person Holding a Power of Attorney of the Alleged Disabled Person:	_____	_____	_____	_____
Alleged Disabled Person's Attorney:	_____	_____	_____	_____
Any Other Person Having Assumed Responsibility for the Alleged Disabled Person:	_____	_____	_____	_____
Any Government Agency Paying Benefits to or for the Alleged Disabled Person:	_____	_____	_____	_____
Any Person Having an Interest in the Property of the Alleged Disabled Person:	_____	_____	_____	_____
All Other Persons Exercising Control over the Alleged Disabled Person or the Person's Property:	_____	_____	_____	_____

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

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

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

_____ _____ _____ _____

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

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

Name	Address	Approximate Dates
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

~~9.~~ 10. A brief description of the alleged disability and how

it affects the alleged disabled person's ability to function is as follows:

_____

_____

_____.

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

_____
(Name of Alleged Disabled Person)

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

_____

_____

_____.

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

_____

_____

_____.

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

_____ cannot manage property
(Name of Alleged Disabled Person)

and affairs effectively because of physical or mental

disability, disease, habitual drunkenness, addiction to drugs or other addictions, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance. State the relevant facts:

_____

_____

_____.

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

_____

_____

_____.

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

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

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

~~14.~~ 15. If a guardian or conservator has been appointed for the alleged disabled person in another proceeding, the name and address of the guardian or conservator and the court that appointed the guardian or conservator are as follows:

_____ _____
Name Address

_____
Court

~~15.~~ 16. All other proceedings regarding the alleged disabled person (including criminal) are as follows:

_____

_____
_____.

~~16.~~ 17. All exhibits required by the Instructions below are attached.

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

be appointed as the guardian.

_____ _____
Attorney's Signature Petitioner's Name

_____
Attorney's Name

_____
Address

_____
Telephone Number

_____
~~Facsimile Number~~

_____
E-mail Address

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

_____
Petitioner's Name

_____
Petitioner's Signature

INSTRUCTIONS

1. The required exhibits are as follows:

(a) A copy of any instrument nominating a guardian;

(b) A copy of any power of attorney (including a durable power of attorney for health care) which the alleged

disabled person has given to someone;

(c) Signed and verified certificates of two physicians licensed to practice medicine in the United States who have examined the alleged disabled person, or of one licensed physician, who has examined the alleged disabled person, and one licensed psychologist or certified clinical social worker, who has seen and evaluated the alleged disabled person. An examination or evaluation by at least one of the health care professionals must have occurred within 21 days before the filing of the petition (see Code, Estates and Trusts Article, § 13-103 and §1-102 (a) and (b)).

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

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

Source: This Rule is new.

Rule 10-112 was accompanied by the following Reporter's note.

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

Judge Eaves said that Rule 10-112 is similar in scope to Rule 10-111, except that it applies to an alleged disabled person instead of a minor.

There being no motion to amend or reject the proposed amendments to Rule 10-112, the Rule was approved as presented.

Judge Eaves presented Rule 10-113, Disqualifying Offenses; Waiver, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

ADD New Rule 10-113, as follows:

Rule 10-113. DISQUALIFYING OFFENSES; WAIVER

(a) Opportunity to Show Good Cause

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

(b) Factors for Court to Consider

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

(1) the nature of the offense;

(2) the time elapsed since the conviction;

(3) the conduct of the proposed guardian since the conviction;

(4) the relationship, if any, between the proposed guardian and the minor or disabled person; and

(5) any special vulnerability of the minor or disabled person.

Source: This Rule is new.

Rule 10-113 was accompanied by the following Reporter's note.

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

Judge Eaves explained that Rule 10-113 applies to potential guardians who may be disqualified because they have certain criminal convictions. The Rule contains factors that the court may consider if the court is going to appoint a person as guardian despite a disqualifying conviction.

There being no motion to amend or reject the proposed amendments to Rule 10-113, the Rule was approved as presented.

Judge Eaves presented "hand-out" versions of Rule 10-202, Certificates and Consents, and Rule 10-301, Petition for Appointment of a Guardian of Property, for the Committee's consideration.

"HANDOUT"

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 – GUARDIAN OF PERSON

AMEND Rule 10-202 (a) to delete language pertaining to the contents of certain certificates, to add a requirement that each certificate be substantially in the form approved by the State Court Administrator, and to add certain requirements pertaining to posting and availability of forms, as follows:

Rule 10-202. CERTIFICATES AND CONSENTS

(a) Certificates

(1) Generally Required

Except as provided in subsection (a)(4) of this Rule, 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 or certified clinical social worker who has seen and evaluated the disabled person. An examination or evaluation by at least one of the health care professionals shall have been within 21 days before the filing of the petition.

(2) ~~Contents~~ Form

Each certificate required by subsection (a)(1) of this Rule shall ~~state: (A) the name, address, and qualifications of the person who performed the examination or evaluation, (B) a brief history of the person's involvement with the disabled person, (C) the date of the last examination or evaluation of the disabled person, and (D) the person's opinion as to: (i) the cause, nature, extent, and probable duration of the disability, (ii) whether institutional care is required, and (iii) whether the disabled person has sufficient mental capacity to understand the nature of and consent to the appointment of a guardian~~ be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts and orphans' courts.

(3) Absence of Certificates

(A) Refusal to Permit Examination

If the petition is not accompanied by the required certificate and the petition alleges that the disabled person is residing with or under the control of a person who has refused to permit examination by a physician or evaluation by a psychologist or certified clinical social worker, and that the disabled person may be at risk unless a guardian is appointed, the court shall defer issuance of a show cause order. The court shall instead issue an order requiring that the person who has refused to permit the

disabled person to be examined or evaluated appear personally on a date specified in the order and show cause why the disabled person should not be examined or evaluated. The order shall be personally served on that person and on the disabled person.

(B) Appointment of Health Care Professionals by Court

If the court finds after a hearing that examinations are necessary, it shall appoint two physicians or one physician and one psychologist or certified clinical social worker to conduct the examinations or the examination and evaluation and file their reports with the court. If both health care professionals find the person to be disabled, the court shall issue a show cause order requiring the alleged disabled person to answer the petition for guardianship and shall require the petitioner to give notice pursuant to Rule 10-203. Otherwise, the petition shall be dismissed.

(4) 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 (a)(1) of this Rule, a certificate of the Secretary of that Department or an authorized representative of the Secretary 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.

. . .

Rule 10-202 was accompanied by the following Reporter's note.

> To enhance uniformity of practice and to provide judges with specific, detailed information pertaining to examinations and evaluations of alleged disabled persons, the Guardianship Work Group of the Domestic Law Committee of the Judicial Council is developing standardized forms for the certificates required by subsection (a)(1) of Rule 10-202. Because the professional credentials, the nature of the examination or evaluation the individual is licensed to perform, etc. are difference as to each type of professional [physician, psychologist, or social worker] authorized to perform the examination or evaluation, three separate forms are being developed.
>
> A proposed amendment to subsection (a)(2) of the Rule replaces language pertaining to the contents of the certificate with the requirement that each certificate be "substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts and orphans' courts." The proposed language follows the format of a recently adopted amendment to Rule 4-504 (b).
>
> Rule 10-301 refers to the certificates required by Rule 10-202. In conjunction with the proposed amendment to Rule 10-202, a Committee note following Rule 10-301 (d) also is proposed.

"HANDOUT"

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 300 – GUARDIAN OF PROPERTY

AMEND Rule 10-301 by adding a Committee note following section (d), as follows:

Rule 10-301. PETITION FOR APPOINTMENT OF A GUARDIAN OF PROPERTY

. . .

(d) Required Exhibits

The petitioner shall attach to the petition as exhibits (1) a copy of any instrument nominating a guardian; (2) (A) the 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 requirements of Rule 10-202, a certificate of the Secretary of that Department or an authorized representative of the Secretary 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.

Committee note: Rule 10-202 (a)(1) requires that a certificate of a physician, psychologist, or social worker be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts and orphans' courts.

. . .

Rule 10-301 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 10-202.

Judge Eaves informed the Committee that the latest versions of Rules 10-202 and 10-301 had been handed out at the meeting. The Subcommittee has not reviewed these amendments. The Reporter said that there were some recent discussions about the certificates required by the Rule. The question was how to encourage uniformity of the certificates. The Work Group felt that the certificates should be established as a form, but they would have to go through the process required for forms with the Judicial Council. Once they are approved, they are placed on the Judiciary website. Physicians, psychologists, and social workers can obtain the form from the website. If changes are required, the Judicial Council can update the forms quickly, rather than having to go through the process of changing a Rule.

Judge Eaves moved to approve the handout versions of amendments to Rules 10-202 and 10-301. The motion was seconded, and the Rules were approved by majority vote.

Judge Eaves presented Rule 10-205.1, Appointment of Guardian – Criteria; Order, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 – GUARDIAN OF PERSON

ADD New Rule 10-205.1, as follows:

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

(a) Whether to Appoint Guardian

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

(b) Whom to Appoint

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

(c) Order

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

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

Source: This Rule is new.

Rule 10-205.1 was accompanied by the following Reporter's note.

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

Judge Eaves explained that Rule 10-205.1 is a new Rule that refers to the Code provision setting forth the criteria to be used by the court in determining whether to appoint a guardian of the person and in determining whom to appoint as a guardian.

Mr. Sullivan commented that Rule 10-205.1 has a cross reference to Rule 10-108, but it might be useful to also cross reference Rule 10-106 because it sets out the factors for who is eligible to be a guardian. Rule 10-205.1 (b) refers to the judge determining who the appropriate guardian should be, and it

would be useful to cross reference the eligibility provision in Rule 10-106.

Mr. Sullivan noted that section (a) states that in determining whether to appoint a guardian of the person of a minor or alleged person, the court shall apply the criteria set forth in Code, Estates and Trusts Article, §13-705. The court also needs to apply the criteria set forth in Rule 10-106 (b). Assistant Reporter Libber asked whether it would go in section (a) after the statutory reference. Mr. Sullivan replied that it could either go there or with the cross reference to Rule 10-108.

The Chair noted that Rule 10-106 addresses the eligibility of the attorney. Judge Eaves pointed out that Rule 10-205.1 addresses the eligibility of the guardian, so a cross reference to Rule 10-106 is not appropriate.

There being no further comment, Rule 10-205.1 was approved as presented.

Judge Eaves presented Rule 10-304.1, Appointment of Guardian – Criteria; Order, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 300 – GUARDIAN OF PROPERTY

ADD New Rule 10-304.1, as follows:

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

(a) Whether to Appoint Guardian

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

(b) Whom to Appoint

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

(c) Order

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

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

Source: This Rule is new.

Rule 10-304.1 was accompanied by the following Reporter's note.

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

Judge Eaves said that new Rule 10-304.1 applies to the order for appointment of guardians of the property of a minor or disabled person. Similar to Rule 10-205.1, it refers to the statutes that set forth the criteria for determining whether there is to be a guardian of the property and who should be appointed as guardian of the property.

There being no motion to amend or reject proposed new Rule 10-304.1, it was approved as presented.

Mr. Laws presented Rule 10-702, Bond – Fiduciary Estate, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 700 – FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS OF THE PROPERTY

AMEND Rule 10-702 by adding a new section (b) pertaining to factors for the court to consider when determining whether to require a guardian of the property to post a bond; by adding the words "or increase" to subsection (c)(1); in subsection (e)(1), by deleting language from subsection (e)(1)(A) and by adding language providing that the amount of a fiduciary bond shall be based on the value of the property of the estate that is or will be under the fiduciary's control and that the

fiduciary has or will have authority to expend, encumber, or convey without further order of court; by adding a Committee note after subsection (e)(1)(A) explaining the intent of that subsection and containing some of the language of current section (d); and by making stylistic changes, as follows:

Rule 10-702. BOND – FIDUCIARY ESTATE

(a) When Required or Excused

(1) Required by Instrument

If the instrument nominating the fiduciary or creating the estate requires the fiduciary to give bond, the fiduciary, whether corporate or non-corporate, shall file a bond before commencing the performance of any fiduciary duties unless excused pursuant to subsection (5) of this section.

(2) Excused by Instrument

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

(3) Corporate Fiduciary

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

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

The court may require a non-corporate fiduciary, appointed by the court

or nominated under an instrument that is silent as to bond, to file a bond if the court finds that exceptional circumstances make a bond necessary for the protection of interested persons.

(5) Fiduciary Estate not Exceeding $10,000

Unless the court finds that exceptional circumstances make a bond necessary for the protection of interested persons, the court shall not require a fiduciary to furnish or continue in effect a bond if the assets of the estate (A) do not exceed $10,000 in value, (B) cannot be transferred by the fiduciary without approval of the court, and (C) consist only of cash deposited in a restricted account pursuant to Rule 10-705, securities, or real property.

(b) Factors for Court to Consider

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

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

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

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

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

(5) the potential burden on the estate;

(6) the guardian's credit history;

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

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

(9) any impediments to obtaining a bond.

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

(1) Who May File

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

(2) Where Filed

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

(3) Notice

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

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

(1) Required by Court

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

(2) Required by Instrument

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

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

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

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

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

(1) Generally

(A) The amount of a fiduciary bond shall ~~not be greater than the aggregate value of the property of the estate in the fiduciary's control, less the value of (A) securities, (B)~~ be set based on the value of the property of the estate that is or will be under the fiduciary's control and that the fiduciary has or will have authority to expend, encumber, or convey without further order of the court.

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

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

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

(2) Specified by Instrument

If the instrument creating the estate requires that the fiduciary file a bond in a specific amount, the bond shall be

in the lesser of that amount or the maximum amount provided in subsection (1).

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

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

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

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

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

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

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

Rule 10-702 was accompanied by the following Reporter's note.

The Guardianship Work Group recommended that Rule 10-702 be amended to provide factors for the court to consider when determining whether to require a guardian of

the property to post a bond. In addition to factors suggested by the Work Group, the Subcommittees added two more factors. One is whether the guardian has malpractice insurance. This would only apply to professionals likely to carry such insurance. Another is whether a guardian who is an attorney is a member in good standing of the Maryland Bar and is in compliance with Rule 19-605.

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

Subsection (e)(1)(A) is amended and clarified to provide that the amount of a fiduciary bond is to be set based on the value of the property of the estate that is or will be under the fiduciary's control and that the fiduciary has or will have authority to expend, encumber, or convey without further order of court. An explanatory Committee note, which, in part, uses language from the text of current section (d) is added following the subsection.

Stylistic changes also are made.

Mr. Laws explained that the proposed amendments to Rule 10-702 add new section (b). The section sets forth the factors for the court to consider when determining whether to require a guardian of the property to post a bond where one is not required by law or by the instrument creating the fiduciary estate. Mr. Laws referred to the prior issue about professional malpractice insurance which Mr. Frederick had raised. The Chair

asked Mr. Frederick whether he had a suggestion for new language in subsection (b)(7). Mr. Frederick replied that section (b) should say, "whether the guardian can provide an appropriate policy of insurance." Senator Norman suggested that the language of section (b) should track the language of subsection (b)(1)(B) of Rule 10-106 that had been decided on earlier in the meeting. This language was: "provide evidence satisfactory to the court of financial responsibility." By consensus, the Committee agreed with Senator Norman's suggestion.

The Chair referred to the drafter's note after subsection (d)(2) of Rule 10-702, which asks about circumstances that would lead to a petition to file, increase, or decrease a bond in a court other than the one that has assumed jurisdiction over the estate. Judge Becker responded that he had never seen one, but he thought that there might be some instruments that have some effect on guardianships. The Chair said that the proposal is that subsections (d)(2)(A) and (B) provide that the bond is filed where the instrument says it is to be filed or where the instrument is recorded, but that could be a different county. Judge Becker noted that there might be a power of attorney that affects the disabled person. The Chair asked what would happen if Howard County establishes the guardianship, but it is based on an instrument that may provide that anything regarding the guardianship should be done in Garrett County. The judge in

Howard County assumes that the bond was filed in Garrett County, but it may not have been. Subsection (d)(2) can be left as it is, with the hope that this issue does not arise.

Mr. Zarbin asked whether the property could be located in Delaware, but the owner also owns property in Garrett County. Could the guardian appointed in Delaware ask the judge to set the bond in Garrett County? The Chair responded that whether this involves another state or another county, it is an ancillary proceeding, but the bond should be filed where the guardianship is. Judge Becker noted that Ms. Subasinghe pointed out that Rule 10-702 affects other proceedings besides guardianships. Ms. Rochvarg remarked that the estate would be enrolled in that county and the bond would be attached to it. If there is an out-of-state guardian, the estate would be enrolled in a Maryland county, and the bond would be with it. The Chair commented that no one seemed to be having any problems with the current language. He had just raised a question about filing a bond where there is no case.

The Chair asked whether anyone had any further comments on Rule 10-702. There being no further comments, by consensus, the Committee approved Rule 10-702 as amended.

Mr. Laws asked what has been changed in the versions of the *Guardianship Guidelines* that were distributed today, as opposed to those in the meeting materials. The Reporter said that

copies of the Guidelines were put into the meeting materials. They will be incorporated as an Appendix to the Rules, so it is important for the Rules Committee to see what is in them. Ms. Subasinghe added that most of the changes are simply stylistic. Some of the points were re-emphasized; some components of training were added. Mr. Laws inquired if the *Guidelines* allow the alternative of experience instead of training. Ms. Subasinghe answered affirmatively.

The Chair said that on behalf of the Rules Committee, he wanted to thank all of the people who worked on the Guardianship Rules. It was a huge project, and all the participants were very diligent in getting it done. The next step will be the training of guardians. The Reporter asked whether January 1, 2018 is an appropriate effective date. Would this date allow sufficient time to set up the training and update the forms? Judge Becker answered that the courts should be able to be on board by January 1, 2018. The Chair commented that the proposed changes to the Rules and the *Guidelines* will be in the next report to the Court of Appeals. He said that the Court should be able to consider the Report in time for a January 1, 2018 effective date. Judge Becker remarked that he would relay the Chair's comments to the other members of the Work Group.

Agenda Item 2. Consideration of proposed amendments to Rule 19-711 (Complaint; Investigation by Bar Counsel)

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

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

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

ADMINISTRATIVE PROCEDURES

AMEND Rule 19-711 by changing the words "appropriate investigation" to the words "inquiry concerning" in subsection (b) (1); by permitting Bar Counsel to decline a complaint that is duplicative; by permitting Bar Counsel to decline a complaint instead of dismissing one; by permitting Bar Counsel to decline a complaint submitted by an individual who provides information about an attorney derived from certain sources where the complainant appears to have no personal knowledge of the information being submitted; by providing that unless a complaint is declined, Bar Counsel ordinarily shall obtain a written response from the attorney who is the subject of the complaint and consider other appropriate information to assist in evaluating the complaint; by giving Bar Counsel the discretion to close a file without the approval of the Attorney Grievance Commission if Bar Counsel determines that an insufficient basis exists to demonstrate misconduct or incapacity or that the overall

circumstances do not warrant further investigation; in subsection (b)(3), by changing the words "open a file on" to the word "docket," by changing the words "acknowledge receipt of the complaint" to "notify the complainant," and by changing the word "believe" to the word "support"; by permitting Bar Counsel with the approval of the Commission to defer action on a complaint when an investigation of substantially similar or related facts by certain authorities is under way or when there are related allegations in a pending civil or criminal action; and by making stylistic changes, as follows:

Rule 19-711. COMPLAINT; INVESTIGATION BY BAR COUNSEL

(a) Who May Initiate

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

(b) Review of Complaint

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

(2) If Bar Counsel concludes that ~~**the**~~ **a** complaint is ~~*either*~~ without merit*,* ~~*or*~~ does

not allege facts which, if true, would demonstrate either professional misconduct or incapacity, *or is duplicative,* Bar Counsel shall ~~**dismiss *or***~~ *decline* ~~***to pursue***~~ the complaint and ~~***shall***~~ notify the complainant ~~*of the dismissal*~~. **Bar Counsel also may decline a complaint submitted by an individual who provides information about an attorney derived from published news reports or third party sources where the complainant appears to have no personal knowledge of the information being submitted.**

(3) Unless a complaint is declined for one of the reasons set forth in subsection (b)(2) of this Rule, Bar Counsel ordinarily shall obtain a written response from the attorney who is the subject of a complaint and consider other appropriate information to assist in evaluating the merits of the complaint. If Bar Counsel determines based upon such evaluation that an insufficient basis exists to demonstrate misconduct or incapacity or that the overall circumstances do not warrant investigation, Bar Counsel has discretion to close the file without approval of the Commission. Otherwise, subject to subsection ~~**(b)(3)**~~ **(b)(4)** of this Rule, Bar Counsel shall (A) ~~**open a file on docket**~~ the complaint, (B) ~~**acknowledge receipt of the complaint**~~ **notify the complainant** and explain in writing ~~**to the complainant**~~ the procedures for investigating and processing the complaint, (C) comply with the notice requirement of section (c) of this Rule, and (D) conduct an investigation to determine whether reasonable grounds exist to ~~**believe**~~ **support** the allegations of the complaint.

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

~~**(3)**~~ **(4)** If Bar Counsel concludes that a civil or criminal action involving material

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

(c) Notice to Attorney

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

(2) Bar Counsel need not give notice of investigation to an attorney if, with the

approval of the Commission, Bar Counsel proceeds under Rule 19-737, 19-738, or 19-739.

(d) Time for Completing Investigation

(1) Generally

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

(2) Extension

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

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

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

(3) Sanction

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

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

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

> At the request of Bar Counsel, several amendments to Rule 19-711 are proposed. An amendment to subsection (b)(1) allows Bar Counsel to make an inquiry concerning every complaint that is not facially frivolous or duplicative. The word "inquiry" replaces the word "investigation," which is a more thorough procedure and only takes place after a complaint has been docketed. Amendments to subsection (b)(2) permit Bar Counsel to decline a complaint that is duplicative of another complaint against the same attorney, alleging the same misconduct. Bar Counsel may also decline a complaint from an individual who has no personal knowledge of the subject matter of a complaint but seeks to be designated as a complainant by filing a complaint based on publicly available information, often with some political motivation or agenda. Bar Counsel would like to have the authority to decline these complaints and not be required to provide these individuals with confidential responses from attorneys, who may be the subject of media reports, when the complainant appears to be driven by a particular political or ideological persuasion or a desire for self-publicity or both.
>
> Proposed subsection (b)(3) is intended to reflect more accurately the reality of how the Office of Bar Counsel initially screens and reviews complaints before a complaint may reach the "docketed" stage. The new provision expressly recognizes Bar Counsel's discretion to close non-docketed files without the approval of the Attorney Grievance Commission. The latter portion of subsection (b)(3) would incorporate language from current subsection (b)(2) while reflecting the distinctions Bar

> Counsel makes when a complaint becomes a docketed matter. The subsequent provisions of Rule 19-711 would apply only to docketed complaints, which is how Bar Counsel and the Commission have applied those provisions of the Rule since its inception as former Rule 16-731.
>
> Current subsection (b)(3) of Rule 19-711 gives Bar Counsel, with the approval of the Commission, the authority to defer action on a complaint when there is a civil or criminal action pending in a court of record involving material allegations against the attorney that are substantially similar or related to those alleged in the complaint. Proposed amendments to subsection (b)(4) expand the authority to defer to include the situations where the allegations in the complaint are (1) "related" to the allegations in the pending civil or criminal action, or (2) are substantially similar or related to allegations under investigation by a law enforcement, regulatory, or disciplinary agency.

Mr. Frederick said that Bar Counsel would like to clarify and codify the actual practice for investigating a complaint, as opposed to having it in the Administrative Guidelines. Mr. Hein had made some suggestions for changes to Rule 19-711, and Mr. Frederick agreed with the suggestions. He expressed the opinion that they are in the best interest of attorneys and the Office of Bar Counsel. Most of the changes are stylistic. The words "appropriate investigation of" were changed to the words "inquiry concerning." Bar Counsel has been given the

opportunity to ignore or decline to consider a complaint that is duplicative.

Mr. Frederick pointed out that Rule 19-711 has been changed to enable Bar Counsel to decline a complaint instead of dismissing it when it appears that the complainant has no personal knowledge of the information being submitted. An example would be that once a news article about an attorney is published, several people express their opinions and would like to take credit for blowing the whistle on the attorney. The proposed language gives Bar Counsel the opportunity to dismiss a case without having to go through the Attorney Grievance Commission if Bar Counsel decides that there is an insufficient basis to demonstrate misconduct.

Mr. Frederick noted that some words have been changed, such as "open file" to "docket," "acknowledge receipt of the complaint" to "notify the complainant," and "believe" to "support." Other changes include addition of the language "or related" after the language "substantially similar" before the language "to those alleged in the complaint" and addition of the language providing that Bar Counsel concludes "substantially similar or related allegations presently are under investigation by a law enforcement, regulatory, or disciplinary agency."

Mr. Frederick commented that it is not unusual in a heated family law case where custody is hotly contested, for one or

both of the parties or the opposing attorney to make a complaint about the other attorney. Part of the problem with this is that the practice and custom of the Office of Bar Counsel is that unless the problems are resolved in advance, the Office of Bar Counsel will send the response of the attorney being complained about to the person complaining. If the attorney has to defend himself or herself in the grievance proceeding while the heated custody battle is ongoing, the attorney is essentially giving out work product and conveying some otherwise confidential information. An experienced attorney will call Bar Counsel, who may send a letter, but what Bar Counsel would really like to do is to put the case on hold without violating the time standards, and let the trial court make the custody decision. Then later, Bar Counsel can consider how to proceed. This is the change Mr. Hein had requested.

Judge Bryant referred to subsection (b)(3), which states that Bar Counsel "ordinarily shall" obtain a written response, and she asked why the word "ordinarily" is used. Mr. Hein answered that the word "ordinarily" reflects that this is the normal course of how the Office of Bar Counsel handles complaints, but it is not done in every single instance, and it recognizes that there may be circumstances where Bar Counsel elects not to obtain a written response immediately, because there may be other investigation or inquiries made. Judge

Bryant asked whether the word should be "shall" or "may." Anecdotally, there has been an increase in mandamus filings where Bar Counsel has refused to act. The Chair commented that several decades ago, a judge on the Court of Appeals discovered the role of the word "ordinarily." It is useful to leave some flexibility, and the court will define how much flexibility. This does not mean that the word has to be used in Rule 19-711 (b)(3).

Mr. Frederick remarked that in his practice, he had found that the word "ordinarily" enables Bar Counsel to craft an appropriate ability to deal with a complaint, depending on the facts and circumstances. There are circumstances where it would be inappropriate and unfair for the respondent to do what is ordinarily done, so it gives him or her the opportunity to avoid this. Judge Bryant suggested that using the word "may" would give discretion. The Chair responded that this may be too broad, because it suggests that the attorney may not have to give a response in any case.

Judge Bryant suggested that the language could be "...shall require a response from the attorney and may require it to be in writing...". Mr. Frederick commented that there would be no way for the Office of Bar Counsel to maintain a file on the matter. He expressed the view that the current language is appropriate. Mr. Zarbin agreed with Mr. Frederick. Does the respondent not

have to give a written response? Mr. Frederick replied that Bar Counsel does not have to obtain a written response. If Bar Counsel is satisfied that the complaint does not give rise to a violation of a rule, Bar Counsel has to be able to have the discretion to do this, but there still must be guidelines for what Bar Counsel usually or customarily does. If there is a better way to word this, Mr. Frederick could not think of it. Mr. Hein said that he also could not think of a better way to recognize that there is a certain amount of flexibility.

The Chair suggested that the wording of Rule 19-711 (b)(3) could keep the word "shall" in, but the Rule would state that Bar Counsel may defer the question. Judge Bryant commented that she had not been opposed to the wording of subsection (b)(3), but she was just curious as to why the word "ordinarily" was included. The Chair acknowledged that it seems inconsistent. Judge Bryant remarked that she and many of the people present at the meeting understand its meaning, but others who read it may not understand it.

The Reporter noted that this is a directive provision, and Mr. Carbine suggested that the word "shall" should be used. Mr. Sullivan suggested that the rest of the wording could be: "unless circumstances dictate otherwise." The Reporter suggested that a clause beginning with the word "unless" could be added.

The Chair asked whether there are circumstances in which Bar Counsel would not ask for a response from the attorney where Bar Counsel is going to proceed with the matter eventually. Mr. Hein replied that there would be some circumstances. One example, apart from a charge of professional misconduct, may be where his office receives a report containing information about a possible incapacity issue of an attorney where, rather than writing to that attorney and requesting an immediate response, the matter would proceed.

The Chair said that he was not talking about an immediate response. Would there be any case, even with a disability or incapacity issue, where Bar Counsel would not want a response from an attorney, his or her counsel, or a guardian for the attorney? Either Bar Counsel is going to decline the complaint or is simply not going to proceed, and Bar Counsel may want to defer asking the attorney for a response or tell the attorney no response is appropriate. Mr. Frederick observed that if there is a parallel proceeding in another court, and that judge completely exonerates the person being complained about, Bar Counsel would never ask for a response. The Chair responded that this is because Bar Counsel is going to dismiss the case.

Mr. Zarbin referred to *Attorney Grievance Commission v. Feldman*, 441 Md. 212 (2014), where it was necessary for Bar Counsel to wait to see what the State court was going to do and

what the federal court was going to do. Mr. Hein said that this is covered by subsection (b)(4) of Rule 19-711.

The Chair noted that this is being deferred, so Bar Counsel is not asking for a response at that time. At some point, based on whatever the court does, Bar Counsel may not want to proceed at all, so no response is needed. If Bar Counsel is going to proceed against an attorney, can he or she dispense with the right of the attorney to respond? Mr. Hein remarked that when a complaint that comes in is docketed, there is a requirement in subsection (c)(1) that the attorney has to be given notice. This does not require a written response from the attorney.

With respect to the Chair's question, Mr. Hein answered that there could be circumstances where he or his colleagues choose to close the file but not get a written response. The Chair agreed, noting that if the file is going to be closed, no response is needed. The Chair reiterated his question. Only if Bar Counsel decides at some point that he or she is going to proceed against the attorney, does the attorney have to have the opportunity to respond? This is due process. Mr. Hein agreed. The Chair remarked that what is being discussed is that Bar Counsel gets a response and has the authority to defer a response, or Bar Counsel decides not to pursue the matter.

Mr. Weaver suggested that the last sentence of subsection (b)(3) should be separated out. Subsection (b)(3) would read:

"[u]nless a complaint is declined or Bar Counsel opens a file...". The Chair added that Bar Counsel could defer in any case from the point of view of time, because the response is due at a certain time. The deferral is separate. Mr. Hein said that the answer is that there are circumstances where he and his colleagues may elect not to pursue a matter, in which case no response is needed. The Chair asked the Committee if they had any changes to suggest. Mr. Zarbin replied that no change should be made.

The Reporter asked whether the word "docket" could be described better to make it clear that it does not refer to the court's docket but rather the docket of the Office of Bar Counsel. Mr. Frederick said that in the attorney discipline world, the word "docket" has a particular meaning. It means that it has crossed the threshold from simply investigation to the finding that the complaint may have some validity. The Reporter pointed out that this is not a defined term, and this is the first time that the word has been used in the Attorney Discipline Rules. Mr. Frederick noted that this has always been referred to as "docketing." Mr. Hein added that this is longstanding.

Mr. Laws suggested that a definition of the word "docket" as the Office of Bar Counsel uses it could be added. The Reporter suggested that this could be in a Committee note. By

consensus, the Committee agreed to make a change to Rule 19-711 to indicate that the word "docket" is not used the same way as it used as docketing in the courts.

Mr. Sullivan referred to subsection (b)(2) of Rule 19-711, noting that it implies that unless the complainant has personal knowledge of the information being submitted, Bar Counsel does not proceed. When none of the principals come forward, but Bar Counsel becomes aware of something, he or she may pursue it even though there is no actual complainant who has direct personal knowledge. Is this correct? Mr. Hein answered affirmatively, adding that this is recognized in section (a) of Rule 19-711. Mr. Sullivan asked whether a story in a newspaper brought to Bar Counsel's attention would be enough for Bar Counsel to pursue the matter. Mr. Hein replied affirmatively.

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

Agenda Item 3. Consideration of proposed amendments to Rules 19-605 (Obligations of Attorneys) and Rule 19-606 (Enforcement of Obligations)

Mr. Frederick presented Rule 19-605, Obligations of Attorneys and Rule 19-606, Enforcement of Obligations, for consideration.

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

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

Rule 19-605. OBLIGATIONS OF ATTORNEYS

(a) Conditions Precedent to Practice

(1) Generally

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

(2) Exception

Unless the attorney is on permanent retired status pursuant to Rule 19-740, upon timely application by an attorney, the

trustees of the Fund may approve the attorney for inactive/retired status. By regulation, the trustees may provide a uniform deadline date for seeking approval of inactive/retired status. An attorney on inactive/retired status may engage in the practice of law without payment to the Fund or to the Disciplinary Fund if (A) the attorney is on inactive/ retired status solely as a result of having been approved for that status by the trustees of the Fund and not as a result of any action against the attorney pursuant to the Rules in Chapter 700 of this Title, and (B) the attorney's practice is limited to representing clients without compensation, other than reimbursement of reasonable and necessary expenses, as part of the attorney's participation in a legal services or pro bono publico program sponsored or supported by a local bar association, the Maryland State Bar Association, Inc., an affiliated bar foundation, or the Maryland Legal Services Corporation.
Cross reference: See Rule 19-705 (Disciplinary Fund).

(3) Bill; Request for Information; Compliance

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

(4) Method of Payment

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

(b) Change of Address

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

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

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

At the request of the Executive Director of the Client Protection Fund, the Attorneys and Judges Subcommittee recommends that Rules 19-605 and 19-606 be amended to delete the reference to attorneys providing their Social Security numbers, and that both Rules be modified to indicate that once an attorney provides his or her federal tax identification number, it is not necessary to provide the same information each year.

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

attorney is not required to provide it again.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

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

Rule 19-606. ENFORCEMENT OF OBLIGATIONS

(a) List of Delinquencies

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

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

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

(b) Required Notice of Delinquency

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

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

(c) Additional Discretionary Notice

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

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

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

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

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

(E) any other means the trustees deem appropriate.

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

(d) Temporary Suspension

(1) Proposed Order

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

(2) Entry of Order

If satisfied that the trustees have given the required notice to the attorneys remaining delinquent, the Court of Appeals shall enter a Temporary Suspension Order prohibiting each of them from practicing law in the State. The trustees shall mail by first class mail a copy of the Temporary

Suspension Order to each attorney named in the order at the attorney's last address as it appears on the records of the trustees. The mailing by the trustees of the copy constitutes service of the order on the attorney.

(3) Effect of Order

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

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

(e) Termination of Temporary Suspension Order

(1) Duty of Trustees

Upon the attorney's compliance with Rule 19-605 (a)(1)(A) and receipt of ~~the attorney's Social Security number, federal tax identification number or statement that the attorney has no such number, and~~ all amounts due by the attorney, including all related costs prescribed by the Court of Appeals or the trustees, the trustees shall:

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

(B) if a Temporary Suspension Order has been entered, inform the Court of

Appeals that the ~~Social Security number, federal tax identification number or statement that the attorney has no such number,~~ attorney has complied with Rule 19-605 (a)(1)(A) and full payment ~~have~~ has been received and request the Court to enter an order terminating the attorney's suspension; and

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

(2) Duty of Court

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

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

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

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

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

Mr. Frederick explained that a suggestion has been made to delete the requirement that an attorney must provide his or her Social Security number to the treasurer of the Client Protection Fund ("CPF"). This is in part because Code, Business

Occupations and Professions Article, §10-313 (b)(i) – which is included in the meeting materials – sets forth what has to be provided. The CPF has represented that it is already getting the Social Security numbers of attorneys. Ms. Harris commented that Ms. Moss, the Executive Director of the CPF, probably has the Social Security numbers of most attorneys. However, she does not have the Social Security numbers for inactive attorneys or for attorneys with special status. If the reference to Social Security numbers is taken out of Rule 19-605, the only other reference to being required to provide a Social Security number in connection with applying to be an attorney or being an attorney is in Rule 19-202, Application for Admission. The State Board of Law Examiners requires applicants to the Maryland Bar to provide their Social Security numbers. This is how the CPF gets the Social Security numbers of new members of the Bar.

Mr. Harris said that the Social Security numbers of attorneys are necessary. The new Attorney Information System ("AIS") is a portal to help attorneys view, update, and maintain their attorney status. The Social Security number helps to verify the identity of the attorney. If the reference to the Social Security number is taken out of Rule 19-605, and the CPF does not have the Social Security numbers of inactive attorneys, how would those numbers be obtained when an attorney would like to become active? Ms. Harris also expressed the concern that

although she is using the Social Security numbers in the AIS, if the reference to the numbers is deleted from Rule 19-605, some of the numbers could become unavailable.

The Chair asked Ms. Moss whether her office will be purging all of the Social Security numbers they have already received if the changes to Rule 19-605 are approved. Ms. Moss answered in the negative. She said that anyone who is inactive for any length of time cannot get into AIS. This is an issue. Mr. Frederick noted that if someone who is inactive wishes to get reinstated, the person would have to file a petition with the Court of Appeals. This would first go through the Office of Bar Counsel. The Court makes a determination as to whether the person can be reactivated. The Chair responded that there are two kinds of inactive status for attorneys, and Mr. Frederick is referring to the kind of inactive status that is the result of the attorney disciplinary process. Ms. Moss remarked that it is not difficult to be reactivated from the kind of inactive status that results from a voluntary request for that status that the attorney submits to the CPF.

Ms. Ortiz told the Committee that there are about 12,000 to 13,000 inactive attorneys who are receiving mail from the Judiciary about participating in AIS for whom her office does not have Social Security numbers. About 39,000 attorneys are on active status. A large amount of them had not been required to

provide their Social Security number. The Reporter suggested that Rule 19-605 could use the language "if it has not already been provided" pertaining to Social Security numbers, as it already does for federal tax identification numbers ("TIN"). Ms. Harris said that she would like the authority also to have the Social Security numbers. The AIS is a database that will be helpful to all attorneys. In the future, it could be argued that the State Court Administrator has no authority to have the attorneys' Social Security numbers at all. The Administrator may be in a position that he or she is not allowed to have them, or is allowed to have them in one area but not in another.

The Chair said that this issue had been discussed many times with no resolution. The CPF was the one judicial agency that had most attorneys' Social Security numbers. The State Board of Law Examiners started requiring them on applications, but not until the 1980s. The CPF had numbers for most active attorneys, and this became an issue because of several statutes. One, Code, Family Law Article, §10-119.3, requires the Court of Appeals, as a licensing agency, to share its database of Social Security numbers with the Child Support Enforcement Administration. Another, Code, Business Occupations and Professions Article, §10-313, requires the CPF to give the TIN of attorneys to the Comptroller, and if the attorney does not have a TIN, the CPF must give the attorney's Social Security

Number. The Judiciary was in the business of collecting these numbers for its own purposes and because the legislature required the CPF to give them to the executive agencies. Then, two attorneys in Virginia decided not to give the CPF their Social Security numbers, and they were decertified. They filed two lawsuits, both of which were dismissed. One was appealed to the 4th U.S. Circuit Court of Appeals, and that court affirmed. The federal courts held that the attorneys had to report their Social Security numbers. Ms. Moss reported that nine attorneys have been decertified and were not practicing because of failure to provide their Social Security numbers.

The Chair said that with AIS, there is an independent State judicial interest in having the Social Security numbers. Ms. Harris commented that Ms. Moss cannot verify that "John Smith" is a certain person, because there are 10 attorneys with the same name. The Social Security number is crucial in making the proper identification.

The Chair noted that a proposal was on the floor to not require attorneys to provide their Social Security numbers. He called for a motion. Ms. Harris moved to reject the proposal, and the motion was seconded. The motion carried by majority vote.

The Reporter commented that the Social Security number could be required but does not have to be given every year,

since it will not have changed. All of these Rules are going to have to be revamped in conjunction with AIS. The new system will be impacting Maryland attorneys. Some of the Rules that the Reporter identified as possibly needing changes are Rule 19-503, Reporting Pro Bono Legal Service; Rule 19-409, Interest on Funds, the IOLTA reporting Rule; and the CPF Rules, Rules 19-601 to 19-611.

The Reporter commented that another important issue is timing. Pro Bono and IOLTA reporting are currently on a calendar year basis, and the reporting deadline is February 15. The CPF reporting and payment of obligation are based on a fiscal year that runs from July 1 to June 30. The Subcommittee and others would like to align the reporting periods. These timing issues need to be considered.

The Chair said that the reporting period for Pro Bono and IOLTA is going to be moved to the fiscal year schedule beginning in 2018. Ms. Ortiz confirmed this. No report will be due in January 2018. The Reporter commented that the attorneys will need to be notified that for one time only, it is an 18-month reporting period, rather than a 12-month period.

Ms. Ortiz noted that the AIS program was initiated by Ms. Harris, and it is a good one. In Maryland, no single entity administers the legal profession. The Court of Appeals ultimately oversees, but other offices, including the State

Board of Law Examiners, the CPF, the Administrative Office of the Courts, and the Attorney Grievance Commission are also involved. She commented that the reporting and assessment requirements can be very confusing for an attorney. The benefit of the new AIS is that it provides for a single portal for attorneys interacting with all of the various entities so that attorneys can maintain their current status. Each year, attorneys will be able to use AIS to pay their annual CPF assessments and do their annual Pro Bono and IOLTA reporting, and they will be able to check on their disciplinary status. They can verify those events and see any Court of Appeals actions taken. For all of the agencies and for the Court, there is a single place that provides information about attorneys and their status.

Ms. Ortiz remarked that in the past, data had been maintained by separate entities. The consultant who has been working with the Judicial Information Systems ("JIS") and other Judicial agencies has been able to migrate all of the data into one place. It is important to have a single and consistent source of information in all of the courts in the State. They are now reaching out to attorneys and inviting them to go online and activate their registration. Information about all Maryland attorneys – active and inactive, disbarred, decertified, and any other status – is in this database now. Attorneys will have an

opportunity to log on and review that information, making sure it is up-to-date, as well as to create their account. As the Chair had noted, the database creates an opportunity to streamline some of the Rules concerning attorney status and how the Judiciary communicates with attorneys.

Ms. Ortiz said that attorneys can file in paper or electronically. About 80% of attorneys now file electronically, and this number may be even higher by now. The Rules require service by mail, which eventually should be eliminated. Ms. Ortiz noted that there should be a transition period with dual notice, both by U.S. mail and e-mail. Attorneys must have a valid e-mail address to sign up for the AIS account. The Chair pointed out that attorneys must have an e-mail address for MDEC. Ms. Ortiz noted that, as to the issue about providing the Social Security numbers, they are needed because what is being created is a virtual, singular system, and there has to be a way to verify the identity of users. The Social Security number is used one time, and the programmers cannot see it.

The Chair commented that is important to note that the information that one agency collects will not be shared with other agencies if the information is confidential. There are blocks throughout. Ms. Ortiz agreed. Each agency has different information. The responsibility for maintaining the information is partly in the Administrative Office of the Courts, but the

Court of Appeals has primary responsibility for updating the status of attorneys. An attorney can log on and view the information, but it cannot be edited. The Court of Appeals can enter new information about the status of an attorney. The CPF is the custodian of the contact information. The attorneys can update their own information on AIS. Ms. Ortiz commented that she had asked the Chair to expedite consideration of this issue, and she appreciates that he has done so.

Ms. Ortiz remarked that the next project will be to handle online CPF assessments this summer. The Chair remarked that the implementation of this has not yet been discussed. Ms. Ortiz said that she wanted to make sure that the notice requirement is changed. What is being considered is having dual process for a period, requiring U.S. mail notice and notice by e-mail. It is important for her office that Pro Bono and IOLTA reporting be online only. As she had said, at least 80% of attorneys are doing this now. Ms. Ortiz's office has had a contract for the last 15 years that they manage with a very competent vendor who sets up online reporting and handles the mailing process. Her office has insufficient staff to do this. Another contract is with a vendor who answers questions and researches attorney addresses when her office cannot find them.

Mr. Durfee asked if there are any states where only electronic notice and filing are used. Ms. Ortiz replied in the

affirmative, noting that she had given the Chair a list of these states. Some of Ms. Ortiz's staff had contacted every state bar association to ask how attorney reporting and notice requirements are handled. Thirteen states are doing an online process only. Mr. Durfee asked whether an attorney who is old and blind and not capable of using e-mail would still be required to do so. The attorney could be coached on how to use e-mail, but the attorney may not want to. The attorney may ask as a reasonable accommodation to make a filing in paper form. Ms. Ortiz responded that accommodations are individual to the person. Her office has worked with a blind attorney to test the AIS interface. Mr. Durfee commented that people cannot be forced to accept a particular accommodation. Ms. Ortiz responded that there are many different ways to address those kinds of concerns. Her office can handle data entry for people who require an accommodation.

The Reporter said that in attempting to draft the changes, she had noted several other policy or drafting issues requiring guidance from the Committee and the Subcommittee. She expressed the view that a separate Rule is needed to require attorneys to register by a certain date, to provide an e-mail address (currently there is no requirement to do so), to keep information up to date, to make payments to the CPF, to file the Pro Bono and IOLTA reports, and to receive notices and reminders

through the AIS. A Committee note can be added to Rule 19-605 providing that registration with MDEC is not the same as registration with AIS. They are two separate systems.

The Reporter commented that the bottom line is that the Subcommittee had suggested that there may need to be some modifications to the registration requirement, such as the exception for an attorney who is blind. At the Subcommittee meeting, there was a concern that if there is no stated standard to be applied, and an attorney takes the initiative to request an exemption to the registration requirement or the requirement to file by e-mail, then the exemption must be granted.

The Reporter asked how the Committee felt about a written request for an exemption. This was the suggestion made by the Subcommittee. The Chair responded that the court has a form to request an accommodation under the Americans with Disabilities Act, 42 U.S.C. §12101, et seq. (the "ADA"). The State Board of Law Examiners deals with this all the time. Someone requests an accommodation, explaining why it is needed. There is a process for denying or granting it. The Reporter asked whether the request would be made only as an ADA accommodation. The Chair answered that he was not suggesting that it has to be limited to that, but it is one possibility if there is a disability issue.

The Reporter commented that in some states, instead of using a credit card online, a person could print out a paper

copy of the bill for the CPF and then mail it in with a check. Ms. Smith said that her office is considering sending an e-mail and attaching the invoice in the e-mail, which the attorney can print out. The attorney can then send in a check. Ms. Ortiz said that she recommends that the attorney can request an invoice. If a paper invoice is sent, it is less likely that the attorney will pay attention to it. The Reporter pointed out that an attorney may not want to use his or her credit card, preferring to write a check.

The Reporter asked about a penalty for failure to register. Would it be a decertification? Judge Eaves responded that attorneys who fail to file their Pro Bono and IOLTA reports are decertified. Mr. Frederick explained that an attorney may be decertified by the Court of Appeals and not realize that he or she had been decertified. If the attorney then attempts to file a case on the last day before the statute of limitations runs, some unfortunate client is hoping that there is appropriate professional liability insurance. The attorney may be subsequently recertified but not readmitted *nunc pro tunc* and, in theory, all of what the attorney did while the attorney was decertified does not count.

Mr. Zarbin remarked that in the past, he had received a telephone call from judges of the Court of Appeals who are now retired. He was told that five attorneys were going to be

decertified and they were listed by name. Mr. Zarbin called each of the five attorneys and told them to pay their assessment immediately. The Chair noted that it is an informal system. Initially, when the IOLTA reporting was instituted and the Pro Bono reporting was later added, the issue came up as to what to do with the attorneys who do not comply with filing the reports. For a while, the Court was referring them to Bar Counsel.

The Chair commented that when the reporting requirements first started, the Court was getting 900 to 1,000 non-responses. The names of all of these people were being sent to Bar Counsel, who rightly complained. The Court then looked at some alternative enforcement mechanism, as opposed to using the attorney discipline system. The solution was the decertification process, so that Bar Counsel was not part of the enforcement system. This did not mean that Bar Counsel had to be excluded, because if someone continually did not comply, the person could be reported to Bar Counsel. A notice of deficiency was sent to the 900 to 1,000 attorneys, and about 400 to 500 would respond. Every year about 100 attorneys remained out of compliance, and some were attorneys who should have known better. The judges of the Court would call some of those who did not comply. Those who were called would quickly respond, and the decertification number was reduced to about 20 to 50 attorneys.

The Chair noted that there has always been an issue with this process. When the Court of Appeals suspends someone by going through Bar Counsel, that person's name is stricken from the list of attorneys by the Clerk of the Court of Appeals. The clerks of the U.S. District Court, all the circuit courts, the District Court, the Fourth Circuit, and the U.S. Supreme Court are sent notice of this. When an attorney is decertified, this wide-spread notice is not sent. The Maryland clerks are sent notice. It is two different systems, yet decertification under the Rule is an order of suspension just like an order that is entered when the Court of Appeals formally suspends the attorney as a result of the Attorney Grievance process. It is the same status, but it would not be a good idea to send the decertification notices back and forth to the various courts when the attorneys can get recertified so quickly. The system is efficient but not ideal. Attorneys do not seem to think that they are suspended if they have been decertified, but the Rules make clear that they are suspended. Mr. Frederick observed that the attorneys may not know that they are decertified. Mr. Laws remarked that he had heard from attorneys who said that they received no notice. An attorney may not know exactly when the decertification order may come, but there should have been prior notices to the attorney about non-compliance.

Mr. Frederick explained the problem. Notice is sent to the address of record, which may be out-of-date. The attorney may have left one firm and gone to another, but the notice is sent to the original firm, and it is thrown away. The same thing happens with the next two notices. The attorney may be young and not realize that he or she should have received a CPF assessment notice or the reporting of Pro Bono or IOLTA notice. Mr. Laws observed that an online filing system may have this kind of problem and more, because an attorney's e-mail address is often associated with a particular firm. It is incumbent on the attorney to change the address if the attorney changes firms.

Ms. Ortiz commented that her office handles Pro Bono and IOLTA reporting. The Rules require them to send out the mailing by January 10 of each year, send a reminder notice in March, and send a notice of possible decertification in May. They check with the court and CPF for each mailing to make sure that they have the current address. When the court decertifies attorneys, they mail the notice of that to the updated address that they have in their records. With an online system, attorneys will have to go to only one place to update their address, check their status, pay their assessment, and do their reports. As the Chair had noted, they have a fairly seamless reporting process. Although there are probably chronic non-compliant

attorneys, about 100 attorneys each year are decertified for failure to report Pro Bono time and IOLTA combined. They did not get the January, March, or May mailing, but for some reason, they do get the September decertification notice. About 20 to 30 percent of them file immediately.

Ms. Moss said that the CPF addresses non-compliance in a different way. The CPF sends the bills on July 1. The first late fee notice is sent on September 1 and the second late fee notice is sent on January 1. A reminder notice is sent on February 15. A final notice is sent by March 15. CPF employees spend the month of January calling the approximately 1,300 attorneys who have not paid their bills. They check the MSBA and Washington D.C. Bar Association lists, trying to track down attorneys who are required by law to change their address with the CPF within 30 days but have not done so. "She added that staff from Ms. Ortiz's office come to the CPF offices to check the addresses on file with the CPF.

The Chair said that it will be necessary to discuss some transition provisions with respect to the form of notices. He has the list of what other states are doing. Something will be drafted, and it will be brought back to the Rules Committee. Mr. Zarbin noted that some of the attorneys that he helped avoid decertification had, in fact, responded, but they had not filled out the forms correctly. The question as to whether the

attorney is the person who reports IOLTA for the firm is causing some confusion. Ms. Ortiz pointed out that her office does not review what is on the form; it simply checks that the form was submitted. Mr. Zarbin said that the Court had called him and told him that certain attorneys would be decertified, because they had not filled out the forms correctly.

Ms. Ortiz commented that the primary issue that is time-sensitive for her office is whether or not the timeline is changed for Pro Bono and IOLTA reporting. She explained that her office needs to know whether that is going to happen so that JIS can make the necessary changes. The Chair responded that he is aware of the time problem; however, it appears that not everything has been decided. Judge Eaves said that Judge Jensen and Sharon Goldsmith, Executive Director of the Pro Bono Resource Center of Maryland, had said that they did not object to changing the time of reporting. The Chair suggested that they could get together and work this out.

The Reporter asked whether anyone on the Rules Committee had a problem with the 18-month reporting change. No one responded. She said that it will be necessary for attorneys to be notified. Mr. Zarbin observed that the specialty bars could be asked to help. The Chair said that the MSBA can help with this process. With more than 40,000 attorneys admitted to

practice in Maryland, no matter what notification is done, some of them will not comply.

The Reporter requested guidance as to redrafting Rule 19-605. There are policy and logistical issues to be resolved. Mr. Zarbin remarked that he should be able to access the AIS site from the Court of Appeals website. Ms. Ortiz responded that this is the goal. The Reporter asked whether there should be no penalty for failure to register with the AIS system, but the penalty would result when an attorney failed to file his or her report. The Chair pointed out that the attorney cannot do his or her report unless the attorney is registered. The Reporter noted that the goal of AIS is to do all the notifications by e-mail. This works until an attorney does not pay. Should there be one mailing by U.S. mail before the attorney is decertified? Mr. Zarbin remarked that in the beginning, to be fair, notice will have to be given both ways so that everyone can get used to the new system. The Chair commented that the states with a similar system used both kinds of notice for a period of time. The Reporter asked what kind of mailing is appropriate once the AIS system is up and running. Judge Eaves suggested three mailings and then a final notice by mail. Ms. Harris added that the decertification notice should be by mail. The Reporter commented that this question raised due process issues. Ms. McBride observed that for many

attorneys, the practice of law is their life's work. The Reporter added that putting a postage stamp on the decertification notice is worth the expense.

Ms. Day asked why attorneys have to be notified by U.S. mail. Why are attorneys being coddled? Third notice by e-mail should be adequate. Mr. Zarbin commented that the problem with e-mail is that it cannot be assured that the person received it. The e-mail may go to spam, it may not go through, or the attorney is so inundated with e-mail that he or she does not see it. Mr. Laws asked whether the system could accommodate a second e-mail address. A young attorney whose employment may change could use a personal e-mail account. Ms. Smith answered that the system can accommodate as many e-mails as the attorney would like to have. The attorney can indicate which e-mail address he or she would like to use for certain types of notifications. The Reporter noted that before the attorney is decertified, the notice can go to all e-mail addresses on file for the person, even if the person did not want his or her personal e-mail used as their usual notification. Ms. Day asked whether this needs to be in a Rule. The Reporter replied that it does, because it may not happen if it is not codified.

The Chair commented that these details need to be discussed in a "brainstorming" session. The Reporter said that Jeffrey Shipley, Esq., Secretary to the State Board of Law Examiners,

has already registered and noted that the registration form asked for any other e-mail addresses. The attorney registering can designate which one he or she prefers, and the other ones can be listed as a private or personal e-mail address in the system. It is a good idea to program the system so that all e-mail addresses that the person has given as current are used to provide notice to the attorney. Mr. Shipley had said that he tried to register using his Judiciary e-mail address, and the system required that he use his personal e-mail address to get started. He was then able to change his preferred address to the Judiciary address. Ms. Smith told the Committee that unfortunately, the Judiciary portal made Mr. Shipley's Judiciary e-mail address his login, and there was a conflict. The login was the same as the e-mail address. The Reporter inquired whether this was going to be fixed. Ms. Smith answered that it is going to be fixed. The problem only applies to attorneys who are Judiciary employees. The Reporter reiterated that the main policy issues are using U.S. mail versus using e-mail for notices to the attorney and how much notice should be required before an attorney is decertified. Ms. Ortiz remarked that it is less onerous to send e-mail than it is to receive it. As long as AIS can be used for all incoming communications from attorneys, the mail that goes out can be programmed. They prefer an online system.

By consensus, the Committee remanded Rules 19-605 and 19-606 for redrafting.

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