STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Ninety-First Report to the Court of Appeals, transmitting thereby the proposed deletion of current Title 18, Chapter 400 and Rules 4-215 and 16-806; proposed adoption of new Title 12, Chapter 800 (Action to Quiet Title) and new Title 18, Chapter 400 (Judicial Disabilities and Discipline) and new Rules 2-413.1, 2-422.1, 2-510.1, 4-215, 4-215.1, 4-601.1, 16-506, 16-804, and 16-806; and proposed amendments to Title 15, Chapter 1300 (Structured Settlement Transfers) and Rules 1-101, 1-325, 1-325.1, 2-131, 2-402, 2-422, 2-510, 2-551, 3-131, 3-306, 3-308, 3-509, 3-701, 4-202, 4-212, 4-213, 4-213.1, 4-214, 4-216.1, 4-242, 4-347, 4-601, 5-609, 5-803, 5-902, 6-122, 6-125, 6-210, 6-302, 6-317, 6-416, 6-431, 6-432, 6-452, 7-202, 8-121, 8-122, 8-402, 8-412, 8-504, 14-216, 14-504, 15-205, 16-105, 16-207, 16-501, 16-906, 18-601, 19-301.2, 19-304.4, and 19-307.4.

The Committee’s One Hundred Ninety-First Report and the proposed Rules changes are set forth below.

Interested persons are asked to consider the Committee’s Report and proposed Rules changes and to forward on or before November 14, 2016 any written comments they may wish to make to:

Sandra F. Haines, Esq.

Reporter, Rules Committee

2011-D Commerce Park Drive

Annapolis, Maryland 21401

Bessie M. Decker
Clerk
Court of Appeals of Maryland

October 13, 2016

The Honorable Mary Ellen Barbera,
Chief Judge
The Honorable Clayton Greene, Jr.
The Honorable Sally D. Adkins
The Honorable Robert N. McDonald,
The Honorable Shirley M. Watts
The Honorable Michele D. Hotten
The Honorable Joseph M. Getty,
Judges
The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its One Hundred Ninety-First Report, and recommends that the Court adopt the new Rules and amendments to existing Rules set forth in this Report. The Report comprises 16 categories of proposals, some of which are carry-overs from earlier submissions.

CATEGORY 1

Category 1 consists of the latest revisions to the proposed Rules governing the Commission on Judicial Disabilities and the resolution of complaints made against judges (Title 18, Chapter 400, consisting of Rules 18-401 through 18-417). Revisions to the judicial discipline Rules were initially included in Part II of the Committee's 178th Report, submitted to the Court in June 2013. A hearing was held on that Part in October 2013, but no final action was taken at that time, as the plan was to deal with all three Parts of the 178th Report together, and Part III had not yet been completed.

Due to intervening matters of greater urgency, Part III, dealing with attorneys, could not be completed until March 2016, at which time it, along with updating Supplements to Parts I and II, were submitted. During the interim, the Committee considered a number of additional changes to the judicial discipline Rules recommended by the Chair of the Judicial

Disabilities Commission and Investigative Counsel, some of which were included in the Supplement to Part II.

Following the submission of that Supplement, but prior to the Court's hearing on it, concerns regarding some of those changes were expressed to the Committee by some former members of the Commission and the Inquiry Board. At the Committee's request, the Court deferred action on those Rules in order to give the Committee an opportunity to discuss the concerns with those who had expressed them and with the current Chairs of the Commission and Inquiry Board and Investigative Counsel. With that exception, and a few others, the Court approved the balance of the 178th Report (Part III and the Supplements to Parts I and II), to take effect July 1, 2016. That decision left the *current* judicial discipline Rules –- renumbered Title 18, Chapter 400 -- intact for the time being.

Further discussions occurred and, as a result, compromises were reached. There now appears to be agreement among those parties and the Rules Committee. The proposed Rules in Category 1 reflect those agreements. For the convenience of the Court and, as was done in the initial submission of Part II in 2013 and in the Supplement to that Part, Title 18, Chapter 400 is submitted in two formats – a "clean" version showing how the Rules will read if adopted, and, as APPENDIX A to this Report, a "marked" version showing, through underlining and strikeouts, the changes made to the current Rules.

As noted in the Supplement to Part II, most of the changes involve a reorganization and updating of the Rules, making some administrative changes, and clarifying some provisions. There are, however, a few more substantive changes to which the Court's attention is drawn.

First, although the Maryland Constitution establishes the name of the Commission as the Commission on Judicial Disabilities (Art. IV, §§4A and 4B), it recognizes that the Commission's authority extends not just to *disabilities* on the part of judges but to *sanctionable conduct* as well, and, in fact, the great majority of complaints dealt with by the Commission and by the Court have involved allegations of sanctionable conduct rather than disability, although occasionally there is some overlap. The distinction is an important one, both in terms of accurately defining the role of the Commission, the Inquiry Board, and the Court in dealing with complaints against judges and in assuring that dispositions recommended or imposed fairly match the circumstances.

In that regard, the Committee proposes to caption the Title 18, Chapter 400 Rules "Judicial Disabilities and Discipline," but to give greater recognition to the Constitutionally

permissible disposition of mandatory retirement. Mandatory retirement which is not regarded as discipline, may be appropriate when the conduct that brought the judge before the Commission was truly the product of a *disability*, as defined in Rule 18-401 (h), rather than inexcusable misconduct, for which a reprimand, conditional diversion (currently referred to as deferred discipline) censure, suspension, or removal from office may be appropriate. *See* proposed Rules 18-405, 18-407, 18-412, and 18-414.

Second, the current Rules permit a judge to reject an offer of dismissal with a warning or a private reprimand, and several judges have done that, either in the honest belief that they have done nothing wrong or fearful of the consequences of receiving a "warning" or a reprimand, should that ever become public. That leaves the Commission with the choice of either dismissing the complaint outright or proceeding with the filing of formal charges, neither of which it believes is the most appropriate disposition.

The Rules Committee does not propose to alter the right of the judge to reject such an offer but recommends two changes that may help remove an impediment to making those two dispositions more acceptable. Although other States permit their counterpart agency to couple a dismissal with a letter of some kind, some use a description other than "warning," which has a negative and confrontational connotation. The Committee proposes substituting "letter of cautionary advice," coupled with a Committee note to Rule 18-408 -- the dismissal Rule -- explaining the remedial purpose of the attachment, in order to soften its image but still send the desired message.

The Committee also proposes, in Rule 18-406, dealing with proceedings before the Inquiry Board, to permit the Board, *with the consent of the judge*, to convene a peer review panel consisting of two judges of the same level of court as the judge to meet privately with the judge, offer their neutral evaluation, and suggest options for the judge to consider. This panel would not be part of the formal disciplinary process; it would not act as a mediator or make any findings, and its meeting with the judge would be confidential. The judge may freely reject any suggestions his or her colleagues may offer. A somewhat similar process seems to have worked well in attorney grievance cases.

Third, under the current Rule, all recommendations of Investigative Counsel, including outright dismissal of the complaint without a warning, go to the Inquiry Board for its review and then to the Commission, which has final authority over the dismissal. In the last two fiscal years (FY 2015 and 2016), Investigative Counsel recommended that 186 complaints be

dismissed without a warning, all of which were approved by the Board and ultimately by the Commission.

The Committee recommends that recommendations by Investigative Counsel of outright dismissal of the complaint be sent directly to the Commission, to avoid the double proceeding. The Chairs of the Commission and the Inquiry Board, as well as Investigative Counsel concur in this recommendation.

The Rules Committee does not view this recommendation as detracting from the important role played by the Inquiry Board in shielding the Commission, which ultimately may have to "try the case," from undue involvement in the investigation phase. It is unlikely that the judge will ever object to a recommendation of outright dismissal, and, if the Commission were to have any qualm about approving such a recommendation, it would have the authority to refer the matter to the Inquiry Board for consideration. Under this proposal, recommended dismissals accompanied by a letter of cautionary advice would continue to be referred to the Inquiry Board, because (1) the judge may wish to reject that proposed disposition and thereby create a contested issue, and (2) the Board's views on the content of the proposed letter would be useful.

Fourth, current Rule 18-406 (c) [former Rule 16-807 (c)] permits the Commission, with the consent of the judge, to enter into what the Rule refers to as a "deferred discipline agreement." That is probably a misnomer, as the hope and expectation is that there will be no discipline. It is akin to the "conditional diversion agreement" provided for in the attorney grievance Rules, and the Committee believes that is a more accurate description of what is intended. The Committee proposes using that term.

Fifth, another new addition is Rule 18-416, to fill a gap in the current Rules. On several occasions, the Court has suspended a judge for a set period of time and simultaneously suspended execution of part of that suspension, subject to compliance with certain conditions. It is a form of probation, although that term has not been used. There is no current Rule on that, which leaves open the question of who is to monitor compliance with the conditions set by the Court, how any non-compliance would be reported to the Court, and what would happen then. Rule 18-416 places that option into the Rules and, unless the Court orders otherwise, directs that the Commission monitor compliance and report any material failure of compliance on the part of the judge but permits the Commission to delegate the basic monitoring to Investigative Counsel. Upon a report from Investigative Counsel of a material violation by the judge, the Commission would schedule a hearing and report its findings to the Court. The judge would have the right to file a response.

The Court would hold a hearing and take whatever action it deems appropriate.

Finally, the Committee proposes in Rule 18-417, dealing with the confidentiality of proceedings before Investigative Counsel, the Inquiry Board, and the Commission, that, at the request of the Chief Judge of the Court of Appeals, the Commission disclose to the Chief Judge (1) whether a complaint is pending against the judge who is the subject of the request, and (2) the disposition of each complaint that had been filed against that judge within the preceding five years. The Rule would permit the Chief Judge to share that information with the members of the Court. The Court, or the Chief Judge, may need this information in determining whether to approve a retired (senior) judge for recall, in deciding whether to designate the judge as an administrative judge, cross-designate the judge to sit on another court, or to appoint the judge to a committee.

CATEGORY 2

Category 2 consists of amendments to Rules 1-325 and 1-325.1

Rule 1-325 (Waiver of Costs – Generally) currently applies only to original civil actions in a circuit court or the District Court. At the request of the Director of the Access to Justice Department of the Administrative Office of the Courts (AOC), the Committee proposes an addition that would expand the scope of the Rule to include requests for relief that are civil in nature but are filed in a criminal action, such as petitions for expungement and requests to shield all or part of a criminal record. A housekeeping amendment also is proposed to subsection (f)(2)(A) of the Rule. A clarifying amendment is proposed to Rule 1-325.1, dealing with the waiver of prepaid appellate costs.

CATEGORY 3

Category 3 comprises proposed additions or changes to Rules in Title 2 (Civil Procedure – Circuit Court) and Rules 3-131, 4-214, and 19-304.4.

First: An amendment is proposed to Rule 2-131 (and to Rule 3-131) to require that the entry of an attorney's appearance be in writing. That is required in criminal cases (Rule 4-214 (a)), and the Committee believes it should be required in civil cases as well. Appearances entered orally in open court may be difficult for clerks or other parties to locate when needed to serve subsequent papers. There is a simple form available online and in the clerks' offices for the entry of an appearance. As a housekeeping amendment, the Committee recommends substituting "notice of appearance" for the current

"request for the entry of appearance." Although the court may strike an attorney's appearance in certain circumstances, the attorney normally does not need the court's permission to enter one. Conforming amendments are proposed for Rule 4-214.

Second: The Committee was advised that disagreements have arisen regarding who may attend a deposition in a civil matter. Proposed new Rule 2-413.1 addresses that issue. Subject to an agreement among the parties or a court order, it states who may attend.

Third: New Rules 2-422.1 and 2-510.1 and amendments to Rules 2-422 and 2-510 are proposed, in part to implement the enactment, in 2008, of the Maryland Uniform Interstate Depositions and Discovery Act (Code, Courts Article, §§9-401 through 9-407). A copy of that statute is attached as APPENDIX B to this Report. It was not immediately clear, when the statute was enacted, what, if any, Rules changes might be needed, but a number of issues have arisen that make some changes desirable.

The Uniform Act, which has been adopted in at least 28 States, enables a party to an action in another State that has enacted the Uniform Act to obtain a subpoena from a Maryland court requiring a Maryland resident, including a nonparty to the foreign action, to attend a deposition, produce documents, and permit the inspection of property, including real property, in the possession or control of the Maryland resident. The proposed Rules changes have two principal objectives -- to conform as much as possible the procedures set forth in the statute with procedures applicable in cases pending in Maryland courts, and, with respect to discovery from nonparties, to give litigants in Maryland actions rights equivalent to those afforded by the General Assembly to litigants in foreign actions.

Current Rule 2-422 permits a party to serve a request on another party (1) to produce documents and electronically stored information for inspection, copying, and testing, and (2) to permit entry upon designated land or other property in the possession or under the control of the other party for the purposes set forth in the Rule. In *Webb v. Joyce*, 108 Md. App. 512 (1996), the Court of Special Appeals held that Rule 2-422 does *not* permit a party to inspect property in the possession or control of a *nonparty*. Following that decision, the Rules Committee, in its 147th Report, proposed a new Rule that would have provided that authority, but, by Order of this Court dated June 6, 2000, that proposal was rejected.

Two relevant things have occurred since then. In *Stokes v. 835 N. Washington Street, LLC*, 141 Md. App. 214 (2001), the

Court of Special Appeals held that, notwithstanding the limited scope of Rule 2-422, the circuit courts have the inherent equitable power to permit inspection of a nonparty's property through the device of a "bill of discovery," a holding that was confirmed in *Johnson v. Franklin*, 223 Md. App. 273 (2015). Although, being equitable in nature, that form of relief is not assured, the *Johnson* Court concluded that bills of discovery are "favored in equity" and that they "should be granted unless there is some well founded objection against the exercise of the court's discretion." *Id.*, at 287.

Equally to the point, the Uniform Act expressly permits a party to a foreign action to obtain a Maryland subpoena to inspect the property of a nonparty in Maryland, and the Committee believes, as a matter of fairness, that parties to a Maryland action should have the same right, without having to resort to an equitable bill of discovery. To achieve that objective, the Committee proposes a new Rule 2-422.1 to deal both with subpoenas requested under the Uniform Act and subpoenas to obtain entry on property of a nonparty and to make conforming amendments to Rule 2-422.

The Uniform Act affects as well Rule 2-510, dealing more directly with subpoenas. That Rule applies to subpoenas for attendance both at depositions and at court proceedings but focuses on actions pending in Maryland circuit courts. The Uniform Act applies only to subpoenas for depositions, but it contains requirements and limitations not entirely relevant to subpoenas requested or issued in Maryland cases. For convenience and clarity, the Committee proposes to deal with subpoenas under the Uniform Act or to inspect property of a nonparty in a new Rule 2-510.1 and, in that regard, make only conforming amendments to Rule 2-510.

Fourth: Apart from the changes prompted by the Uniform Act, the Committee believes there is a need to address a very different problem that also involves Rules 2-510 and 2-510.1, of what should occur when a party, in response to a discovery request, inadvertently discloses information that is subject to a claim of privilege or protection for other reasons. This is not a new problem but one that has become exacerbated by discovery requests for electronically stored information that can involve hundreds or thousands of documents which, due to time constraints on responding, need to be located and reviewed fairly quickly. It has an impact as well on Rule 19-304.4 (formerly Maryland Lawyers' Rule of Professional Conduct (MLRPC) 4.4) (Respect for Rights of Third Persons) and Rule 2-402 (Scope of Discovery).

As indicated in the Reporter's note to Rule 19-304.4, in 2007, the Maryland State Bar Association Committee on Ethics

concluded that, under MLRPC 4.4, there was no ethical obligation on the part of a receiving attorney to notify the sending attorney that there may have been an inadvertent transmittal of privileged material or to refrain from examining that material. At the time, MLRPC 4.4 did not conflict with the Maryland discovery Rules, although it did conflict with 2006 changes to the Federal Rules of Civil Procedure and with the Ethics 2000 Amendments to ABA Model Rule 4.4 (b). In 2008, that conflict was resolved when the Court, as part of its approval of the Committee's 158th Report, amended Rule 2-402 to require the receiving party, upon notice from the sending party that information produced in discovery is subject to a claim of privilege or protection, either to return, sequester, or destroy the information or file a motion under seal to determine the validity of the claim. *See* Rule 2-402 (e).

With that change, Rule 19-304.4 -- an ethical Rule -- needs to be brought into alignment with Rule 2-402. In drafting the necessary changes, the Committee has endeavored to clarify the proper procedure to be followed, both in Rule 2-402 and in Rules 2-510, 2-510.1, and 19-304.4. There is, at the outset, a reciprocal obligation. The sending party who subsequently realizes that information that is subject to protection was inadvertently sent must notify the receiving party of that claim and the basis for it. That is in current Rules 2-402 (e) and 2-510 (k)(2). Added to both of those Rules and to Rule 19-304.4 is the duty of a party who receives information that the party knows or should know was inadvertently sent to notify the sending party. Either party may file a motion under seal to determine the validity of a claim of protection, and, if such a motion is filed, the parties must preserve the item until the claim is resolved. The proposed changes to Rule 19-304.4 will conform that Rule to ABA Model Rule 4.4.

Finally: The Committee proposes to amend Rule 2-551 (In Banc Review), to bring that Rule closer in alignment with Rules 8-202 (c) and 8-602 (d) when a notice for in banc review is filed, and another party thereafter files a timely motion pursuant to Rule 2-532, 2-533, or 2-534. The notice will not deprive the court of jurisdiction to resolve the motion and will be treated as filed on the same day as, but after withdrawal or entry of an order disposing of the motion for post-trial relief.

CATEGORY 4

Category 4 consists of amendments to Rules 3-306, 3-308, 3-509, 3-701, and 5-902, all intended to implement Chapter 579 of the Laws of 2016, dealing with assigned consumer debt collection actions in the District Court.

CATEGORY 5

Category 5 consists of revisions and amendments to several Rules of criminal procedure.

Rules 4-215 and 4-215.1

The major item in Category 5 is the splitting and rewriting of Rule 4-215, dealing with the defendant's waiver of the right to an attorney. That Rule probably has produced more appellate litigation than any other Rule of criminal procedure; in one publisher's print edition of the Maryland Rules, there are 15 pages of small-print, single-spaced annotations following the Rule. With the assistance of the Attorney General's Office, the Office of the Public Defender, State's Attorneys, private defense attorneys, and judges, the Rules Committee has attempted to make the requirements and the procedure more clear, in part by (1) splitting the Rule into two –- Rule 4-215 for the District Court and Rule 4-215.1 for the circuit courts; (2) taking greater account of the how criminal cases progress chronologically; and (3) taking account as well of applicable case law and the coming ability of District Court commissioners to electronically record initial appearance and preliminary hearing proceedings.

Although this makes the combined text of the two Rules longer than the current Rule, hopefully it will shrink the number of additional annotations. The principal changes are as follows:

First: Under the current Rule, if a defendant appears in court without an attorney and indicates a desire to waive the right to one, the court may not accept the waiver until after an examination of the defendant to determine that the waiver is a knowing and voluntary one. The Rule permits that examination to be conducted by the court, by the State's Attorney, or in part by both. The Committee believes that the examination should be conducted solely by the court, whose responsibility it is to make the required findings. Recommended forms for such an inquiry are available to judges. A comparable provision is proposed for Rule 4-215.1.

Second: One of the duties of the court at the first appearance of the defendant without an attorney is to advise the defendant "of the importance of having an attorney." The *content* of that advice, which may be the most critical piece of advice given to the defendant, has been left largely to case law. The Committee proposes adding a Committee note, based on that case law, elaborating on what should be told to the defendant, so the defendant has a clearer and more complete understanding of how an attorney can help in his or her case and

to avoid a later appellate finding that a waiver was invalid because an important element of the advice was omitted. The Committee also recommends that a similar statement be added to the charging document. The intent is not to add any new items of advice not already required by the decisions of this Court but just to alert the judges to what is required. A comparable provision is proposed for Rule 4-215.1.

Third: Rule 4-215 permits a District Court judge, in determining whether a defendant has waived the right to an attorney by inaction, to rely on the fact that the defendant was advised of the right to an attorney by a District Court commissioner at an initial appearance or a preliminary hearing pursuant to Rule 4-213 or 4-216. At present, the principal evidence that such advice was given is the certification of the commissioner and a signed acknowledgment by the defendant.

Pursuant to a proposed amendment to Rule 16-501 and proposed new Rule 16-506, described in Category 13, District Court commissioners will soon be electronically recording initial appearance and preliminary inquiry proceedings. The Committee is recommending a Committee note to new Rule 4-215 (e)(1) permitting a District Court judge to listen to and rely on that recording in determining whether there has been a waiver by inaction if there is any genuine dispute about what occurred at the proceeding before the commissioner. Because a circuit court judge may not rely on advice given by a District Court commissioner, no comparable provision is included in Rule 4-215.1.

Fourth: In light of *Dykes v. State*, 444 Md. 642 (2015) and *State v. Westray*, 444 Md. 672 (2015), the Committee proposes to elaborate some on what must occur when a defendant moves to discharge his or her current attorney, and the court finds that the discharge is meritorious. If the discharged attorney had been assigned by the Office of the Public Defender (OPD), the defendant remains indigent, and OPD declines to appoint a replacement, the court must appoint an attorney for the defendant at the cost of the State, unless the defendant validly waives the right to an attorney. If the discharged attorney had not been assigned by OPD, and the defendant remains indigent, the court must inform the defendant of the need to contact OPD immediately. Comparable provisions are proposed for Rule 4-215.1.

Fifth: Current Rule 4-215 permits a circuit court judge, in determining a waiver by inaction, to rely on advice of the right to an attorney given to the defendant by a District Court judge upon the defendant's demand for a jury trial. The Committee does not propose to change that but proposes (1) in Rule 4-215 (f) that the District Court judge be required to

certify in a document that such advice was given and that the clerk docket that certification and include it in the record transmitted to the circuit court, and (2) in Rule 4-215.1 (e)(3) to make clear that a circuit court judge may not find the defendant's appearance without an attorney to be without merit absent a finding that the defendant had a reasonable opportunity after the demand for jury trial was made to obtain an attorney. A Committee note is added noting that, in counties where the circuit court attempts to set a jury trial very quickly, the court must take into account whether the defendant actually had a reasonable opportunity to obtain an attorney.

In this Report, Rules 4-215 and 4-215.1 are presented as "new" Rules; however, for the convenience of the Court, "marked" versions showing, through underlining and strikeouts, how each Rule differs from current Rule 4-215 are attached as APPENDIX C.

Conforming amendments are proposed to Rules 4-212, 4-216.1, 4-347, 15-205, and 16-207 and are included in amendments to Rule 4-214 (Category 3) and Rule 4-213 (below).

Other Title 4 Rules

Rule 4-202 (Charging Document – Content) is amended to add a requirement that the notice of right to attorney contain a statement that an attorney can be helpful in explaining any potential collateral consequences of a conviction, including immigration consequences.

Rule 4-213 (Initial Appearance of Defendant) is amended to require the judicial officer to inform the defendant of possible enhanced penalties.

Rule 4-213.1 (c) (Appointment, Appearance, or Waiver of Attorney at Initial Appearance) is amended to require the judicial officer to advise the defendant of the importance of having an attorney at the initial appearance.

Rule 4-242 (Pleas) is amended to require that the defendant be advised of possible immigration consequences of a conviction when entering a plea of not guilty on an agreed statement of facts or on stipulated evidence and to add a cross reference to *Padilla v. Kentucky*, 559 U.S. 356 (2010) and *State v. Prado*, 448 Md. 664 (2016)

Rule 4-601 (Search Warrants) is amended in two respects. First, the requirement that, if the return of an executed warrant is delivered to the judge electronically, the officer deliver the original return, warrant, and inventory to the judge the next day is deleted. The purpose of allowing electronic transmission is to avoid the officer having to appear personally. Second, the current requirement that an executed

warrant, the return, and other papers be filed with the clerk of the county *from which the property was seized* is changed to require that those papers be filed with the clerk of the county *from which the warrant was issued*. That appears to be the current practice.

A new Rule 4-601.1 is proposed to permit applications for and orders authorizing the installation and use of pen registers and trap and trace devices to be transmitted electronically. The installation of those devices is provided for in Code, Courts Article, §§10-4B-01 through 10-4B-05. Although the statute requires applications to be in writing, it does not specify whether they, and approving orders, may be transmitted electronically, as applications for search warrants may be, and it appears that there is some disagreement whether electronic transmissions are allowed. The Committee is of the view that, if applications and warrants may be transmitted electronically, these applications and orders should be as well. The text of the Rule is patterned after comparable language in Rule 4-601, dealing with search warrants.

CATEGORY 6

Category 6 consists of amendments to Rules 5-609 and 5-803. The amendment to Rule 5-609 (Impeachment by Evidence of Conviction of Crime) conforms the Rule to Chapter 531, Laws of 2016, which repealed the prohibition against testimony by a convicted perjurer but permits evidence of a perjury conviction to be admitted for the purpose of impeachment regardless of the date of the conviction.

The amendment to Rule 5-803 (Hearsay Exceptions: Unavailability of Declarant Not Required) takes account of the recently inaugurated use of body cameras by law enforcement officers. See Code, Courts Article, §10-402 and Code, Public Safety Article, §3-511. Under the public record exception to the hearsay Rule embodied in Rule 5-803 (b)(8)(A)(ii), a record made by a public agency setting forth matters observed pursuant to a duty imposed by law as to which there was a duty to report is not generally excluded as hearsay. Subsection (b)(8)(C) of the Rule, however, provides that a record of matters observed by a law enforcement person is not admissible under that paragraph when offered against an accused in a criminal action.

Concern was expressed by the Chair of the State Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers that subsection (b)(8)(C), which was intended to remove police *narrative* reports from the hearsay exception, might be held to apply as well to recordings made by body cameras which, if made in conformance with the policies established pursuant to law by the Maryland Police Training

Commission, will be more reliable and trustworthy. The proposed amendment adds a new subsection (b)(8)(D) to provide that an electronic recording of a matter by a body camera worn by a law enforcement person or by another type of recording device employed by a law enforcement agency may be admitted when offered against an accused if (i) it is properly authenticated, (ii) it was made contemporaneously with the matter recorded, and (iii) circumstances do not indicate a lack of trustworthiness.

CATEGORY 7

Category 7 consists of amendments to Rule 7-202, dealing with the methods of securing judicial review of administrative agency decisions. In 2015, the Court approved amendments to that Rule permitting the Workers' Compensation Commission to send notices of petitions for judicial review electronically to those parties who have consented to that form of notice. The State Department of Environment asked that the Rule permit it to do the same, noting that, in many of their administrative cases, there were scores of parties. With the approval of the Attorney General's Office, the Committee recommends that all agencies be permitted to use that form of transmission to those parties who have consented to receive notices in that manner. This is not stated as a duty, but only as an option.

CATEGORY 8

Category 8 consists of amendments to Rules 8-121, 8-122, 8-402, 8-412, and 8-504. The amendments to Rules 8-121 and 8-122 are intended to protect the privacy of children who get caught up in appellate proceedings by requiring that they and their parents be identified in court papers by their initials rather than their names. This is largely being done already.

Under current Rule 8-402, corporations must enter an appearance by an attorney; other persons -- LLCs, other kinds of associations or entities -- may proceed as self-represented. That differs from the Rules applicable to the trial courts (Rules 2-131 and 3-131). Under those Rules, the right to proceed without an attorney is limited to individuals, *i.e.,* human beings. The proposed amendment conforms the appellate Rule to the trial court Rules; only individuals will be allowed to proceed as self-represented in the appellate courts.

The amendment to Rule 8-412 is a clarifying one. The amendment to Rule 8-504 will require that, unless otherwise ordered by the Court, an appendix in an appeal in a juvenile or termination of parental rights case be filed as a separate document under seal. The intent is to eliminate the need for wholesale redactions of identifying information.

CATEGORY 9

Category 9 consists of amendments to Rules 6-122, 6-125, 6-210, 6-302, 6-317, 6-416, 6-431, 6-432, and 6-452. With one exception, the amendments are largely clarifying ones. The exception deals with the manner in which certain notices may be sent by registers of wills. Some of the current Rules require that notices be sent by certified mail. A group of registers reported that certified mail is expensive and that in many cases, the return receipt either is not returned or is returned marked "unclaimed," requiring the registers to then send a second notice by first class mail. They requested that the Rules allow notices to be sent by first class mail in the first instance, which they regarded as more likely to be received.

The Probate/Fiduciary Subcommittee regarded that request as reasonable, but the full Committee felt differently. The Committee believed that the first notice, to interested persons, should be sent both by certified and first class mail because that notice is what informs interested persons of the opening of the estate and the possibility that they may have an interest in it. The Committee agreed that subsequent notices could be sent by first class mail. Amendments to Rules 6-210, 6-302, 6-317, 6-432, and 6-452 reflect the Committee's view.

CATEGORY 10

Category 10 consists of a new Chapter 800 to Title 12 (Rules 12-801 through 12-811), dealing with actions to quiet title to property, and a conforming amendment to Rule 1-101. Such actions have been authorized for many years by Code, Real Property Article, §14-108, but no Rules were adopted to set forth the procedures for prosecuting them, and the Maryland Land Title Association reported that inconsistent procedures were being used in the various counties. The Legislature responded by enacting Chapter 396, Laws of 2016 (Code, Real Property Article, §§14-601 through 14-621). The new statute sets forth uniform requirements and procedures for such actions, but the Committee is of the view that a set of Rules to implement the statute would be useful. A copy of the 2016 statute is attached as APPENDIX D.

CATEGORY 11

Category 11 consists of amendments to Rules 14-216 (b) and 14-504.

Rule 14-216 (b) deals with deficiency judgments following a foreclosure sale. It permits a secured party to move for such a judgment at any time within three years after final ratification of the auditor's report and permits service of the motion pursuant to Rule 1-321. Rule 1-321 allows service by mailing

the motion to the address most recently stated in a pleading or paper filed by the party to be served, which often is the property that was in foreclosure. If the motion is filed any appreciable time after ratification of the auditor's report, however, the party to be served is not likely to still be at that property and therefore not likely to get the notice. The Committee recommends that service be in accordance with Rule 2-121 (personal service). This may be the first notice to the borrower/former homeowner that a money judgment is being sought.

Rule 14-504 (Notice to Persons Not Named as Defendants) provides for notice to homeowners' associations if any part of the property is owned by the association. The proposed amendment applies that requirement to condominium associations as well, to the extent they own any of the property.

CATEGORY 12

Category 12 consists of amendments to some of the structured settlement transfer Rules in Title 15, Chapter 1300 of the Maryland Rules. Those Rules were adopted last December in the wake of serious concerns about the manner in which petitions for court approval of transfers of structured settlement benefits were being handled by some factoring companies and by some judges. It was anticipated when the Rules were being drafted and when they were presented to the Court that legislation in the 2016 session was likely, but it was critical to have the Rules in place as soon as possible. Legislation sponsored by the Attorney General was enacted in the 2016 session (Chapter 722, Laws of 2016), some provisions of which require amendments to some of the Rules.

CATEGORY 13

Category 13 consists of additions to four Rules in Title 16. As noted in the discussion of Category 5, it is anticipated that, by the end of this year, District Court commissioners will have available in their offices equipment that will allow them to electronically record proceedings. In part because of penumbral aspects of making such recordings -- what is to be recorded, control over the recordings, redactions, access, etc. -- which are covered in the Rules dealing with electronic recordings of *court* proceedings, it became important to have Rules dealing with these recordings as well. That is provided for in amendments to Rule 16-501 and new Rule 16-506.

The second matter dealt with in this Category is a revision of proposed Rule 16-804, dealing with conflicting assignments undertaken by attorneys. The initial version of that Rule, which largely was a mere codification of an Administrative Order of the Chief Judge that had been in existence for 40 years, was

presented to the Court in the Supplement to Part I of the Committee's 178th Report and was considered by the Court last May. Although there had been no reported problems with the Administrative Order, and no comments had been received about the proposed codification of that Order, 14 attorneys appeared at the Court hearing in opposition to it.

It may well be that the quiescence over the 40-year period is attributable to the fact that few attorneys or judges were aware of the Administrative Order, and, indeed, transparency was the main reason the Committee chose to recommend that it be codified in a Rule. Given the belated opposition, which caught the Committee, and likely the Court, by surprise, the Court remanded the matter to the Committee for further consideration.

The Committee met with some of the attorneys who had appeared at the hearing, as well as others, and concluded that there was a better, more practical way to deal with the issue. The contested part of the proposed Rule was substantially redrafted and with the support of the attorneys who had worked with the Committee on the revisions, was approved by the full Committee. It does not absolutely preclude attorneys from accepting conflicting assignments, as the Administrative Order did, but it does place reasonable requirements on them when they do so -- requirements that, for the most part, they have anyway under the Rules of Professional Conduct.

The fourth Rule amended in this Category is Rule 16-906. The only change is the addition of a cross-reference to a new statute governing the confidentiality of court records pertaining to a citation issued for the use or possession of less than 10 grams of marijuana. The Rules Committee currently has under review all of the Rules relating to access to court records.

CATEGORY 14

Category 14 consists of a revision of Rule 16-806 (Judicial Personnel Policies and Procedures) and amendments to Rules 16-105 (Circuit Court – County Administrative Judge) and 18-601 (Judicial Leave).

Rule 16-806

Apart from judges, there are five basic categories of judicial personnel: (1) employees in the AOC, (2) District Court employees, (3) circuit court clerks, (4) employees in agencies such as the Board of Law Examiners, the Attorney Grievance Commission, the Judicial Disabilities Commission, and the Client Protection Fund, and (5) circuit court employees, such as judges' secretaries, law clerks, magistrates, jury commissioners, and others who may be paid by the county but are

essentially at-will employees who serve at the pleasure of a judge or the court. There are personnel plans or policies and procedures in existence that cover the first four categories – policies governing hiring, classification, promotion, discipline, grievance procedures.

With respect to the fifth category, because those employees are largely at-will, the full range of those personnel policies do not apply, but those employees are subject to and do enjoy the protection of Federal and State equal employment opportunity, anti-discrimination, anti-harassment, and anti-nepotism laws. What has been missing is clear notice (1) that they are subject to those supervening laws, (2) of the rights and responsibilities of both the employees and their supervisors with regard to those laws, and (3) of how to report and redress alleged violations.

Proposed revised Rule 16-806 is intended to fill that gap. It directs the State Court Administrator to develop, for consideration and approval by the Chief Judge of the Court of Appeals, policies and procedures dealing with those matters for *all* judicial employees and more general policies and procedures for the first four categories. It directs the county administrative judges to develop, for consideration and approval by the Chief Judge of the Court of Appeals, more general policies for the Category 5 employees of their respective courts, so long as those policies are consistent with the equal employment opportunity, anti-discrimination, anti-harassment, and anti-nepotism policies developed by the State Court Administrator as approved by the Chief Judge. Because those employees are at-will, any more general policies necessarily will be more limited than those applicable to the other categories.

Proposed amendments to Rule 16-105 conform it to revised Rule 16-806.

Rule 18-601

A proposed updating of the current Rule on judicial absences was presented to the Court in the Supplement to Part II of the Committee's 178th Report, but the Court deferred action on that proposal and, subject to further consideration, kept in place, but renumbered, the then-current Rule. After further discussions with the State Court Administrator and the Chief Judge, the Committee has revised slightly the Rule proposed in the Supplement. It keeps in the Rule the current entitlements of judges to not more than 27 days of annual leave, six days of personal leave, unlimited sick leave for the judge's illness, and additional leave for illnesses or disabilities of members of the judge's family, subject to verifications, limitations, and

conditions contained in a Policy on Judicial Absences developed by the State Court Administrator and approved by the Court of Appeals. Under the current Rule, policies of that kind are contained in an Administrative Order of the Chief Judge.

CATEGORY 15

Category 15 consists of a new Comment 12 to Rule 19-301.2, to address an attorney's ethical obligation for advising clients with respect to conducting medical marijuana activities.

Section (d) of the Rule prohibits an attorney from counseling or assisting a client in engaging in conduct that the attorney knows is criminal or fraudulent but allows the attorney to discuss the legal consequences of any proposed course of conduct with a client. The issue arises from the fact that, although Maryland law, with limitations and conditions, permits the production, distribution, and use of marijuana for medical purposes (*see* Code, Health-General Article, Title 13, Subtitle 33), Federal law continues to make that activity criminal (*see* 21 U.S.C. §§801-904).

The proposed Comment notes the conflict and, in conformance with an Opinion of the Maryland State Bar Association's Ethics Committee, states that an attorney may counsel a client about compliance with the State's medical marijuana law without violating the Rule and may provide legal services in connection with business activities permitted by State statute, provided the attorney also advises the client about the legal consequences, under other applicable law, of the client's proposed course of conduct.

CATEGORY 16

Category 16 consists of an amendment to Rule 19-307.4 (a) deleting the prohibition against an attorney holding "himself or herself out publicly as a specialist."

This issue, of whether, to what extent, and under what conditions attorneys may hold themselves out as "specialists" or as having been certified as a "specialist" has been the subject of considerable discussion, both nationally and in Maryland, for 40 years. A proposal to amend what then was Rule 7.4 of the Attorneys' Rules of Professional Conduct (current Rule 19-307.4) was presented to the Court in May 2015 in the 187th Report of the Rules Committee (Category 6).

It was pointed out in that Report that, prior to 1977, most States, including Maryland, severely limited attorneys from advertising their services, but that, in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), the Supreme Court held that advertising by attorneys was a form of commercial speech

protected by the First Amendment and that, although the States could preclude advertising that was, in fact, false or misleading, they could not place an absolute restriction on it on the ground that it may be *potentially* misleading. Following that decision, the American Bar Association and State regulatory agencies began searching for the kinds of regulations that could pass muster under *Bates*.

In October 1977, the Rules Committee submitted its 61st Report, in which, as part of general Rules regarding advertising, it recommended that attorneys be permitted to advertise that they specialized in a particular field if they had been certified as a specialist in that field by the State authority having jurisdiction over attorney advertising but not otherwise. That appeared to be where the ABA and several other States were heading. The Court rejected that recommendation, however, in favor of the flat prohibition. Until the filing of the 187th Report, the Court had not had occasion to reconsider that decision.[1]

As noted in the 187th Report, the legal landscape regarding that issue has changed since 1977. In *Peel v. Attorney Registration and Disciplinary Commission of Illinois*, 496 U.S. 91 (1990), the Supreme Court held that an attorney's reference in his letterhead to his certification as a civil trial specialist by the National Board of Trial Advocacy, being true, verifiable, and not misleading, was protected by the First Amendment and that an Illinois Rule prohibiting such a statement was invalid. The Court concluded that the State's concern over the *possibility* that such a statement may be deceptive was not sufficient to rebut the Constitutional presumption favoring disclosure over concealment. *See* also *Hayes v. New York Atty. Griev. Comm.*, 672 F.3d 158 (2d. Cir. 2012) and *Searcy v. The Florida Bar*, 140 F. Supp. 3d 1290 (N.D. Fla. 2015). When faced with challenges to restrictions on attorney advertising, the courts have been applying the four-part test set forth in *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980), the essence of which is that "commercial speech that is not false, deceptive, or misleading

[1] In 2004, a committee appointed by the Court to review modifications that had been adopted to the ABA Model Rules considered whether the prohibition in the Maryland Rule 7.4 should be deleted. A motion to delete the prohibition was made but rejected. The issue was not raised in the committee's report to the Court. More recently, in a Concurring Opinion in *Attorney Grievance v. Zhang*, 440 Md. 128, 180, n.1 (2014), two members of the Court noted that the Maryland version of Rule 7.4 conflicted with the ABA Model Rule and recommended that consideration be given to a conforming amendment.

can be restricted, but only if the State shows that the restriction directly and materially advances a substantial state interest in a manner no more extensive than necessary to serve that interest." *Id*. at 566.

In its 187th Report, the Committee noted that Maryland was then one of only two States that still outright prohibited attorneys from advertising themselves as specialists or as certified specialists and expressed concern about the validity of that prohibition. With the concurrence of the Maryland State Bar Association, it recommended that the Court create a Judicial Commission to recommend areas of specialty that should be recognized and to accredit certifying agencies in those specialties, which was the approach many of the States had adopted. The problem was that such a Commission would require at least two judicial employees, and there was no funding for those positions. The Court therefore deferred action on the recommendation. The Judiciary did not receive such funding in the succeeding legislative session and, in light of other, more important Judiciary initiatives, it was not likely that such funding would be forthcoming.

In the meanwhile, the Committee became aware of a broader effort by the Association of Professional Responsibility Lawyers, a national organization of attorneys whose practices are devoted primarily to matters involving professional responsibility/legal ethics, to revamp the advertising and solicitation Rules that exist in the various States in favor of a more uniform national approach that takes account of advertising formats and technologies that did not exist 40 years ago. That organization has been working with committees of the ABA and has presented its proposals to the ABA. A representative met with the Rules Committee recently for a general discussion of what the organization is proposing.

The Committee concluded that it was premature, at least until there was some response from the ABA, to consider those broader proposals but referred the matter to its Attorneys and Judges Subcommittee. The Committee remains concerned, however, about the Constitutional validity of the existing Maryland prohibition and concluded that dealing with that should not await consideration of any broader rewriting of the advertising Rules. Repealing that one provision would not remove all constraints on attorneys advertising themselves as specialists. All advertising by attorneys is subject to Rule 19-307.1, which precludes attorneys from making a false or misleading communication about the attorney or the attorney's services and, in relevant part, declares a communication to be false or misleading if it "contains a material misrepresentation of fact

or law, or omits a fact necessary to make the statement considered as a whole not materially misleading."

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

Respectfully submitted,

Alan M. Wilner,
Chair

AMW:cdc
cc: Bessie M. Decker, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

TABLE OF CONTENTS

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

Rule 18-401. COMMISSION OF JUDICIAL DISABILITIES - DEFINITIONS

The following definitions apply in this Chapter except as otherwise expressly provided or as necessary implication requires:

(a) Address of Record

"Address of record" means a judge's current home address or another address designated in writing by the judge.

Cross reference: See Rule 18-417 (a)(1) concerning confidentiality of a judge's home address.

(b) Board

"Board" means the Judicial Inquiry Board appointed pursuant to Rule 18-403.

(c) Charges

"Charges" means the charges filed with the Commission by Investigative Counsel pursuant to Rule 18-413.

(d) Commission

"Commission" means the Commission on Judicial Disabilities created by Art. IV, §4A of the Maryland Constitution.

(e) Commission Record

"Commission record" means all documents pertaining to the

judge who is the subject of charges that are filed with the Commission or made available to any member of the Commission and the record of all proceedings conducted by the Commission with respect to that judge.

Cross reference: See Rule 18-402 (g).

(f) Complainant

"Complainant" means a person who has filed a complaint, and in Rule 18-404 (a), “complainant” also includes a person who has filed a written allegation of misconduct by or disability of a judge that is not under oath or supported by an affidavit.

(g) Complaint

“Complaint” means a written communication under oath or supported by an affidavit alleging that a judge has a disability or has committed sanctionable conduct.

(h) Disability

"Disability" means a mental or physical disability that seriously interferes with the performance of a judge's duties and is, or is likely to become, permanent.

(i) Judge

"Judge" means (1) a judge of the Court of Appeals, the Court of Special Appeals, a circuit court, the District Court, or an orphans' court, and (2) a retired judge during any period that the retired judge has been approved for recall.

Cross reference: See Md. Const., Art. 4, §3A and Code, Courts Article, §1-302.

(j) Sanctionable Conduct

(1) "Sanctionable conduct" means misconduct while in office, the persistent failure by a judge to perform the duties of the judge's office, or conduct prejudicial to the proper administration of justice. A judge's violation of any of the provisions of the Maryland Code of Judicial Conduct promulgated by Title 18, Chapter 100 may constitute sanctionable conduct.

(2) Unless the conduct is occasioned by fraud or corrupt motive or raises a substantial question as to the judge's fitness for office, "sanctionable conduct" does not include:

(A) making an erroneous finding of fact, reaching an incorrect legal conclusion, or misapplying the law; or

(B) failure to decide matters in a timely fashion unless such failure is habitual.

Committee note: Sanctionable conduct does not include a judge's simply making wrong decisions - even very wrong decisions - in particular cases.

Cross reference: Md. Const., Art. IV, §4B (b)(1). For powers of the Commission in regard to any investigation or proceeding under §4B of Article IV of the Constitution, see Code, Courts Article, §§13-401 through 13-403.

Source: This Rule is derived from former Rule 16-803 (2016).

REPORTER'S NOTE

Proposed Rule 18-401 is derived from former Rule 16-803.

In section (a), the addition of the words "in writing" requires any designation of an "address of record" other than the judge's home address to be written.

An addition to section (e) fills a gap and clarifies that

the “Commission record” includes not only documents but also the record of proceedings conducted by the Commission pertaining to the judge who is the subject of the proceedings.

The definition of “formal complaint” is deleted, and the requirements that allegations be in writing and under oath are transferred to the definition of “complaint.” The definition of “complainant” is revised to conform to these changes.

Stylistic changes also are made.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

Rule 18-402. COMMISSION

(a) Chair and Vice Chair

The judicial member from the Court of Special Appeals shall serve as Chair of the Commission. The Commission shall select another of its judicial members to serve as Vice Chair. The Vice Chair shall perform the duties of the Chair whenever the Chair is disqualified or otherwise unable to act.

(b) Recusal

A member of the Commission shall not participate as a member in any proceeding in which (1) the member is a complainant, (2) the member's disability or sanctionable conduct is in issue, (3) the member's impartiality reasonably might be questioned, (4) the member has personal knowledge of disputed material evidentiary facts involved in the proceeding, or (5) the recusal of a judicial member otherwise would be required by the Maryland Code of Judicial Conduct.

Cross reference: See Md. Const., Article IV, §4B (a), providing that the Governor shall appoint a substitute member of the Commission for the purpose of a proceeding against a member of the Commission.

(c) Executive Secretary

The Commission may select an attorney as Executive

Secretary. The Executive Secretary shall serve at the pleasure of the Commission, advise and assist the Commission, have other administrative powers and duties assigned by the Commission, and receive the compensation set forth in the budget of the Commission.

(d) Investigative Counsel; Assistants

(1) Appointment; Compensation

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

(2) Duties

Investigative Counsel shall have the powers and duties set forth in the Rules in this Chapter and shall report and make recommendations to the Commission as required under these Rules or directed by the Commission.

(3) Additional Attorneys and Staff

As the need arises and to the extent funds are available in the Commission's budget, the Commission may appoint additional attorneys or other persons to assist Investigative Counsel. Investigative Counsel shall keep an accurate record of the time and expenses of additional persons employed and ensure

that the cost does not exceed the amount allocated by the Commission.

(e) Quorum

The presence of a majority of the members of the Commission constitutes a quorum for the transaction of business, provided that at least one judge, one attorney, and one public member are present. At a hearing on charges held pursuant to Rule 18-413 (i), a Commission member is present only if the member is physically present. Under all other circumstances, a member may be physically present or present by telephone, video, or other electronic conferencing. Other than adjournment of a meeting for lack of a quorum, no action may be taken by the Commission without the concurrence of a majority of members of the Commission.

(f) General Powers of Commission

In accordance with Maryland Constitution, Article IV, §4B and Code, Courts Article, §13-401 through 13-403, and in addition to any other powers provided in the Rules in this Chapter, the Commission may:

(1) administer oaths and affirmations;

(2) issue subpoenas and compel the attendance of witnesses and the production of evidence;

(3) require persons to testify and produce evidence by granting them immunity from prosecution or from penalty or forfeiture; and

(4) in case of contumacy by any person or refusal to obey a subpoena issued by the Commission, invoke the aid of the circuit court for the county where the person resides or carries on a business.

(g) Record

The Commission shall keep a record of all documents filed with the Commission and all proceedings conducted by the Commission concerning a judge, subject to a retention schedule determined by the Commission.

(h) Annual Report

Not later than September 1 of each year, the Commission shall submit an annual report to the Court of Appeals regarding its operations. The Report shall include statistical data with respect to complaints received and processed, but shall not include material declared confidential under Rule 18-417.

(i) Request for Home Address

Upon request by the Commission or the Chair of the Commission, the Administrative Office of the Courts shall supply to the Commission the current home address of each judge.

Cross reference: See Rules 18-401 (a) and 18-417 (a).

Source: This Rule is derived from former Rule 16-804 (2016).

REPORTER'S NOTE

Proposed Rule 18-402 is derived from former Rule 16-804.

Section (a) is revised to specify that the judicial member from the Court of Special Appeals serves as Chair of the

Commission, and the Commission selects another of its judicial members to serve as Vice Chair.

Section (f) is new. It lists the general powers of the Commission, in accordance with Article IV, §4B of the Maryland Constitution and Code, Courts Article, §§13-401 through 403.

In section (g), retention of records is made subject to a retention schedule determined by the Commission.

Stylistic and clarifying changes also are made.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

Rule 18-403. JUDICIAL INQUIRY BOARD

(a) Creation and Composition

The Commission shall appoint a Judicial Inquiry Board consisting of two judges, two attorneys, and three public members who are not attorneys or judges. No member of the Commission may serve on the Board.

(b) Compensation

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

(c) Chair and Vice Chair

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

(d) Removal or Replacement

The Commission by majority vote may remove or replace members of the Board at any time.

(e) Quorum

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

(f) Record

The Board shall keep a record of all documents filed with the Board and all proceedings conducted by the Board concerning a judge. The Executive Secretary of the Commission shall attend the Board meetings and keep a record of those meetings in the form that the Commission requires, subject to the retention schedule established by the Commission.

Source: This Rule is derived from former Rule 16-804.1 (2016).

REPORTER'S NOTE

Proposed Rule 18-403 is derived from former Rule 16-804.1.

Added to section (c) is a provision requiring the Chair of the Commission to designate as Vice Chair of the Inquiry Board the judicial member of the Board who was not designated to serve as Chair.

Provisions pertaining to record keeping and retention of records are added to section (f).

Stylistic changes also are made.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

Rule 18-404. COMPLAINTS; INITIAL REVIEW BY INVESTIGATIVE COUNSEL

(a) Procedure on Receipt of Complaint

(1) Referral to Investigative Counsel

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

(2) Complaint that Fails to Allege Disability or Sanctionable Conduct

If Investigative Counsel concludes that a complaint fails to allege facts that, if true, would constitute a disability or sanctionable conduct, Investigative Counsel shall (A) dismiss the complaint, and (B) notify the complainant and the Commission, in writing, that the complaint was filed and dismissed and the reasons for the dismissal.

Committee note: Subsection (a)(2) of this Rule does not preclude Investigative Counsel from communicating with the complainant or making an inquiry under section (c) of this Rule in order to clarify general or ambiguous allegations that may suggest a disability or sanctionable conduct. Outright dismissal is warranted when the complaint, on its face, complains only of conduct that clearly does not constitute a disability or sanctionable conduct.

(3) Allegation of Disability or Sanctionable Conduct not

Under Oath or Supported by Affidavit

Except as provided by section (c) of this Rule, the Commission may not act upon an allegation of misconduct or disability unless it is a complaint. If a written allegation alleges facts indicating that a judge may have a disability or may have committed sanctionable conduct but is not under oath or supported by an affidavit, Investigative Counsel, if possible, shall (A) inform the complainant that the Commission acts only upon complaints under oath or supported by an affidavit, (B) provide the complainant with an appropriate form of affidavit, and (C) inform the complainant that unless a complaint under oath or supported by an affidavit is filed within 30 days after the date of the notice, the matter may be dismissed.

(4) Failure to File Complaint Under Oath or Supported by Affidavit

If, after Investigative Counsel has given the notice provided for in subsection (a)(3) of this Rule or has been unable to do so, the complainant fails to file a timely complaint under oath or supported by an affidavit, Investigative Counsel may dismiss the matter and notify the complainant and the Commission, in writing, that a written allegation of misconduct or disability was filed and dismissed and the reasons for the dismissal.

Committee note: In contrast to dismissal of a complaint under Rule 18-405, which requires action by the Commission, Investigative Counsel may dismiss an allegation of disability or

sanctionable conduct under this Rule when, for the reasons noted, the allegation fails to constitute a complaint. Subject to section (c) of this Rule, if there is no cognizable complaint, there is no basis for conducting an investigation.

(b) Opening File on Receipt of Complaint

Investigative Counsel shall open a numbered file on each properly filed complaint and promptly in writing (1) acknowledge receipt of the complaint and (2) explain to the complainant the procedure for investigating and processing the complaint.

(c) Inquiry

Upon receiving information from any source indicating that a judge may have a disability or may have committed sanctionable conduct, Investigative Counsel may open a file and make an inquiry. An inquiry may include obtaining additional information from a complainant and any potential witnesses, reviewing public records, obtaining transcripts of court proceedings, and communicating informally with the judge. Following the inquiry, Investigative Counsel shall (1) close the file and dismiss any complaint in conformity with subsection (a)(2) of this Rule or (2) proceed as if a complaint had been properly filed and undertake an investigation in accordance with Rule 18-405.

Source: This Rule is derived from former Rule 16-805 (a) through (d)(2016).

REPORTER'S NOTE

Proposed Rule 18-404 is derived from sections (a) through (d) of former Rule 16-805.

Stylistic changes are made, and two Committee notes are added.

The term “preliminary investigation” is eliminated. Procedures that had been part of a “preliminary investigation” process are now included in Rule 18-405, Investigation by Investigative Counsel.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

Rule 18-405. INVESTIGATION BY INVESTIGATIVE COUNSEL

(a) Conduct of Investigation

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

If a complaint is not dismissed in accordance with Rule 18-404, Investigative Counsel shall conduct an investigation to determine whether there are reasonable grounds to believe that the judge may have a disability or may have committed sanctionable conduct. Investigative Counsel shall promptly inform the Board and the Commission that the investigation is being undertaken.

(2) Subpoena

Upon application by Investigative Counsel and for good cause, the Chair of the Commission may authorize the issuance of a subpoena to compel the person to whom it is directed to attend, give testimony, and produce designated documents or other tangible things at a time and place specified in the subpoena.

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

(3) Grant of Immunity

Upon application by Investigative Counsel and for good cause, the Commission may grant immunity to any person from

prosecution, or from any penalty or forfeiture, for or on account of any transaction, matter, or thing concerning which that person testifies or produces evidence, documentary or otherwise.

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

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

(4) Notice to Judge

(A) Except as provided in subsection (a)(4)(C) of this Rule, before the conclusion of the investigation, Investigative Counsel shall notify the judge, in writing, that (i) Investigative Counsel has undertaken an investigation into whether the judge has a disability or has committed sanctionable conduct; (ii) whether the investigation was undertaken on Investigative Counsel's initiative or on a complaint; (iii) if the investigation was undertaken on a complaint, the name of the person who filed the complaint and the contents of the complaint; (iv) the nature of the alleged disability or sanctionable conduct under investigation; and (v) the judge's rights under subsection (a)(5) of this Rule.

(B) The notice shall be given by first class mail or by certified mail requesting "Restricted Delivery – show to whom, date, address of delivery" and shall be addressed to the judge at the judge's address of record.

(C) Notice shall not be given under this Rule if (i) Investigative Counsel determines, prior to the conclusion of the investigation, that the recommendation of Investigative Counsel will be dismissal of the complaint without a letter of cautionary advice, or (ii) as to other recommended dispositions, the Commission or Board, for good cause, directs a temporary delay of providing notice and includes in its directive a mechanism for providing the judge reasonable opportunity to present information to the Board.

(5) Opportunity of Judge to Respond

Upon the issuance of notice pursuant to subsection (a)(4) of this Rule, Investigative Counsel shall afford the judge a reasonable opportunity which, unless the Commission orders otherwise, shall be no less than 30 days, to present such information as the judge chooses.

(6) Time for Completion

Investigative Counsel shall complete an investigation within 90 days after the investigation is commenced. Upon application by Investigative Counsel within the 90-day period and for good cause, the Chair of the Commission may extend the time for completing the investigation for a reasonable period. The Chair shall notify the Board of any extension granted. For failure to comply with the time requirements of this section, the Commission may dismiss any complaint and terminate the investigation.

(b) Report and Recommendation by Investigative Counsel

(1) Duty to Make

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

(2) Contents

Investigative Counsel shall include in the report or attach to it any response or other information provided by the judge pursuant to subsection (a)(5) of this Rule. The report shall include a statement that the investigation indicates probable sanctionable conduct, probable disability, both, or neither, together with one of the following recommendations, as appropriate:

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

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

(C) a conditional diversion agreement;

(D) a private reprimand;

(E) a public reprimand;

(F) the filing of charges; or

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

(3) Recipient of Report

(A) If the recommendation is dismissal of the complaint

without a letter of cautionary advice, the report and recommendation shall be made to the Commission. Upon receipt of the recommendation, the Commission shall proceed in accordance with Rule 18-408 (a)(2).

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

Committee note: A complaint may be dismissed outright and without a letter of cautionary advice for various reasons, at different stages, and by different entities. Investigative Counsel may dismiss a claim on his or her own initiative, without opening a file, pursuant to Rule 18-404 (a). In that instance, no notice need be given to the judge unless the judge has requested notice. If Investigative Counsel opens a file pursuant to Rule 18-404 (b) and performs an investigation under this Rule, Investigative Counsel may recommend dismissal without a letter of cautionary advice because, as a factual matter, there is insufficient evidence of a disability or sanctionable conduct. In that situation, if the Commission adopts the recommendation, there is no need for notice to the judge unless the judge has requested such notice. If the matter proceeds to the Board, the judge must receive notice, even if the ultimate decision is to dismiss the complaint.

(C) Subject to a retention schedule approved by the Commission, Investigative Counsel shall keep a record of the investigation.

Source: This Rule is in part derived from former Rule 16-805 (e) and (f) (2016) and is in part new.

REPORTER'S NOTE

Proposed Rule 18-405 revises and expands upon provisions contained in former Rule 16-805 (e) and (f).

Provisions pertaining to the issuance of subpoenas and the grant of immunity by the Commission are included as new subsections (a)(2) and (3), followed by cross references to the statutory and Constitutional authorities for those provisions.

Subsection (a)(4)(C)(ii) contains a new provision that, under certain circumstances, permits a temporary delay of providing a required notice to the judge who is the subject of an investigation.

Subsections (a)(4),(5), and (6) contain provisions pertaining to notifying the judge of the investigation, allowing the judge an opportunity to present information to the Board, and the timing of the completion of the investigation.

Section (b) expands upon the contents of the report and recommendation that Investigation Counsel is required to prepare at the conclusion of an investigation. If the recommendation is dismissal without letter of cautionary advice, new subsection (b)(3) requires that the report and recommendation be made directly to the Commission, rather than to the Board. All other reports by Investigative Counsel at this juncture are made to the Board.

A record-keeping and retention provision is added at the end of the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

Rule 18-406. PROCEEDINGS BEFORE BOARD; REVIEW BY COMMISSION

(a) Review of Investigative Counsel's Report

The Board shall review the reports and recommendations made to the Board by Investigative Counsel.

(b) Informal Meeting with Judge; Peer Review

(1) Generally

The Board may meet informally with the judge.

(2) Peer Review

(A) As part of or in furtherance of that meeting, the Chair of the Board, with the consent of the judge, may convene a peer review panel consisting of not more than two judges on the same level of court upon which the judge sits to confer with the judge about the complaint and suggest options for the judge to consider. The judges may be incumbent judges or retired judges eligible for recall to that level of court.

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

the conference with the judge before the Commission or in any court proceeding.

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

(c) Further Investigation

The Board may direct Investigative Counsel to make a further investigation pursuant to Rule 18-407.

(d) Board's Report to Commission

(1) Contents

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

(A) dismissal of any complaint, without a letter of cautionary advice pursuant to Rule 18-408 (a), and termination of any investigation;

(B) dismissal of any complaint, with a letter of cautionary advice pursuant to Rules 18-408 (b) and 18-414;

(C) a conditional diversion agreement pursuant to Rules 18-409 and 18-414;

(D) a private reprimand pursuant to Rules 18-410 and 18-414;

(E) a public reprimand pursuant to Rules 18-411 and 18-414;

(F) retirement of the judge pursuant to Rules 18-412 and 18-414;or

(G) upon a determination of probable cause that the judge has a disability or has committed sanctionable conduct, the filing of charges pursuant to Rule 18-413.

(2) Condition and Limitation

(A) The Board may not recommend (i) a dismissal with a letter of cautionary advice if the judge has objected to that disposition pursuant to Rule 18-408 (b), or (ii) a conditional diversion agreement, a private reprimand, a public reprimand, or retirement unless the judge has consented in writing to that remedy pursuant to the applicable Rules in this Chapter.

Committee note: A public reprimand or recommendation of retirement, without the consent of the judge, may be issued by the Commission only after the filing of charges and a hearing before the Commission.

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

(3) Time for Submission of Report

(A) Generally

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

(B) Extension

Upon a written request by the Chair of the Board, the Chair of the Commission may grant a reasonable extension of time for transmission of the report.

(C) Failure to File Timely Report

If the Board fails to issue its report within the time allowed, the Chair of the Commission and Investigative Counsel shall conform the report and recommendation of Investigative Counsel to the requirements of subsections (f)(1) and (2) of this Rule and refer the matter to the Commission, which may proceed, using the report and recommendation of Investigative Counsel.

(4) Copy to Investigative Counsel and Judge

Upon receiving the report and recommendation, the Commission promptly shall transmit a copy of it to Investigative Counsel and, except for a recommendation of dismissal without a letter of cautionary advice, to the judge.

(e) Filing of Response

Investigative Counsel and, except for a recommendation of dismissal without a letter of cautionary advice, the judge may file with the Commission a written response to the Board's

report and recommendation. Unless the Chair of the Commission, Investigative Counsel, and the judge agree to an extension, any response shall be filed within 15 days after the date the Commission transmitted copies of the report and recommendation to Investigative Counsel and the judge.

(f) Action by Commission on Board Report and Recommendation

(1) Review

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

(2) Appearance by Judge

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

(3) Disposition

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

(A) direct Investigative Counsel to conduct a further investigation pursuant to Rule 18-407;

(B) remand the matter to the Board for further consideration and direct the Board to file a supplemental report within a specified period of time;

(C) enter a disposition pursuant to Rule 18-408, 18-

409, 18-410, 18-411, or 18-412;

(D) enter an appropriate disposition to which the judge has filed a written consent in accordance with the Rules in this Chapter, including a disposition under Rule 18-414 (a)(5); or

(E) direct Investigative Counsel to file charges pursuant to Rule 18-413.

Source: This Rule is derived in part from former Rule 16-805 (h) through (l) (2016) and is in part new.

REPORTER'S NOTE

Proposed Rule 18-406 is derived in part from former Rule 16-805 (h) through (l) and is in part new. Most of the changes are clarifying or stylistic.

A new substantive feature is included as subsection (b)(2), Peer Review. Subsection (b)(2) permits the Chair of the Board, with the consent of the judge, to convene a peer review panel of not more than two other judges to meet with the judge informally for the purpose of providing an honest and neutral appraisal for the judge to consider. Peer review proceedings are confidential, and the panel members may not be called to testify regarding the meeting in any Commission or court proceeding.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

Rule 18-407. FURTHER INVESTIGATION

(a) Notice to Judge of Investigation

Upon a directive for a further investigation by the Board pursuant to Rule 18-406 (c) or by the Commission pursuant to Rule 18-405 (b)(3)(A) or 18-406 (f)(3), Investigative Counsel promptly shall (A) provide the notice and opportunity to respond required by Rule 18-405 (a)(4) and (5) if such notice and opportunity have not already been provided, and (B) notify the judge at the judge's address of record that the Board or Commission has directed a further investigation.

(b) Subpoenas

(1) Issuance

Upon application by Investigative Counsel and for good cause, the Chair of the Commission may authorize the issuance of a subpoena to compel the person to whom it is directed to attend, give testimony, and produce designated documents or other tangible things at a time and place specified in the subpoena.

(2) Notice to Judge

Promptly after service of the subpoena and in addition to any other notice required by law, Investigative Counsel shall

provide to the judge notice of the service of the subpoena. The notice to the judge shall be sent by first class mail to the judge's address of record or, if previously authorized by the judge, by any other reasonable method.

(3) Motion for Protective Order

The judge, a person named in the subpoena, or a person named or depicted in an item specified in the subpoena may file a motion for a protective order pursuant to Rule 2-510 (e). The motion shall be filed in the circuit court for the county in which the subpoena was served or, if the judge under investigation serves on that court, another circuit court designated by the Commission. The court may enter any order permitted by Rule 2-510 (e).

(4) Failure to Comply

Upon a failure to comply with a subpoena issued pursuant to this Rule, the court, on motion of Investigative Counsel, may compel compliance with the subpoena as provided in Rule 18-402 (f).

(5) Confidentiality

(A) Subpoena

To the extent practicable, a subpoena shall not divulge the name of the judge under investigation.

(B) Court Files and Records

Files and records of the court pertaining to any motion filed with respect to a subpoena shall be sealed and

shall be open to inspection only upon order of the Court of Appeals.

(C) Hearings

Hearings before the circuit court on any motion filed with respect to a subpoena shall be on the record and shall be conducted out of the presence of all individuals except those whose presence is necessary.

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

(c) Time for Completion of Investigation

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

(d) Report and Recommendation

(1) Duty to Make

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

(2) Contents

Unless the material already has been provided to the recipient of the report, Investigative Counsel shall include in the report or attach to it any response or other information provided by the judge pursuant to section (a) of this Rule or Rule 18-405 (a)(5). The report shall include a statement that the investigation indicates probable sanctionable conduct, probable disability, both, or neither, together with one of the following recommendations:

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

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

(C) a conditional diversion agreement;

(D) a private reprimand;

(E) a public reprimand;

(F) the filing of charges; or

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

Source: This Rule is derived from former Rule 16-806 (2016).

REPORTER'S NOTE

Proposed Rule 18-407 is derived from Rule 16-806, with clarifying and stylistic changes.

In section (c), a substantive change is made. Instead of a fixed, sixty-day period, the time for completion of a further investigation is "within the time specified by the Board or

Commission," which may be less than or greater than sixty days, depending on the circumstances. For good cause, an additional extension for a specified reasonable time may be granted by the Chair of the Commission.

In section (d), the required contents of Investigative Counsel's report and recommendation are spelled out in greater detail than in the former Rule.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

Rule 18-408. DISMISSAL OF COMPLAINT

(a) Without Letter of Cautionary Advice

(1) Generally

If, after an investigation by Investigative Counsel, the Commission concludes that the evidence fails to show that the judge has a disability or has committed sanctionable conduct, it shall dismiss the complaint without a letter of cautionary advice. Unless the judge has requested in writing notice of any dismissal, the Commission need not notify the judge of the dismissal but shall notify the complainant and the Board.

(2) Upon Recommendation Pursuant to Rule 18-405 (b)(3)

If Investigative Counsel has recommended dismissal of the complaint without a letter of cautionary advice pursuant to Rule 18-405 (b)(3), the Commission may (A) accept the recommendation and dismiss the complaint, (B) refer the matter to the Board for its consideration, or (C) direct Investigative Counsel to undertake a further investigation pursuant to Rule 18-407.

(b) With Letter of Cautionary Advice

(1) When Appropriate

If the Commission determines that any sanctionable

conduct that may have been committed by the judge will be sufficiently addressed by the issuance of a letter of cautionary advice, the Commission may accompany a dismissal with such a letter.

Committee note: A letter of cautionary advice may be appropriate where the conduct was marginally sanctionable or, if sanctionable, was not particularly serious, was not intended to be harmful, may have been the product of a momentary lapse in judgment or the judge being unaware that the conduct was not appropriate, and does not warrant discipline. The letter is intended to be remedial in nature, so that the judge will be careful not to repeat that or similar conduct.

(2) Notice to Judge

Before a dismissal with a letter of cautionary advice is issued, the Commission shall mail to the judge a notice that states (i) that the Commission intends to dismiss the complaint accompanied by a letter of cautionary advice, (ii) the content of the letter, (iii) whether the complainant is to be notified that such a letter was issued; (iv) that the judge has the right to object to the letter by filing a written objection with the Commission within 30 days after the date of the notice; (v) if a written objection is not filed within that time, the Commission may issue the letter as an accompaniment to the dismissal; and (vi) if a timely objection is filed, the proposed disposition will be regarded as withdrawn and the matter shall proceed as if the proposed disposition was never made.

(3) Objection by Judge

The judge may object to the proposed dismissal

accompanied by the letter of cautionary advice by filing a written objection with the Commission within the 30-day period stated in the notice. If a timely objection is not filed, the Commission may proceed with the proposed disposition upon the expiration of the time for filing an objection. If a timely objection is filed, the Commission shall not proceed with the proposed disposition, the proceeding shall resume as if no dismissal with a letter of cautionary advice had been proposed, and the fact that a dismissal with an accompanying letter of cautionary advice was proposed and withdrawn may not be admitted into evidence.

(4) Confidentiality of Content of Letter of Cautionary Advice

The contents of the letter are private and confidential, except that the Commission may notify the complainant that a letter of cautionary advice was given to the judge.

(5) Not a Form of Discipline

A letter of cautionary advice is not a reprimand and does not constitute a form of discipline.

Source: This Rule is derived from former Rule 16-807 (a) (2016).

REPORTER'S NOTE

Proposed Rule 18-408 is derived from former Rule 16-807 (a).

Revisions to the Rule include changes in terminology. To better reflect the intent to provide guidance, rather than impose discipline, the term “warning” is changed to “letter of cautionary advice.” The judge’s option to “reject” such a letter is replaced by the option to “object” to it.

Section (a), pertaining to dismissals without a letter of cautionary advice, is divided into two subsections. Subsection (a)(1) pertains to a dismissal by the Commission after an investigation by Investigative Counsel. Subsection (a)(2) sets out the Commission’s options when, pursuant to Rule 18-405 (b)(3), the Commission receives directly from Investigative Counsel a recommendation that a complaint be dismissed without a letter of cautionary advice.

Section (b) contains procedures pertaining to dismissals with a letter of cautionary advice. With stylistic changes, the procedures are based upon the procedures in former Rule 16-807 (a)(2). The content of the former Committee note following that subsection is transferred to the body of the new Rule, as subsection (b)(5), and a new Committee note is added following subsection (b)(1), explaining the remedial nature of a letter of cautionary advice.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

Rule 18-409. CONDITIONAL DIVERSION AGREEMENT

(a) When Appropriate

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

(1) the Commission concludes that the alleged sanctionable conduct was not so serious, offensive, or repeated as to warrant formal proceedings and that the appropriate disposition is for the judge to undergo specific treatment, participate in one or more specified educational programs, issue an apology to the complainant, or take other specific corrective or remedial action; and

(2) the judge, in the agreement, (A) agrees to the specified conditions, (B) waives the right to a hearing before the Commission and subsequent proceedings before the Court of Appeals, and (C) agrees that the conditional diversion agreement may be revoked for noncompliance in accordance with the provisions of section (b) of this Rule.

(b) Compliance

The Commission shall direct Investigative Counsel to monitor compliance with the conditions of the agreement and may direct the judge to document compliance. Investigative Counsel

shall give written notice to the judge of the nature of any alleged failure to comply with a condition of the agreement. If after affording the judge at least 15 days to respond to the notice, the Commission finds that the judge has failed to satisfy a material condition of the agreement, the Commission may revoke the agreement and proceed with any other disposition authorized by these rules.

(c) Not a Form of Discipline

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

(d) Confidentiality

The Commission shall notify the complainant that the complaint has resulted in an agreement with the judge for corrective or remedial action. Except as permitted in Rule 18-417, the terms of the agreement shall remain confidential and not be disclosed to the complainant or any other person unless the judge consents in writing.

(e) Termination of Proceedings

Upon notification by Investigative Counsel that the judge has satisfied all conditions of the agreement, the Commission shall terminate the proceedings.

Source: This Rule is derived from former Rule 16-807 (c) (2016).

REPORTER'S NOTE

Proposed Rule 18-409 is derived from former Rule 16-807

(c). The term “conditional diversion agreement” is substituted for the term “deferred discipline agreement,” and other stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

Rule 18-410. PRIVATE REPRIMAND

(a) When Appropriate

The Commission may issue a private reprimand to the judge if, after an investigation:

(1) the Commission concludes that the judge has committed sanctionable conduct that warrants some form of discipline;

(2) the Commission further concludes that the sanctionable conduct was not so serious, offensive, or repeated as to warrant formal proceedings and that a private reprimand is an appropriate disposition under the circumstances; and

(3) the judge, in writing on a copy of the reprimand retained by the Commission, (A) waives the right to a hearing before the Commission and subsequent proceedings before the Court of Appeals and the right to challenge the findings that serve as the basis for the private reprimand, (B) consents to the reprimand, and (C) agrees that the reprimand may be admitted in any subsequent disciplinary proceeding against the judge to the extent that it is relevant to the charges at issue or the sanction to be imposed.

(b) Form of Discipline

A private reprimand constitutes a form of discipline.

(c) Confidentiality; Notice to Complainant

(1) Generally

Except as otherwise provided by subsection (b)(2) of this Rule and Rule 18-417, a private reprimand is confidential and shall not be disclosed unless the judge consents, in writing, to the disclosure.

(2) Notice to Complainant

Upon the issuance of a private reprimand, the Commission shall notify the complainant that such a reprimand was issued but shall not disclose the text of the reprimand.

Source: This Rule is derived from former Rule 16-807 (b) (2016).

REPORTER'S NOTE

Proposed Rule 18-410 is derived from former Rule 16-807 (b), with clarifying and stylistic changes.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

Rule 18-411. PUBLIC REPRIMAND

(a) When Appropriate

The Commission may issue a public reprimand upon a finding by the Commission that (1) the judge has committed sanctionable conduct, (2) the conduct, by reason of its nature, repetition, or effect, is sufficiently serious as to make a private reprimand or a conditional diversion agreement inappropriate but not sufficiently serious to warrant the judge being suspended or removed from office.

(b) Consent of Judge

(1) A public reprimand may be issued with the written consent of the judge pursuant to subsection (b)(2) of this Rule or, after the filing of charges and a hearing, without the judge's consent.

(2) A consent by the judge shall be in writing and shall include a waiver of (A) the right to a hearing before the Commission and subsequent proceedings before the Court of Appeals, and (B) the right to challenge the findings that serve as the basis for the public reprimand.

(c) Publication

A public reprimand shall be posted on the Judiciary

website and may be otherwise disclosed. A copy of the public reprimand shall be sent to the complainant.

(d) Form of Discipline

A public reprimand constitutes a form of discipline.

Source: This Rule is new.

REPORTER'S NOTE

Proposed Rule 18-411 is new. The Rule is based upon the Constitutional authority of the Commission to issue a reprimand. See Md. Constitution, Article IV, Section 4B (a)(2). Procedures pertaining to the Commission's power to reprimand are set forth in two Rules -- Rule 18-410, pertaining to private reprimands, and Rule 18-411, pertaining to public reprimands.

Section (a) of Rule 18-411 describes the findings that the Commission must make before it issues a public reprimand.

Section (b) requires that, unless the judge consents in writing to a public reprimand, a public reprimand may be issued only after the filing of charges and a hearing before the Commission on those charges. See Rule 18-413.

Section (c) requires that a copy of a public reprimand be sent to the complainant and posted on the Judiciary website.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

Rule 18-412. RETIREMENT

(a) When Appropriate

Retirement of a judge may be an appropriate disposition upon a determination that (1) the judge suffers from a disability, as defined in Rule 18-401 (h), and (2) any alleged conduct that may otherwise be sanctionable conduct was predominantly the product of that disability and did not involve misconduct so serious that, if proven, would warrant suspension or removal of the judge from office.

(b) Effect

(1) Retirement under this Rule is permanent. A judge who is retired under this Rule may not be recalled to sit on any court, but the judge shall lose no other retirement benefit to which he or she is entitled by law.

(2) Retirement under this Rule does not constitute discipline.

Cross reference: See Md. Constitution, Art. IV, §4B (a)(2), authorizing the Commission to recommend to the Court of Appeals retirement of a judge "in an appropriate case." See also Rule 19-740 authorizing a comparable disposition for attorneys who have a disability.

Source: This Rule is new.

REPORTER' NOTE

Proposed Rule 18-412 is new. It is based upon the Constitutional provision that the Commission has the power to recommend to the Court of Appeals retirement of a judge "in an appropriate case." See Md. Constitution, Article IV, Section 4B (a)(2).

A disposition of retirement under Rule 18-412 requires that the judge have a disability, as defined in Rule 18-401 (h), and that other determinations set out in Rule 18-412 (a) are made.

Retirement under Rule 18-412 is permanent, and the judge may not be recalled to sit on any court. Retirement under the Rule does not constitute discipline, and the judge does not lose any retirement benefit to which he or she is entitled by law.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

Rule 18-413. FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

(a) Filing of Charges

(1) Direction by Commission

After considering the report and recommendation of the Board submitted pursuant to Rule 18-406 and any timely filed response, and upon a finding by the Commission of probable cause to believe that a judge has a disability or has committed sanctionable conduct, the Commission may direct Investigative Counsel to initiate proceedings against the judge by filing with the Commission charges that the judge has a disability or has committed sanctionable conduct.

(2) Content of Charges

The charges shall (A) state the nature of the alleged disability or sanctionable conduct, including each Rule of the Maryland Code of Judicial Conduct allegedly violated by the judge, (B) allege the specific facts upon which the charges are based, and (C) state that the judge has the right to file a written response to the charges within 30 days after service of the charges.

(b) Service; Notice

The charges may be served upon the judge by any means

reasonably calculated to give actual notice. A return of service of the charges shall be filed with the Commission pursuant to Rule 2-126. Upon service, the Commission shall notify any complainant that charges have been filed against the judge.

Cross reference: See Md. Const., Article IV, §4B (a).

(c) Response

Within 30 days after service of the charges, the judge may file with the Commission an original and 11 copies of a written response or the judge may file a response electronically in a format acceptable to the Commission.

(d) Notice of Hearing

Upon the filing of a response or, if no response is filed, upon expiration of the time for filing one, the Commission shall notify the judge of the date, time, and place of a hearing. Unless the judge has agreed to an earlier hearing date, the hearing shall not be held earlier than 60 days after the notice was sent. If the hearing is on a charge of sanctionable conduct, the Commission also shall notify the complainant and post a notice on the Judiciary website that is limited to (1) the name of the judge, (2) the date, time, and place of the hearing, and (3) the charges that have been filed and any response from the judge.

Cross reference: See Rule 18-417 (a)(3), concerning the time for posting on the Judiciary website.

(e) Extension of Time

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

(f) Procedural Rights of Judge

The judge has the right to (1) inspect and copy the Commission Record, (2) receive a prompt hearing on the charges in accordance with this Rule, (3) be represented by an attorney, (4) the issuance of subpoenas for the attendance of witnesses and for the production of documents and other tangible things, (5) present evidence and argument, and (6) examine and cross-examine witnesses.

(g) Exchange of Information

(1) Generally

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

(2) List of Witnesses; Documents

Not later than 30 days before the date set for the hearing, Investigative Counsel and the judge shall provide each other with a list of the names, addresses, and telephone numbers

of the witnesses that each intends to call and copies of the documents that each intends to introduce in evidence at the hearing.

(3) Scope of Discovery

Discovery is governed by the applicable Rules in Title 2, Chapter 400, except that the Chair of the Commission, rather than the court, may limit the scope of discovery, enter protective orders permitted by Rule 2-403, and resolve other discovery issues.

(4) Mental or Physical Examination

When disability of the judge is an issue, on request of Investigative Counsel upon a showing of good cause or on the initiative of the Commission, the Chair of the Commission may order the judge to submit to a mental or physical examination in accordance with Rule 2-423.

(h) Amendments

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

(i) Hearing on Charges

The hearing on charges shall be conducted in the following manner:

(1) Upon application by Investigative Counsel or the judge, the Commission shall issue subpoenas to compel the attendance of witnesses and the production of documents or other tangible things at the hearing. To the extent otherwise relevant, the provisions of Rule 2-510 (c), (d), (e), (g), (h), (i), (j), and (k) shall apply.

(2) The Commission may proceed with the hearing whether or not the judge has filed a response or appears at the hearing.

(3) Except for good cause shown, a motion for recusal of a member of the Commission shall be filed at least 30 days before the hearing.

(4) At the hearing, Investigative Counsel shall present evidence in support of the charges.

(5) Title 5 of the Maryland Rules shall apply.

(6) The proceeding shall be recorded verbatim, either by electronic means or stenographically, as directed by the Chair of the Commission. Except as provided in section (k) of this Rule, the Commission is not required to have a transcript prepared. The judge, at the judge's expense, may have the record of the proceeding transcribed.

(7) with the approval of the Chair of the Commission, the judge and Investigative Counsel may each submit proposed findings of fact and conclusions of law within the time period set by the Chair.

(j) Commission Findings and Action

(1) Finding of Disability

If the Commission finds by clear and convincing evidence that the judge has a disability, it shall refer the matter to the Court of Appeals, whether or not the Commission also finds that the judge committed sanctionable conduct.

(2) Finding of Sanctionable Conduct

If the Commission finds by clear and convincing evidence that the judge has committed sanctionable conduct but does not find that the judge has a disability, it shall either issue a public reprimand to the judge or refer the matter to the Court of Appeals.

(3) Finding of No Disability or Sanctionable Conduct

If the Commission does not find that the judge has a disability and does not find that the judge committed sanctionable conduct, it shall dismiss the charges and terminate the proceeding.

(k) Duties of Commission on Referral to Court of Appeals

If the Commission refers the case to the Court of Appeals, the Commission shall:

(1) make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceeding, state its recommendations, and enter those findings and recommendations in the record;

(2) cause a transcript of all proceedings at the hearing to be prepared and included in the record;

(3) make the transcript available for review by the judge and the judge's attorney or, at the judge's request, provide a copy to the judge at the judge's expense;

(4) file with the Court of Appeals the entire hearing record, which shall be certified by the Chair of the Commission and shall include the transcript of the proceedings, all exhibits and other papers filed or marked for identification in the proceeding, and all dissenting or concurring statements by Commission members; and

(5) promptly mail to the judge at the judge's address of record notice of the filing of the record and a copy of the findings, conclusions, and recommendations and all dissenting or concurring statements by Commission members.

Source: This Rule is derived from former Rule 16-808 (a) through (k) (2016).

REPORTER'S NOTE

Proposed Rule 18-413 is derived from sections (a) through (k) of former Rule 16-808, with clarifying and stylistic changes.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

Rule 18-414. CONSENT TO DISPOSITION

(a) Generally

At any time after completion of an investigation by Investigative Counsel, a judge may consent to:

(1) dismissal of the complaint accompanied by a letter of cautionary advice by failing to object pursuant to Rule 18-408 (b);

(2) a conditional diversion agreement pursuant to Rule 18-409;

(3) a private reprimand pursuant to Rule 18-410;

(4) a public reprimand;

(5) suspension or removal from judicial office; or

(6) retirement from judicial office pursuant to Rule 18-412.

(b) Form of Consent

(1) Generally

Except for a consent by failure to object to a dismissal accompanied by a letter of cautionary advice, a consent shall be in the form of a written agreement between the judge and the Commission.

(2) If Charges Filed

If the agreement is executed after charges have been

filed, it shall contain:

(A) an admission by the judge to all or part of the charges;

(B) as to the charges admitted, an admission by the judge to the truth of all facts constituting the sanctionable conduct or disability as set forth in the agreement;

(C) an agreement by the judge to take any corrective or remedial action provided for in the agreement;

(D) a consent by the judge to the stated sanction;

(E) a statement that the consent is freely and voluntarily given; and

(F) a waiver by the judge of the right to further proceedings before the Commission and subsequent proceedings before the Court of Appeals.

(3) If Charges Not Yet Filed

If the agreement is executed before charges have been filed, it shall contain a statement by the Commission of the charges that would have been filed but for the agreement and the consents and admissions required in subsection (b)(2) of this Rule shall relate to that statement.

(c) Submission to Court of Appeals

An agreement requiring the approval of the Court of Appeals shall be submitted to the Court, which shall either approve or reject the agreement. Until approved by the Court of Appeals, the agreement is confidential and privileged. If the

Court approves the agreement and imposes the stated sanction, the agreement shall be made public. If the Court rejects the stated sanction, the proceeding shall resume as if no consent had been given, and all admissions and waivers contained in the agreement are withdrawn and may not be admitted into evidence.

Source: This Rule is derived in part from former Rule 16-808 (l) (2016) and is in part new.

REPORTER'S NOTE

Proposed Rule 18-414 is derived from former Rule 16-808 (l), with two additions and stylistic changes.

Rule 18-414 applies to consents "at any time after completion of an investigation by Investigative Counsel," whereas the former Rule was limited to consents "after the filing of charges alleging sanctionable conduct and before a decision by the Commission."

Also, subsection (b)(1) of the proposed Rule provides that, in addition to consent to discipline being in the form of a written agreement, consent could also take the form of a failure to object to a dismissal accompanied by a letter of cautionary advice.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

Rule 18-415. PROCEEDINGS IN COURT OF APPEALS

(a) Expedited Consideration

Upon receiving the hearing record pursuant to Rule 18-413 (k), the Clerk of the Court of Appeals shall docket the case for expedited consideration.

(b) Exceptions

The judge may except to the findings, conclusions, or recommendation of the Commission by filing exceptions with the Court of Appeals within 30 days after service of the notice of filing of the record and in accordance with Rule 20-405. The exceptions shall set forth with particularity all errors allegedly committed by the Commission and the disposition sought. A copy of the exceptions shall be served on the Commission in accordance with Rules 1-321 and 1-323.

(c) Response

The Commission shall file a response within 15 days after service of the exceptions in accordance with Rule 20-405. The Commission shall be represented in the Court of Appeals by its Executive Secretary or such other attorney as the Commission may appoint. A copy of the response shall be served on the judge in accordance with Rules 1-321 and 1-323.

(d) Hearing

If exceptions are timely filed, upon the filing of a response or, if no response is filed, upon the expiration of the time for filing it, the Court shall set a schedule for filing memoranda in support of the exceptions and response and a date for a hearing. The hearing on exceptions shall be conducted in accordance with Rule 8-522. If no exceptions are timely filed or if the judge files with the Court a written waiver of the judge's right to a hearing, the Court may decide the matter without a hearing.

(e) Disposition

The Court of Appeals may (1) impose the disposition recommended by the Commission or any other disposition permitted by law; (2) dismiss the proceeding; or (3) remand for further proceedings as specified in the order of remand.

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

(f) Decision

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

Source: This Rule is derived from former Rule 16-809 (2016).

REPORTER'S NOTE

Proposed Rule 18-415 is derived from former Rule 16-809, with stylistic changes. In section (e), the word "disposition" is substituted for the word "sanction," to more accurately reflect the range of options available to the Court, including the permanent retirement of a judge in accordance with Rule 18-412.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

Rule 18-416. EXECUTION OF DISCIPLINE

(a) Authority

In imposing discipline upon a judge pursuant to the Rules in this Chapter, whether pursuant to an agreement between the judge and the Commission or otherwise, the Court of Appeals, in its Order, may suspend execution of all or part of the discipline upon terms it finds appropriate.

(b) Monitoring Compliance

(1) Unless the Court orders otherwise, the Commission shall monitor compliance with the conditions stated in the order. The Commission may direct Investigative Counsel to monitor compliance on its behalf.

(2) The Commission may direct the judge to provide to Investigative Counsel such information and documentation and to authorize other designated persons to provide such information and documentation to Investigative Counsel as necessary for the Commission effectively to monitor compliance with the applicable conditions.

(3) Upon any material failure of the judge to comply with those requirements or upon receipt of information that the judge otherwise has failed to comply with a condition imposed by the

Court, Investigative Counsel shall promptly file a report with the Commission and send written notice to the judge that it has done so. The notice shall include a copy of the report and inform the judge that, within fifteen days from the date of the notice, the judge may file a written response with the Commission.

(4) The Commission promptly shall schedule a hearing on the report and any timely response filed by the judge and shall report to the Court its findings regarding any material violation by the judge. The report shall include any response filed by the judge.

(5) If a material violation found by the Commission is based upon conduct by the judge that could justify separate discipline for that conduct, the Commission may direct Investigative Counsel to proceed as if a new complaint had been filed and shall include that in its report to the Court.

(c) Response; Hearing

Within fifteen days after the filing of the Commission's report, the judge may file a response with the Court. The judge shall serve a copy of any response on the Commission. The Court shall hold a hearing on the Commission's report and any timely response filed by the judge and may take whatever action it finds appropriate. The Commission may be represented in the proceeding by its Executive Secretary or any other attorney the Commission may appoint.

Source: This Rule is new.

REPORTER'S NOTE

Proposed Rule 18-416 is new. It is added because, on occasion, whether pursuant to an agreement between the judge and the Commission or otherwise, the Court of Appeals has imposed discipline, but suspended execution of all or part of the discipline, pending compliance by the judge with conditions imposed by the Court.

The Rule provides that, ordinarily, the Commission or (if directed by the Commission) Investigative Counsel is responsible for monitoring the judge's compliance with the conditions. The Rule also contains a mechanism to address an alleged material violation of the conditions and affords the judge due process rights to refute any such allegation. After a hearing before the Commission, the Court of Appeals determines whether a material violation occurred and takes any action the Court finds appropriate.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

Rule 18-417. CONFIDENTIALITY

(a) Generally

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

(1) Address of Record

The judge's current home address shall remain confidential at all stages of proceedings under these rules. Any other address of record shall be open to the public if the charges and proceedings are open to the public.

(2) Complaints; Investigations; Disposition Without Charges

Except as otherwise required by Rule 18-408, 18-409, and 18-410, all proceedings under Rules 18-404 through 18-410 shall be confidential.

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

Charges alleging sanctionable conduct, whether or not joined with charges of disability, and all subsequent proceedings before the Commission on those charges shall be open to the public upon the first to occur of (A) the resignation or

voluntary retirement of the judge, (B) the filing of a response by the judge to the charges, or (C) expiration of the time for filing a response. If the charges allege only that the judge has a disability, the charges and all proceedings before the Commission on them shall be confidential.

(4) Work Product, Proceedings, and Deliberations

Except to the extent admitted into evidence before the Commission, the following matters shall be confidential: (A) Investigative Counsel's work product; (B) proceedings before the Board, including any peer review proceeding; (C) deliberations of the Board and Commission; and (D) records of the Board's and Commission's deliberations.

(5) Proceedings in the Court of Appeals

Unless otherwise ordered by the Court of Appeals, the record of Commission proceedings filed with that Court and any proceedings before that Court shall be open to the public.

(b) Permitted Release of Information by Commission

(1) Written Waiver

The Commission may release confidential information upon a written waiver by the judge.

(2) Explanatory Statement

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

(3) To Chief Judge of Court of Appeals

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

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

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

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

(4) Information Involving Criminal Activity

The Commission may provide to law enforcement and prosecuting officials information involving criminal activity, including information requested by subpoena from a grand jury.

(5) Nominations; Appointments; Approvals

(A) Permitted Disclosures

Upon a written application made by a judicial nominating commission, a Bar Admission authority, the President of the United States, the Governor of a state, territory, district, or possession of the United States, or a committee of the General Assembly of Maryland or of the United States Senate which asserts that the applicant is considering the nomination,

appointment, confirmation, or approval of a judge or former judge, the Commission shall disclose to the applicant:

(i) information about any completed proceedings involving the judge that did not result in dismissal, including conditional diversion agreements and private reprimands; and

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

Committee note: A dismissal with a letter of cautionary advice does not constitute discipline and is not disclosed under subsection (b)(5)(A)(i) of this Rule.

(B) Restrictions

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

(C) Copy to Judge

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

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

(c) Statistical Reports

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

Source: This Rule is derived in part from former Rule 16-810 (2016) and is in part new.

REPORTER'S NOTE

Proposed Rule 18-417 is derived from former Rule 16-810, with several changes.

Subsection (a)(3) is revised to provide that charges of alleging sanctionable conduct become public upon the first to occur of the judge's resignation, the judge's retirement, the filing of a response to the charges by the judge, or expiration of the time for filing a response.

Subsection (a)(4) is rewritten to provide for confidentiality of all proceedings before the Board, including peer review proceedings, and for confidentiality of the deliberations and records of deliberations of the Board and Commission. Investigative Counsel's work product is protected, except to the extent admitted into evidence before the Commission.

Revised subsection (b)(3) provides that, upon request of the Chief Judge of the Court of Appeals, the Commission must disclose to the Chief Judge the existence of any pending complaint against the judge who is the subject of the request and the disposition of any complaint that had been filed against that judge within the preceding five years. The Chief Judge may disclose the information to the other judges of the Court in connection with the exercise of the Court's administrative duties. Each judge to whom the information is disclosed is

required to maintain the applicable level of confidentiality of the information otherwise required by the Rules in Title 18, Chapter 400.

New subsection (b)(4) permits disclosure of information involving criminal activity to law enforcement and prosecuting officials, including disclosures to comply with grand jury subpoenas. Comparable provisions pertaining to disclosure of information of this nature by the Attorney Grievance Commission and Bar Counsel are included in recently adopted Rule 19-707 (f)(7) and (f)(8).

New section (c) permits the compilation and public availability of statistical information, provided that if a disposition has not been made public, the identity of the judge involved is not disclosed or readily discernable.

Clarifying and stylistic changes also are made.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-325 to add language to section (a) referring to requests for relief that are civil in nature filed in a criminal action, to add language to the Committee note after section (a), and to correct an internal reference, as follows:

Rule 1-325. WAIVER OF COSTS DUE TO INDIGENCE - GENERALLY

(a) Scope

This Rule applies only to (1) original civil actions in a circuit court or the District Court and (2) requests for relief that are civil in nature filed in a criminal action.

Committee note: Original civil actions in a circuit court include actions governed by the Rules in Title 7, Chapter 200, 300, and 400. Requests for relief that are civil in nature filed in a criminal action include petitions for expungement and requests to shield all or part of a record.

(b) Definition

In this Rule, "prepaid costs" means costs that, unless prepayment is waived pursuant to this Rule, must be paid prior to the clerk's docketing or accepting for docketing a pleading or paper or taking other requested action.

Committee note: "Prepaid costs" may include a fee to file an initial complaint or a motion to reopen a case, a fee for entry of the appearance of an attorney, and any prepaid compensation, fee, or expense of a magistrate or examiner. See Rules 1-501, 2-541, 2-542, 2-603, and 9-208.

(c) No Fee for Filing Request

No filing fee shall be charged for the filing of the request for waiver of prepaid costs pursuant to section (d) or (e) of this Rule.

(d) Waiver of Prepaid Costs by Clerk

On written request, the clerk shall waive the prepayment of prepaid costs, without the need for a court order, if:

(1) the party is an individual who is represented (A) by an attorney retained through a pro bono or legal services program on a list of programs serving low income individuals that is submitted by the Maryland Legal Services Corporation to the State Court Administrator and posted on the Judiciary website, provided that an authorized agent of the program provides the clerk with a statement that (i) names the program, attorney, and party; (ii) states that the attorney is associated with the program and the party meets the financial eligibility criteria of the Corporation; and (iii) attests that the payment of filing fees is not subject to Code, Courts Article, §5-1002 (the Prisoner Litigation Act), or (B) by an attorney provided by the Maryland Legal Aid Bureau, Inc. or the Office of the Public Defender, and

(2) except for an attorney employed or appointed by the Office of the Public Defender in a civil action in which that Office is required by statute to represent the party, the attorney certifies that, to the best of the attorney's

knowledge, information, and belief, there is good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay.

Committee note: The Public Defender represents indigent individuals in a number of civil actions. See Code, Criminal Procedure Article, §16-204 (b).

Cross reference: See Rule 1-311 (b) and Rule 3.1 of the Maryland Lawyers' Rules of Professional Conduct.

(e) Waiver of Prepaid Costs by Court

(1) Request for Waiver

An individual unable by reason of poverty to pay a prepaid cost and not subject to a waiver under section (d) of this Rule may file a request for an order waiving the prepayment of the prepaid cost. The request shall be accompanied by (A) the pleading or paper sought to be filed; (B) an affidavit substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the Clerks' offices; and (C) if the individual is represented by an attorney, the attorney's certification that, to the best of the attorney's knowledge, information, and belief, there is good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay.

Cross reference: See Rule 1-311 (b) and Rule 3.1 of the Maryland Lawyers' Rules of Professional Conduct.

(2) Review by Court; Factors to be Considered

The court shall review the papers presented and may require the individual to supplement or explain any of the

matters set forth in the papers. In determining whether to grant a prepayment waiver, the court shall consider:

(A) whether the individual has a family household income that qualifies under the client income guidelines for the Maryland Legal Services Corporation for the current year, which shall be posted on the Judiciary website; and

(B) any other factor that may be relevant to the individual's ability to pay the prepaid cost.

(3) Order; Payment of Unwaived Prepaid Costs

If the court finds that the party is unable by reason of poverty to pay the prepaid cost and that the pleading or paper sought to be filed does not appear, on its face, to be frivolous, it shall enter an order waiving prepayment of the prepaid cost. In its order, the court shall state the basis for granting or denying the request for waiver. If the court denies, in whole or in part, a request for the waiver of its prepaid costs, it shall permit the party, within 10 days, to pay the unwaived prepaid cost. If, within that time, the party pays the full amount of the unwaived prepaid costs, the pleading or paper shall be deemed to have been filed on the date the request for waiver was filed. If the unwaived prepaid costs are not paid in full within the time allowed, the pleading or paper shall be deemed to have been withdrawn.

(f) Award of Costs at Conclusion of Action

(1) Generally

At the conclusion of an action, the court and the clerk shall allocate and award costs as required or permitted by law.

Cross reference: See Rules 2-603, 3-603, 7-116, and *Mattison v. Gelber*, 202 Md. App. 44 (2011).

(2) Waiver

(A) Request

At the conclusion of an action, a party may seek a final waiver of open costs, including any unpaid appearance fee, by filing a request for the waiver, together with (i) an affidavit substantially in the form prescribed by subsection ~~(e)(1)(A)~~ (e)(1)(B) of this Rule, or (ii) if the party was granted a waiver of prepayment of prepaid costs by court order pursuant to section (e) of this Rule and remains unable to pay the costs, an affidavit that recites the existence of the prior waiver and the party's continued inability to pay by reason of poverty.

(B) Determination by Court

In an action under Title 9, Chapter 200 of these Rules or Title 10 of these Rules, the court shall grant a final waiver of open costs if the requirements of Rules 2-603 (e) or 10-107 (b), as applicable, are met. In all other civil matters, the court may grant a final waiver of open costs if the party against whom the costs are assessed is unable to pay them by reason of poverty.

Source: This Rule is new.

REPORTER'S NOTE

Unless waived, a fee is required to be paid when a petition for expungement is filed. Ordinarily, no fee is required when shielding is requested; however, requests to shield filed under the recently enacted Second Chance Act (Code, Criminal Procedure Article, §§10-301 through 10-306) do carry a charge.

The Director of the Access to Justice Department of the Administrative Office of the Courts pointed out that Rule 1-325 is applicable only to civil matters. She noted that although an expungement is civil in nature, a petition for expungement is filed in a criminal action. Since there will be a greater demand for expungements as well as more shielding requests due to recent changes in the law, the Director asked that language be added to Rule 1-325 to make it clear that Rule 1-325 applies to costs for petitions to expunge and for requests to shield all or part of records.

The Rules Committee considered this matter and recommends amending Rule 1-325 accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-325.1 to remove language that provides that if unwaived prepaid costs are not paid in full within the time allowed the “appeal shall be deemed to have been withdrawn,” and to add language to require the court to “enter an order striking the appeal” if unwaived prepaid costs are not paid in full within the time allowed, as follows:

Rule 1-325.1. WAIVER OF PREPAID APPELLATE COSTS IN CIVIL ACTIONS

(a) Scope

This Rule applies (1) to an appeal from an order or judgment of the District Court or an orphans' court to a circuit court in a civil action, and (2) to an appeal as defined in subsection (b)(1) of this Rule seeking review in the Court of Special Appeals or the Court of Appeals of an order or judgment of a lower court in a civil action.

(b) Definitions

In this Rule, the following definitions apply:

(1) Appeal

"Appeal" means an appeal, an application for leave to appeal to the Court of Special Appeals, and a petition for

certiorari or other extraordinary relief filed in the Court of Appeals.

(2) Clerk

"Clerk" includes a Register of Wills.

(3) Prepaid Costs

"Prepaid costs" means (A) the fee charged by the clerk of the lower court for assembling the record, (B) the cost of preparation of a transcript in the District Court, if a transcript is necessary to the appeal, and (C) the filing fee charged by the clerk of the appellate court.

Cross reference: See the schedule of appellate court fees following Code, Courts Article, §7-102 and the schedule of circuit court fees following Code, Courts Article, §7-202.

(c) Waiver

(1) Generally

Waiver of prepaid costs under this Rule shall be governed generally by section (d) or (e) of Rule 1-325, as applicable, except that:

(A) the request for waiver of both the lower and appellate ~~court~~ prepaid costs shall be filed in the lower court with the notice of appeal;

(B) a request to waive prepayment of the fee for filing a petition for certiorari or other extraordinary relief in the Court of Appeals shall be filed in, and determined by, that Court;

(C) waiver of the fee charged for assembling the record

shall be determined in the lower court;

(D) waiver of the appellate court filing fee shall be determined by the appellate court, but the appellate court may rely on a waiver of the fee for assembling the record ordered by the lower court;

(E) both fees shall be waived if (i) the appellant received a waiver of prepaid costs under section (d) of Rule 1-325 and will be represented in the appeal by an eligible attorney under that section, (ii) the attorney certifies that the appellant remains eligible for representation in accordance with Rule 1-325 (d), and (iii) except for an attorney employed or appointed by the Office of the Public Defender in a civil action in which that Office is required by statute to represent the party, the attorney further certifies that to the best of the attorney's knowledge, information, and belief there is good ground to support the appeal and it is not interposed for any improper purpose or delay; and

(F) if the appellant received a waiver of prepaid costs under section (e) of Rule 1-325, the lower court and appellate court may rely on a supplemental affidavit of the appellant attesting that the information supplied in the affidavit provided under Rule 1-325 (e) remains accurate and that there has been no material change in the appellant's financial condition or circumstances.

(2) Procedure

(A) If an appellant requests the waiver of the prepaid costs in both the lower and appellate courts, the lower court, within five days after the filing of the request, shall act on the request for waiver of its prepaid cost and transmit to the appellate court the request for waiver of the appellate court prepaid cost, together with a copy of the request and order regarding the waiver of the lower court prepaid cost.

(B) The appellate court shall act on the request for the waiver of its prepaid cost within five business days after receipt of the request from the lower court.

(C) If either court denies, in whole or in part, a request for the waiver of its prepaid cost, it shall permit the appellant, within 10 days, to pay the unwaived prepaid cost. If, within that time, the appellant pays the full amount of the unwaived prepaid cost, the appeal shall be deemed to have been filed on the day the request for waiver was filed in the lower court or, as to a petition for certiorari or other extraordinary relief, in the Court of Appeals. If the unwaived prepaid costs are not paid in full within the time allowed, the ~~appeal shall be deemed to have been withdrawn~~ court shall enter an order dismissing the appeal.

Source: This Rule is new.

REPORTER'S NOTE

The last sentence of current Rule 1-325.1 (c)(2)(C) provides that if unwaived prepaid appellate costs are not paid

in full within the time allowed, “the appeal shall be deemed to have been withdrawn.” It is proposed that the sentence be revised to provide that if the unwaived prepaid costs are not paid, “the court shall enter an order striking the appeal.” Thus, the consequences of nonpayment would be the judicial act of dismissing the appeal, instead of a “deemed” withdrawal.

In subsection (c)(1)(A), it is proposed that the word “prepaid” be substituted for “court” for clarity.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 100 – COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-131 to delete the option of an oral entry of appearance and to make a stylistic change, as follows:

Rule 2-131. APPEARANCE

. . .

(c) How Entered

Except as otherwise provided in section (b) of this Rule, an appearance may be entered by filing a pleading or motion~~,~~ or by filing a written ~~request for the entry~~ notice of ~~an~~ appearance~~, or, if the court permits, by orally requesting the entry of an appearance in open court~~.

. . .

REPORTER'S NOTE

Rules 2-131 and 3-131 are proposed to be amended so that oral entries of appearance no longer are permitted. Additionally, the terminology, "request for the entry of an appearance," is changed to "notice of appearance," as a matter of style.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-131 to delete the option of an oral entry of appearance and to make a stylistic change, as follows:

Rule 3-131. APPEARANCE

. . .

(c) How Entered

Except as otherwise provided in section (b) of this Rule, an appearance may be entered by filing a pleading, motion, or notice of intention to defend or, by filing a written ~~request for the entry~~ notice of ~~an~~ appearance~~, or, if the court permits, by orally requesting the entry of an appearance in open court~~.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-131.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-214 to specify that an attorney enters an appearance by filing a written request for the entry of an appearance or by filing a pleading or motion and to update an internal Rule reference, as follows:

Rule 4-214. DEFENSE COUNSEL

(a) Appearance

Counsel retained or appointed to represent a defendant shall enter an appearance ~~in writing~~ within five days after accepting employment, after appointment, or after the filing of the charging document in court, whichever occurs later. An appearance may be entered by filing a pleading or motion or by filing a written notice of appearance. An appearance entered in the District Court will automatically be entered in the circuit court when a case is transferred to the circuit court because of a demand for jury trial. In any other circumstance, counsel who intends to continue representation in the circuit court after appearing in the District Court must re-enter an appearance in the circuit court.

. . .

(d) Striking Appearance

A motion to withdraw the appearance of counsel shall be made in writing or in the presence of the defendant in open court. If the motion is in writing, moving counsel shall certify that a written notice of intention to withdraw appearance was sent to the defendant at least ten days before the filing of the motion. If the defendant is represented by other counsel or if other counsel enters an appearance on behalf of the defendant, and if no objection is made within ten days after the motion is filed, the clerk shall strike the appearance of moving counsel. If no other counsel has entered an appearance for the defendant, leave to withdraw may be granted only by order of court. The court may refuse leave to withdraw an appearance if it would unduly delay the trial of the action, would be prejudicial to any of the parties, or otherwise would not be in the interest of justice. If leave is granted and the defendant is not represented, a subpoena or other writ shall be issued and served on the defendant for an appearance before the court for proceedings pursuant to Rule 4-215 or 4-215.1.

. . .

REPORTER'S NOTE

The Rules Committee received an inquiry as to why there are differences between the methods of entry of an attorney's appearance in criminal cases (Rule 4-214) and the methods of entry of an attorney's appearance in civil cases (Rules 2-131 and 3-131).

Rule 4-214 (a) currently requires that an attorney enter an appearance in writing, but does not specify the form of the

writing. Rules 2-131 (c) and 3-131 (c) permit an appearance to be entered by filing a pleading, a motion, a written request for the entry of an appearance, or, in the District Court, a notice of intention to defend, which, in that Court, is the functional equivalent of an answer. Currently, Rules 2-131 and 3-131 also provide that, if the court permits, an appearance may be entered by orally requesting the entry of an appearance in open court.

The Committee recommends that Rule 4-214 be amended to permit the entry of an attorney's appearance "by filing a pleading or motion or by filing a written request for the entry of an appearance," and that oral entries of appearance not be permitted. The Committee also recommends amendments to Rules 2-131 and 3-131 to make the permitted methods of entry of an attorney's appearance the same in civil and criminal cases.

In Rule 4-214 (d), a reference to proposed new Rule 4-215.1 is added.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 400 - DISCOVERY

ADD new Rule 2-413.1, as follows:

Rule 2-413.1. PERMITTED ATTENDANCE

Unless the parties agree or the court orders otherwise, the only persons allowed to attend a deposition are:

(a) the officer, or officer's designee, before whom the deposition is taken;

(b) an individual acting under the direction and in the presence of the officer;

(c) a party who is an individual;

(d) if the party is not an individual, one representative of that party other than the party's attorney;

(e) the parties' attorneys;

(f) a non-attorney member of the attorney's staff needed to assist in the representation;

(g) the witness;

(h) an attorney for the witness; and

(i) an expert witness expected to testify on the subject matter of the deposition.

Committee note: This Rule is subject to the requirements of any protective order entered in the action, the Americans with Disabilities Act, 42 U.S.C. §§12101, *et seq*., and other law. The parties are encouraged to permit the attendance of non-

testifying party representatives, such as insurance claims adjusters.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 2-413.1 answers the question of who may attend a deposition. The Rule lists the only individuals who are allowed to attend a deposition, unless the parties agree otherwise or the court orders otherwise. With respect to individuals presiding over the deposition, Rule 2-413.1 is in accord with current Rule 2-415 (a) by providing that the "officer before whom a deposition is taken" and an individual "acting under the direction and in the presence of the officer" have a right to attend the deposition. The other identified individuals reflect the Committee's conclusions on which individuals ordinarily have a right to be in attendance. A Committee note following the proposed Rule serves as a reminder that the Rule is subject to the requirements of a protective order entered in the action, the Americans with Disabilities Act, 42 U.S.C. §§12101, *et seq*., and similar statutes. The Committee note also encourages the parties to permit the attendance of party representatives who will not be testifying, such as insurance claims adjusters.

While proposed Rule 2-413.1 clarifies who may attend a deposition, it also reflects a preference that the parties to the deposition will come to an agreement in the vast majority of cases about who may attend, without the need for court intervention.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 400 - DISCOVERY

ADD new Rule 2-422.1, as follows:

Rule 2-422.1. INSPECTION OF PROPERTY - OF NONPARTY OR BY FOREIGN PARTY – WITHOUT DEPOSITION

(a) Applicability; Use of Subpoena

This Rule applies to the issuance of a subpoena to obtain entry upon and inspection of designated land or property owned by or in the possession or control of (1) a nonparty to an action pending in this State or (2) a person to whom a foreign subpoena is directed pursuant to Code, Courts Article, Title 9, Subtitle 4. A subpoena issued under this Rule may be used only for that purpose. This Rule does not apply to the issuance of a subpoena in conjunction with a deposition.

Committee note: Under subsection (a)(2), a person to whom a foreign subpoena is directed could be a party or a nonparty to the foreign action. A party to an action pending in this State who seeks entry upon land of another party must proceed in accordance with Rule 2-422.

Cross reference: For a subpoena issued in conjunction with a deposition, see Rules 2-510 and 2-510.1.

(b) Definitions

(1) Statutory Definitions

The definitions stated in Code, Courts Article, §9-401 apply in this Rule to the extent relevant.

(2) Additional Definitions

In this Rule, the following additional definitions apply:

(A) Domestic Subpoena

"Domestic subpoena" means a subpoena issued by a circuit court of this State in an action pending in this State.

(B) Inspection

"Inspection" includes inspecting, measuring, surveying, photographing, testing, and sampling within the scope of Rule 2-402 (a).

(C) Nonparty

"Nonparty" means any person, other than a party, who is in possession or control of land or other property and, if different, the record owner of the land or other property.

(D) Foreign Party

"Foreign party" means the party on whose behalf a foreign subpoena is issued.

(E) Foreign Attorney

"Foreign attorney" means an attorney licensed to practice law in a foreign jurisdiction, but not in the State of Maryland.

(c) Issuance

(1) Domestic Subpoena

Upon the request of a person entitled to the issuance of a subpoena under this Rule for discovery in an action pending in

this State, the clerk shall issue a completed subpoena, or provide a blank form of subpoena which shall be filled in and returned to the clerk to be signed and sealed before service. On the request of an attorney or other officer of the court entitled to the issuance of a subpoena under this Rule, the clerk shall issue a subpoena signed and sealed but otherwise in blank, which shall be filled in before service.

(2) Foreign Subpoena

(A) Request for Issuance

A party to an action pending in a foreign jurisdiction may request issuance of a subpoena by a court of this State based on a foreign subpoena issued in that action by submitting a request to the clerk of the circuit court for the county in which discovery is sought to be conducted. The request shall be accompanied by the foreign subpoena and a written undertaking in a form approved by the State Court Administrator, signed by the foreign party and the party's foreign attorney, if any, by which the party and the party's foreign attorney submit to the jurisdiction of the circuit court for the purpose of adjudicating discovery disputes, motions to quash, enforcement of the subpoena, and discovery sanctions. A foreign party and the party's foreign attorney, if any, who files a request or undertaking pursuant to this section does not, by so doing, submit to the jurisdiction of a court of this State for any other purpose.

Committee note: This section does not affect the jurisdiction of a court over a party or attorney who is otherwise subject to the court's jurisdiction.

(B) Issuance

The clerk promptly shall issue a subpoena for service upon the person to whom the foreign subpoena is directed. The subpoena shall:

(i) incorporate the terms used in the foreign subpoena;

(ii) comply with the requirements of section (d) of this Rule; and

(iii) contain or be accompanied by the names, addresses, and telephone numbers of all attorneys of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(d) Form

(1) Except as otherwise provided by the court for good cause, every subpoena shall be on a uniform form approved by the State Court Administrator and shall:

(A) contain the caption of the action, including the civil action number for the Maryland court issuing the subpoena;

(B) contain the name and address of the person to whom it is directed;

(C) contain the name of the person at whose request it is issued;

(D) describe with reasonable particularity the land or property to be entered and any actions to be performed;

(E) state the nature of the controversy and the relevancy of the entrance and proposed acts;

(F) specify a reasonable time and manner of entering and performing the proposed acts;

(G) contain or be accompanied by a description of the good faith attempts made by the party to reach agreement and with the person to whom the subpoena is directed concerning the entry and proposed acts;

(H) contain the date of issuance; and

(I) contain a statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter.

(2) A subpoena issued pursuant to this Rule shall be accompanied by:

(A) a written undertaking that the requesting party will pay for all damages arising out of the entry and performance of the proposed acts; and

(B) a notice informing the person to whom the subpoena is directed that:

(i) the person has the right to object to the entry and proposed acts by filing an objection with the court and serving a copy of it on the requesting party;

(ii) any objection must be filed and served within 30 days after the person is served with the subpoena; and

(iii) the objection must include or be accompanied by a

certificate of service, stating the date on which the person mailed a copy of the objection to the requesting party.

Cross reference: See Rules 1-321 and 1-323.

(e) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. If a subpoena is to permit entry upon leased land or property, the subpoena shall be served on any record owner of the land or property and any occupant or person in possession or control of the land or property. Before the subpoena is served, the party on whose behalf the subpoena is issued shall serve a copy of it on each other party in the manner provided by Rule 1-321 and file with the court a certificate of service attesting to the fact of service on the other parties. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance. A subpoena shall be served at least 45 days before the date of a requested entry.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health-

General Article, §4-306 (b)(6) and Code, Financial Institutions Article, §1-304.

(f) Objection to Subpoena to Permit Entry Upon Designated Land or Property; Procedure to Compel Entry

(1) Objection

A person served with a subpoena to permit entry upon designated land or property, or any other person who claims an interest in the land or property, may object to the entry by filing an objection within 30 days after service of the subpoena and serving the objection on the requesting party. After an objection is filed, entry upon the designated land or property is not permitted unless the court grants a motion to compel entry filed in accordance with subsection (f)(2) of this Rule.

(2) Procedure to Compel Entry

(A) Motion to Compel

If the requested discovery is refused or within 15 days after an objection is served, the requesting party may file a motion to compel entry. The requesting party shall (i) attach to the motion a copy of the subpoena and any objection, (ii) serve a copy of the motion in the manner provided by Rule 1-321 on all other parties and the person who filed the objection, and (iii) if the requesting party is seeking entry upon leased land or property, serve a copy of the motion on any record owner of the land or property and any occupant or person in possession or control of the land or property. A hearing may be requested by

including the heading “Request for Hearing” in the motion.

(B) Response

A response may be filed within 15 days after service. A hearing may be requested by including the heading “Request for Hearing” in the response.

(C) Hearing

If a hearing is not timely requested, the court may rule on the motion without a hearing. If a nonparty requests a hearing, the court shall hold a hearing. If a party requests a hearing, the court may determine whether a hearing will be held.

(D) Order

An order granting the motion shall specify the time, place, and manner of entry upon the land or property and the acts that may be performed. The order also may include any other provision that the court deems appropriate, including provisions relating to the privacy of the person who filed the objection, protection of the interests of the parties and any nonparty, and the filing of a bond to secure the obligation of the moving party to pay for damages arising out of the entry and acts performed.

Cross reference: See Maryland Uniform Interstate Depositions and Discovery Act, Code, Courts Article, §§9-401 et seq.

Source: This Rule is new.

REPORTER'S NOTE

In Chapter 41 of the 2008 session, the General Assembly enacted the Maryland Uniform Interstate Depositions and Discovery Act (the "Uniform Act"), which is codified in Code, Courts Article, Title 9, Subtitle 4. The purpose of the Uniform Act, which has been codified in twenty-eight jurisdictions, is to create a fair and easy-to-follow procedure, requiring minimal judicial oversight and intervention. The Uniform Act is patterned after Rule 45 of the Federal Rules of Civil Procedure. *See* Report of the Drafting Committee on the Uniform Interstate Deposition and Discovery Act, §3. Accordingly, Section 9-401 (f)(3) of the Uniform Act provides that a subpoena issued under the Uniform Act may require a person to "[p]ermit inspection of premises under control of a person."

Section 9-401 (f)(3), however, is inconsistent with Rule 2-422. In *Webb v. Joyce*, 108 Md. App. 512 (1996), the Court of Special Appeals determined that Rule 2-422 did not permit a party to inspect the property of a nonparty. The Court distinguished Rule 2-422 from what is permitted under the federal rules of civil procedure, which had been specifically amended to permit the use of subpoenas to inspect the property of nonparties.

After the *Webb* decision, the Rules Committee proposed a new Rule 2-422.1. *See* One Hundred Forty-Seventh Report of the Rules Committee. The Rule expressly would have authorized circuit courts to issue subpoenas to command the inspection of premises of non-parties. However, by Rules Order dated June 6, 2000, the Court of Appeals rejected proposed new Rule 2-422.1.

The Rules Committee now proposes a revised version of Rule 2-422.1, for two reasons that have occurred since 2000.

First, the passage of the Uniform Act enables a foreign party to obtain a subpoena requiring a person, including a nonparty, to permit inspection of premises under the control of the person.

Second, the Committee believes that Maryland litigants should receive the same consideration. Post-*Webb* case authority from the Court of Special Appeals has highlighted for Maryland practitioners that there is an indirect means to obtain discovery of the property of nonparties. In *Stokes v. 835 N. Washington Street, LLC*, 141 Md. App. 214 (2001), the Court of Special Appeals declared the "circuit courts have the power to order inspection of a nonparty's property on a case-by-case basis through the equitable bill of discovery." *Id.* At 223.

The Court acknowledged its earlier decision in *Webb v. Joyce*, but held that, "Because the Maryland Rules do not preclude circuit courts from exercising their inherent equitable powers, we are persuaded that the circuit court has jurisdiction to permit appellants entry into appellee's property through an equitable bill of discovery." *Id.* at 222. In *Johnson v. Franklin*, 223 Md. App. 273 (2015), the Court of Special Appeals adhered to its holding in *Stokes*. The Subcommittee proposes that Rule 2-422.1 be adopted to create a Rule whereby parties may directly obtain discovery of the property of nonparties, rather than having to obtain an equitable bill of discovery.

Section (a) of proposed new Rule 2-422.1 provides that the Rule applies to the issuance of a subpoena to obtain entry upon and inspection of designated land or property owned by or in the possession or control of (1) a nonparty to an action pending in this State or (2) a person to whom a foreign subpoena is directed pursuant to Courts Article, §9-401 et seq. A subpoena issued under this Rule may be used only for that purpose.

Subsection (b)(1) adopts the definitions from the Uniform Act to the extent relevant, and subsection (b)(2) contains additional definitions of "domestic subpoena," "inspection," and "nonparty."

Subsections (c)(1) and (c)(2) deal with the issuance of domestic subpoenas and foreign subpoenas, respectively.

Subsection (d)(1) contains a detailed list of the elements of a subpoena. Subsection (d)(2) states that certain information must accompany a subpoena, including a written undertaking that the requesting party will pay for all damages arising from the entry and proposed acts and a notice containing the receiving person's right to object.

Section (e) contains provisions pertaining to service of the subpoena.

Section (f) contains provisions pertaining to an objection to a subpoena under the Rule and to a procedure to compel entry.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

ADD new Rule 2-510.1, as follows:

Rule 2-510.1. FOREIGN SUBPOENAS IN CONJUNCTION WITH A DEPOSITION

(a) Applicability

This Rule applies only to a subpoena issued under Code, Courts Article, Title 9, Subtitle 4 (Maryland Uniform Interstate Depositions and Discovery Act) requiring a person to attend and give testimony at a deposition and, if applicable, produce at the deposition and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person.

Cross reference: For the issuance of a subpoena based on a foreign subpoena that does not require a person to attend a deposition, see Rule 2-422.1.

(b) Definitions

(1) Statutory Definitions

The definitions stated in Code, Courts Article, §9-401 apply in this Rule, to the extent relevant.

(2) Inspection

In this Rule, “Inspection” includes inspecting,

measuring, surveying, photographing, testing, and sampling to the extent permitted by Rule 2-402 (a).

(3) Foreign Party

In this Rule, "foreign party" means the party on whose behalf a foreign subpoena is issued.

(4) Foreign Attorney

In this Rule, "foreign attorney" means an attorney licensed to practice law in a foreign jurisdiction, but not in the state of Maryland.

(c) Request for Issuance

A party to an action pending in a foreign jurisdiction may request issuance of a subpoena by a court of this State based on a foreign subpoena issued in that action by submitting a request to the clerk of the circuit court for the county in which discovery is sought to be conducted. The request shall be accompanied by the foreign subpoena and a written undertaking in a form approved by the State Court Administrator, signed by the foreign party and the party's foreign attorney, if any, by which the party and the party's foreign attorney submit to the jurisdiction of the circuit court for the purpose of adjudicating discovery disputes, motions to quash, enforcement of the subpoena, and discovery sanctions. A foreign party and the party's foreign attorney, if any, who files a request or undertaking pursuant to this section does not, by so doing, submit to the jurisdiction of a court of this State for any

other purpose.

Committee note: Section (c) of this Rule does not affect the jurisdiction of a court over a party or attorney who is otherwise subject to the court's jurisdiction.

(d) Issuance

The clerk promptly shall issue a subpoena for service upon the person to whom the foreign subpoena is directed. The subpoena shall:

(1) incorporate the terms used in the foreign subpoena;

(2) comply with the requirements of section (e) of this Rule; and

(3) contain or be accompanied by the names, addresses, and telephone numbers of all attorneys of record in the proceeding to which the subpoena relates and of any party not represented by an attorney.

(e) Form

Except as otherwise permitted by the court for good cause, every subpoena shall be on a uniform form approved by the State Court Administrator. The form shall contain: (1) the caption of the action, including the civil action number for the Maryland court issuing the subpoena, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, (5) a description of any documents, electronically stored information, or tangible things to be produced and if testing or sampling is to occur, a description

of the proposed testing or sampling procedure, (6) when required by Rule 2-412 (d), a notice to designate the person to testify, (7) the date of issuance, and (8) a statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter. A subpoena may specify the form in which electronically stored information is to be produced.

Committee note: A subpoena may be used to compel attendance at a deposition that will be held more than 60 days after the date of issuance, provided that the subpoena is served within the 60-day period. The failure to serve a subpoena within the 60-day period does not preclude the issuance of a new subpoena.

(f) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health-General
Article, §4-306 (b)(6) and Code, Financial Institutions Article, §1-304.

(g) Objection to Subpoena for Deposition

A person served with a subpoena to attend a deposition may seek a protective order pursuant to Rule 2-403. If the

subpoena also commands the production of documents, electronically stored information, or tangible things at the deposition, the person served or a person named or depicted in an item specified in the subpoena may seek a protective order pursuant to Rule 2-403 or may file, within ten days after service of the subpoena, an objection to production of any or all of the designated materials. The objection shall be in writing and shall state the reasons for the objection. If an objection is filed, the party serving the subpoena is not entitled to production of the materials except pursuant to an order of the Maryland court from which the subpoena was issued. At any time before or within 15 days after completion of the deposition and upon notice to the deponent, the party serving the subpoena may move for an order to compel the production.

A claim that information is privileged or subject to protection shall be supported by a description of each item that is sufficient to enable the demanding party to evaluate the claim.

(h) Duties Relating to the Production of Documents, Electronically Stored Evidence, and Other Property

(1) Generally

A person responding to a subpoena to produce documents, electronically stored information, or other property at a deposition shall:

(A) produce the documents or information as they are kept

in the usual course of business or shall organize and label the documents or information to correspond with the categories in the subpoena; and

(B) produce electronically stored information in the form specified in the subpoena or, if a form is not specified, in the form in which the person ordinarily maintains it or in a form that is reasonably usable.

(2) Electronically Stored Information

A person responding to a subpoena to produce electronically stored information at a court proceeding or deposition need not produce the same electronically stored information in more than one form and may decline to produce the information on the ground that the sources are not reasonably accessible because of undue burden or cost. A person who declines to produce information on this ground shall identify the sources alleged to be not reasonably accessible and state the reasons why production from each identified source would cause undue burden or cost. The statement of reasons shall provide enough detail to enable the demanding party to evaluate the burdens and costs of complying with the subpoena and the likelihood of finding responsive information in the identified sources. Any motion relating to electronically stored information withheld on the ground that it is not reasonably accessible shall be decided in the manner set forth in Rule 2-402 (b).

(i) Protection of Persons Subject to Subpoenas

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or cost on a person subject to the subpoena.

Cross reference: For the availability of sanctions for violations of this section, see Rules 1-201 (a) and 1-341.

(j) Permissive and Non-permissive Use

(1) A subpoena may be used to compel a witness to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition to the extent permitted by Rule 2-402 (a).

(2) A subpoena issued under this Rule may not be used for any other purpose. If the court, on motion of a party or on its own initiative, after affording the alleged violator an opportunity for a hearing, finds that a person has used or attempted to use a subpoena or a copy or reproduction of a subpoena form for a purpose other than one allowed under this Rule, the court may impose an appropriate sanction, including an award of a reasonable attorney's fee and costs, and reimbursement of any person inconvenienced for time and expenses incurred.

(k) Attachment

A witness served with a subpoena under this Rule is

liable to body attachment and fine for failure to obey the subpoena without sufficient excuse. The writ of attachment may be executed by the sheriff or peace officer of any county and shall be returned to the court issuing it. The witness attached shall be taken immediately before the court if then in session. If the court is not in session, the witness shall be taken before a judicial officer of the District Court for a determination of appropriate conditions of release to ensure the witness' appearance at the next session of the court that issued the attachment.

(l) Information Produced that is Subject to a Claim of Privilege or Protection

(1) A party who receives a document, electronically stored information, or other property that the party knows or reasonably should know was inadvertently sent shall promptly notify the sender.

(2) Within a reasonable time after information is produced in response to a subpoena that is subject to a claim of privilege or of protection, the person who produced the information shall notify each party who received the information of the claim and the basis for it. A party who wishes to determine the validity of a claim of privilege or protection that is not controlled by a court order or a disclosure agreement entered into pursuant to Rule 2-402 (e)(5), shall promptly file a motion under seal requesting that the court

determine the validity of the claim. A party in possession of information that is the subject of the motion shall appropriately preserve the information pending a ruling. A receiving party may not use or disclose the information until the claim is resolved and shall take reasonable steps to retrieve any information the receiving party disclosed before being notified.

Cross reference: See Rule 19-304.4 (b) of the Maryland Attorneys' Rules of Professional Conduct.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 2-510.1 provides procedures pertaining to subpoenas issued under Code, Courts Article, Title 9, Subtitle 4 (Maryland Uniform Interstate Depositions and Discovery Act) in conjunction with a deposition.

Section (a) sets forth the applicability of the Rule.

Subsection (b)(1) adopts the definitions of the Uniform Act, to the extent applicable, and subsections (b)(2) – (b)(4) contain definitions of other terms used in the Rule.

Section (c) establishes requirements for requesting issuance of a subpoena under the Rule. The request must be filed with the clerk of the circuit court for the county in which discovery is sought to be conducted. It must be accompanied by a copy of the foreign subpoena and by a written undertaking by which the foreign party and the party's attorney submit to the jurisdiction of the circuit court for the purpose of adjudicating disputes related to the issuance and enforcement of the subpoena.

Section (d) requires the clerk to issue the subpoena, incorporating the terms used in the foreign subpoena and using the form specified by section (e) of the Rule. Section (d) also requires that the subpoena contain or be accompanied by the names and addresses of all parties or their attorneys.

Section (e), Form, is derived from Rule 2-510 (c).

Section (f), Service, is derived from the applicable provisions of Rule 2-510 (d).

Section (g), Objection to Subpoena for Deposition, is derived from Rule 2-510 (f).

Section (h), Duties Relating to the Production of Documents, Electronically Stored Evidence, and Other Property, is derived from Rule 2-510 (g).

Section (i), Protection of Persons Subject to Subpoena, is derived from Rule 2-510 (h).

Section (j), Permissive and Non-permissive Use, states the purposes for which a subpoena issued under the Rule may and may not be used. Section (j) includes a provision for sanctions that is derived from Rule 2-510 (a)(3).

Section (k), Attachment, is derived from Rule 2-510 (j).

Section (l), Information Produced that is Subject to a Claim of Privilege or Protection, is derived from Rule 2-510 (k).

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-422 to change the title of the Rule and to add a cross reference following section (a), as follows:

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

(a) Scope

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

served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the property, within the scope of Rule 2-402 (a).

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

(b) Request

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

(c) Response

The party to whom a request is directed shall serve a written response within 30 days after service of the request or within 15 days after the date on which that party's initial pleading or motion is required, whichever is later. The response shall state, with respect to each item or category, that (1) inspection and related activities will be permitted as requested, (2) the request is refused, or (3) the request for production in a particular form is refused. The grounds for each refusal shall be fully stated. If the refusal relates to part of an item or category, the part shall be specified. If a

refusal relates to the form in which electronically stored information is requested to be produced (or if no form was specified in the request) the responding party shall state the form in which it would produce the information.

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

(d) Production

(1) A party who produces documents or electronically stored information for inspection shall (A) produce the documents or information as they are kept in the usual course of business or organize and label them to correspond with the categories in the request, and (B) produce electronically stored information in the form specified in the request or, if the request does not specify a form, in the form in which it is ordinarily maintained or in a form that is reasonably usable.

(2) A party need not produce the same electronically stored information in more than one form.

Committee note: Onsite inspection of electronically stored information should be the exception, not the rule, because litigation usually relates to the informational content of the data held on a computer system, not to the operation of the system itself. In most cases, there is no justification for direct inspection of an opposing party's computer system. See *In re Ford Motor Co.*, 345 F.3d 1315 (11th Cir. 2003) (vacating order allowing plaintiff direct access to defendant's databases).

To justify onsite inspection of a computer system and the programs used, a party should demonstrate a substantial need to discover the information and the lack of a reasonable alternative. The inspection procedure should be documented by

agreement or in a court order and should be narrowly restricted to protect confidential information and system integrity and to avoid giving the discovering party access to data unrelated to the litigation. The data subject to inspection should be dealt with in a way that preserves the producing party's rights, as, for example, through the use of neutral court-appointed consultants. See, generally, The Sedona Conference, The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production (2d ed. 2007), Comment 6. c.

Source: This Rule is derived from former Rule 419 and the 1980 and 2006 versions of Fed. R. Civ. P. 34.

REPORTER'S NOTE

In Rule 2-422, the addition of the words "from party" to the title of the Rule and a cross reference following section (a) are proposed to distinguish the existing Rule from proposed new Rule 2-422.1. As stated in the cross reference, Rule 2-422.1 governs (1) inspection of property of a nonparty in an action pending in this State and (2) discovery under the Uniform Interstate Depositions and Discovery Act that is not in conjunction with a deposition.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-510 to change the title of the Rule; to add clarifying language to subsection (a)(3); to add a Committee note following section (b); to delete references to work product in sections (e), (f), and (k); to add to section (k) a certain notification requirement pertaining to items that may have been inadvertently sent; to delete a sentence pertaining to options available to a party that had received certain information; to permit any party to file a motion under section (k) and add language clarifying the circumstances under which the motion is appropriate; to require preservation of a certain item pending a ruling by the court; to add a cross reference following section (k); and to make stylistic changes; as follows:

Rule 2-510. SUBPOENAS <u>– COURT PROCEEDINGS AND DEPOSITIONS</u>

(a) Required, Permissive, and Non-permissive Use

(1) A subpoena is required:

(A) to compel the person to whom it is directed to attend, give testimony, and produce designated documents, electronically stored information, or tangible things at a court proceeding, including proceedings before a magistrate, auditor, or examiner; and

(B) to compel a nonparty to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition.

(2) A subpoena may be used to compel a party over whom the court has acquired jurisdiction to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition.

(3) ~~A~~ Except as otherwise permitted by law, a subpoena may not be used for any other purpose. If the court, on motion of a party or on its own initiative, after affording the alleged violator an opportunity for a hearing, finds that a person has used or attempted to use a subpoena or a copy or reproduction of a subpoena form for a purpose other than one allowed under this Rule, the court may impose an appropriate sanction, including an award of a reasonable attorney's fee and costs, the exclusion of evidence obtained as a result of the violation, and reimbursement of any person inconvenienced for time and expenses incurred.

(b) Issuance

A subpoena shall be issued by the clerk of the court in which an action is pending in the following manner:

(1) On the request of any person entitled to the issuance of

a subpoena, the clerk shall (A) issue a completed subpoena, or (B) provide to the person a blank form of subpoena, which the person shall fill in and return to the clerk to be signed and sealed by the clerk before service.

(2) On the request of a member in good standing of the Maryland Bar entitled to the issuance of a subpoena, the clerk shall issue a subpoena signed and sealed by the clerk, which the attorney shall fill in before service.

(3) An attorney of record in a pending action who is a registered user under Rule 20-101 may obtain from the clerk through MDEC, for use in that action, an electronic version of a blank form of subpoena containing the clerk's signature and the seal of the court, which the attorney may download, print, and fill in before service.

(4) Except as provided in subsections (b)(2) and (b)(3) of this Rule, a person other than the clerk may not copy and fill in any blank form of subpoena for the purpose of serving the subpoena. A violation of this section shall constitute a violation of subsection (a)(3) of this Rule.

Committee note: This Rule does not apply to subpoenas issued under Code, Courts Article, Title 9, Subtitle 4 (Maryland Uniform Interstate Depositions and Discovery Act) requiring attendance at a deposition in this State. For subpoenas issued under that Act in conjunction with a deposition, see Rule 2-510.1. For discovery of documents, electronically stored information, and property from a party to an action pending in this State, other than in conjunction with a deposition, see Rule 2-422. For inspection of property of a nonparty in an action pending in this State and for discovery under the

Maryland Uniform Interstate Depositions and Discovery Act that is not in conjunction with a deposition, see Rule 2-422.1.

(c) Form

Except as otherwise permitted by the court for good cause, every subpoena shall be on a uniform form approved by the State Court Administrator. The form shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, (5) a description of any documents, electronically stored information, or tangible things to be produced and if testing or sampling is to occur, a description of the proposed testing or sampling procedure, (6) when required by Rule 2-412 (d), a notice to designate the person to testify, (7) the date of issuance, and (8) a statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter. A subpoena may specify the form in which electronically stored information is to be produced.

Committee note: A subpoena may be used to compel attendance at a court proceeding or deposition that will be held more than 60 days after the date of issuance, provided that the subpoena is served within the 60-day period. The failure to serve a subpoena within the 60-day period does not preclude the reissuance of a new subpoena.

(d) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law

to receive service for the person named or as permitted by Rule 2-121 (a)(3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. Unless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance. A violation of this provision shall constitute a violation of subsection (a)(3) of this Rule.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health-General Article, §4-306 (b)(6) and Code, Financial Institutions Article, §1-304.

(e) Objection to Subpoena for Court Proceedings

On motion of a person served with a subpoena to attend a court proceeding (including a proceeding before a magistrate, auditor, or examiner) or a person named or depicted in an item specified in the subpoena filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance, the court may enter an order that justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden or cost, including one or more of the following:

(1) that the subpoena be quashed or modified;

(2) that the subpoena be complied with only at some designated time or place other than that stated in the subpoena;

(3) that documents, electronically stored information, or tangible things designated in the subpoena be produced only upon the advancement by the party serving the subpoena of the reasonable costs of producing them; or

(4) that documents, electronically stored information, or tangible things designated in the subpoena be delivered to the court at or before the proceeding or before the time when they are to be offered in evidence, subject to further order of court to permit inspection of them.

A motion filed under this section based on a claim that information is privileged or subject to protection ~~as work product materials~~ shall be supported by a description of the nature of each item that is sufficient to enable the demanding party to evaluate the claim.

(f) Objection to Subpoena for Deposition

A person served with a subpoena to attend a deposition may seek a protective order pursuant to Rule 2-403. If the subpoena also commands the production of documents, electronically stored information, or tangible things at the deposition, the person served or a person named or depicted in an item specified in the subpoena may seek a protective order

pursuant to Rule 2-403 or may file, within ten days after service of the subpoena, an objection to production of any or all of the designated materials. The objection shall be in writing and shall state the reasons for the objection. If an objection is filed, the party serving the subpoena is not entitled to production of the materials except pursuant to an order of the court from which the subpoena was issued. At any time before or within 15 days after completion of the deposition and upon notice to the deponent, the party serving the subpoena may move for an order to compel the production.

A claim that information is privileged or subject to protection ~~as work product materials~~ shall be supported by a description of each item that is sufficient to enable the demanding party to evaluate the claim.

(g) Duties Relating to the Production of Documents, Electronically Stored Evidence, and ~~Tangible Things~~ Other Property

(1) Generally

A person responding to a subpoena to produce documents, electronically stored information, or ~~tangible things~~ other property at a court proceeding or deposition shall:

(A) produce the documents or information as they are kept in the usual course of business or shall organize and label the documents or information to correspond with the categories in

the subpoena; and

(B) produce electronically stored information in the form specified in the subpoena or, if a form is not specified, in the form in which the person ordinarily maintains it or in a form that is reasonably usable.

(2) Electronically Stored Information

A person responding to a subpoena to produce electronically stored information at a court proceeding or deposition need not produce the same electronically stored information in more than one form and may decline to produce the information on the ground that the sources are not reasonably accessible because of undue burden or cost. A person who declines to produce information on this ground shall identify the sources alleged to be not reasonably accessible and state the reasons why production from each identified source would cause undue burden or cost. The statement of reasons shall provide enough detail to enable the demanding party to evaluate the burdens and costs of complying with the subpoena and the likelihood of finding responsive information in the identified sources. Any motion relating to electronically stored information withheld on the ground that it is not reasonably accessible shall be decided in the manner set forth in Rule 2-402 (b).

(h) Protection of Persons Subject to Subpoenas

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or cost on a person subject to the subpoena.

Cross reference: For the availability of sanctions for violations of this section, see Rules 1-201 (a) and 1-341.

(i) Records Produced by Custodians

(1) Generally

A custodian of records served with a subpoena to produce records at trial may comply by delivering the records to the clerk of the court that issued the subpoena at or before the time specified for production. The custodian may produce exact copies of the records designated unless the subpoena specifies that the original records be produced. The records shall be delivered in a sealed envelope labeled with the caption of the action, the date specified for production, and the name and address of the person at whose request the subpoena was issued. The records shall be accompanied by a certificate of the custodian that they are the complete records requested for the period designated in the subpoena and that the records are maintained in the regular course of business. The certification shall be prima facie evidence of the authenticity of the records.

Cross reference: Code, Health-General Article, §4-306 (b)(6); Code, Financial Institutions Article, §1-304.

(2) During Trial

Upon commencement of the trial, the clerk shall release the records only to the courtroom clerk assigned to the trial. The courtroom clerk shall return the records to the clerk promptly upon completion of trial or at an earlier time if there is no longer a need for them. Upon final disposition of the action the clerk shall return the original records to the custodian but need not return copies.

(3) Presence of Custodian

When the actual presence of the custodian of records is required, the subpoena shall state with specificity the reason for the presence of the custodian.

Cross reference: Code, Courts Article, §10-104 includes an alternative method of authenticating medical records in certain cases transferred from the District Court upon a demand for a jury trial.

(j) Attachment

A witness served with a subpoena under this Rule is liable to body attachment and fine for failure to obey the subpoena without sufficient excuse. The writ of attachment may be executed by the sheriff or peace officer of any county and shall be returned to the court issuing it. The witness attached shall be taken immediately before the court if then in session. If the court is not in session, the witness shall be taken before a judicial officer of the District Court for a determination of appropriate conditions of release to ensure the

witness' appearance at the next session of the court that issued the attachment.

(k) Information Produced that is Subject to a Claim of Privilege or ~~Work Product~~ Protection

(1) A party who receives a document, electronically stored information, or other property that the party knows or reasonably should know was inadvertently sent shall promptly notify the sender.

(2) Within a reasonable time after information is produced in response to a subpoena that is subject to a claim of privilege or ~~of~~ protection ~~as work product material~~, the person who produced the information shall notify each party who received the information of the claim and the basis for it. ~~Promptly after being notified, each receiving party shall return, sequester, or destroy the specified information and any copies and may not use or disclose the information until the claim is resolved.~~ A ~~receiving~~ party who wishes to determine the validity of a claim of privilege or protection that is not controlled by a court order or a disclosure agreement entered into pursuant to Rule 2-402 (e)(5), shall promptly file a motion under seal requesting that the court determine the validity of the claim. ~~A receiving party who disclosed the information before being notified shall take reasonable steps to retrieve it. The person who produced the information shall preserve it~~

~~until the claim is resolved.~~ A party in possession of information that is the subject of the motion shall appropriately preserve the information pending a ruling. A receiving party may not use or disclose the information until the claim is resolved and shall take reasonable steps to retrieve any information the receiving party disclosed before being notified.

Cross reference: See Rule 19-304.4 (b) of the Maryland Attorneys' Rules of Professional Conduct. For issuing and enforcing legislative subpoenas, see Code, State Government Article, §§ 2-1802 and 2-1803.

Source: This Rule is derived as follows:
Section (a) is new but the first and second sentences are derived in part from the 2006 version of Fed. R. Civ. P. 45 (a)(1)(C); the second sentence also is derived in part from former Rule 407 a.
Section (b) is new.
Section (c) is derived from former Rules 114 a and b, 115 a and 405 a 2 (b), and from the 2006 version of Fed. R. Civ. P. 45 (a)(1)(D).
Section (d) is derived from former Rules 104 a and b and 116 b. Section (e) is derived from former Rule 115 b and the 2006 version of Fed. R. Civ. P. 45 (d)(2)(A).
Section (f) is derived from the 1980 version of Fed. R. Civ. P. 45 (d)(1), and the 2006 version of Fed. R. Civ. P. 45 (d)(2)(A).
Section (g) is new and is derived from the 2006 version of Fed. R. Civ. P. 45 (d)(1).
Section (h) is derived from the 1991 version of Fed. R. Civ. P. 45 (c)(1).
Section (i) is new.
Section (j) is derived from former Rules 114 d and 742 e.
Section (k) is new and is derived in part from the 2006 version of Fed. R. Civ. P. 45 (d)(2)(B).

REPORTER'S NOTE

In conjunction with the recommended adoption of new Rules 2-422.1 and 2-510.1, which permit subpoenas to be issued by a

circuit court for uses other than the purposes stated in Rule 2-510 (a), amendments to Rule 2-510 are proposed to change the title of the Rule, to add language to subsection (a)(3), and to add a Committee note after section (b). The permitted uses of a subpoena issued under Rule 2-510 remain unchanged.

In sections (e), (f), and (k), references to protection as "work product" materials are revised to refer to a claim of "protection," to encompass claims of protection unrelated to work product that a party may assert.

New subsection (k)(1) requires that a party, upon receipt of material the party knows or reasonably should know was inadvertently sent, promptly notify the sender. A corresponding change is proposed to Rule 19-304.4 of the Maryland Attorneys' Rules of Professional Conduct. Rule 2-510 (k)(1), however, applies to all parties, regardless of whether the party is represented by an attorney.

Other revisions to section (k) permit any party – not just the receiving party – to file a motion for the court to determine the validity of a claim or privilege or protection that is not controlled by a court order or a disclosure agreement entered into pursuant to Rule 2-402 (e)(5). Each party in possession of information that is the subject of the motion is required to preserve the information, pending the court's ruling. A receiving party also is required not to disclose the information until the claim is resolved and to take reasonable steps to retrieve any previously disclosed information.

A cross reference to Rule 19-304.4 is added at the end of the Rule.

Stylistic changes also are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-304.4 by conforming it to Model Rule 4.4 of the Ethics 2000 amendments to the ABA Model Rules of Professional Conduct, with stylistic changes, as follows:

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

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

(b) ~~In communicating with third persons, A lawyer~~ An attorney ~~representing a client in a matter shall not seek~~ who receives a document, electronically stored information, or other property relating to the ~~matter that the attorney~~ representation of the attorney's client and knows or reasonably should know ~~is protected from disclosure by statute or by an established evidentiary privilege, unless the protection has been waived. The Attorney who receives information that is protected from disclosure shall (1) terminate the communication immediately and (2) give notice of the disclosure to any tribunal in which the matter is pending and to the person entitled to enforce the~~

~~protection against disclosure~~ that the document, electronically stored information, or other property was inadvertently sent shall promptly notify the sender.

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

COMMENT

[1] Responsibility to a client requires an attorney to subordinate the interests of others to those of the client, but that responsibility does not imply that an attorney may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-attorney relationship.

[2] ~~Third persons may possess information that is confidential to another person under an evidentiary privilege or under a law providing specific confidentiality protection, such as trademark, copyright, or patent law. For example, present or former organizational employees or agents may have information that is protected as a privileged attorney-client communication or as work product. An attorney may not knowingly seek to obtain confidential information from a person who has no authority to waive the privilege. Regarding current employees of a represented organization, see also Rule 19-304.2 (4.2).~~ Section (b) recognizes that attorneys sometimes receive a document, electronically stored information, or other property that was inadvertently sent or produced by opposing parties or their attorneys. A document, electronically stored information, or other property is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document, electronically stored information, or other property is accidentally included with information that was intentionally transmitted. If ~~a lawyer~~ an attorney knows or reasonably should know that such a document, electronically stored information, or other property was sent inadvertently, this Rule requires the attorney promptly to notify the sender in order to permit that person to take protective measures. Whether the attorney is required to take additional steps, such as returning the document, electronically stored information, or other property, is a matter of law beyond the scope of these Rules, as is the

question of whether the privileged status of a document, electronically stored information, or other property has been waived. Similarly, this Rule does not address the legal duties of an attorney who receives a document, electronically stored information, or other property that the attorney knows or reasonably should know may have been inappropriately obtained by the sending person. For purposes of this Rule, "document, electronically stored information, or other property" includes, in addition to paper documents, email and other forms of electronically stored information, including embedded data (commonly referred to as "metadata"), that is subject to being read or put into readable form. Metadata in electronic documents creates an obligation under this Rule only if the receiving attorney knows or reasonably should know that the metadata was inadvertently sent to the receiving attorney.

[3] Some attorneys may choose to return a document or delete electronically stored information unread, for example, when the attorney learns before receiving it that it was inadvertently sent. Where an attorney is not required by applicable law to do so, the decision to voluntarily return such a document or delete electronically stored information is a matter of professional judgment ordinarily reserved to the attorney. See Rules 19-301.2 and 19-301.4.

Model Rules Comparison - ~~This Rule substantially retains Maryland language as amended November 1, 2001 and does not adopt Ethics 200 Amendments to the ABA Model Rules of Professional Conduct.~~ Rule 19-304.4 is substantially similar to the language of Model Rule 4.4 of the Ethics 2000 amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

With certain stylistic changes, the Rules Committee proposes that Rule 4.4 of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct be substituted for Rule 19-304.4 (formerly Maryland Lawyers' Rules of Professional Conduct (MLRPC) 4.4).

The Maryland State Bar Association Committee on Ethics, in Ethics Docket No. 2007-09, 40-APR Md.B.J. 52 (March/April 2007) concluded that under MLRPC 4.4 there was no ethical obligation for a receiving attorney to notify the sending attorney that there might have been an inadvertent transmittal of information protected by a privilege. Furthermore, there would be no ethical obligation for the receiving lawyer to refrain from examining the materials or abide by the instructions of the

sending lawyer. At that time, MLPRC 4.4 did not conflict with the Maryland discovery rules, but it did conflict with Federal Rules of Civil Procedure that went into effect December 1, 2006. Hence, a Maryland attorney involved in federal litigation could not rely on the absence of a prohibition in MLRPC 4.4 because it had been superseded by the legal requirements set forth in the new Federal Rules.

The Committee contrasted MLRPC 4.4 with Rule 4.4 of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct. Model Rule 4.4 (b) states that "A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender." Comment 2 to the Model Rule also informs the receiving lawyer that there may be legal obligations in addition to the Model Rule: "whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these rules, as is the question of whether the privileged status of the document has been waived."

A series of Rules changes, effective January 1, 2008, addressed discovery issues involving metadata, electronic discovery, and the practical reality that a producing party may not be able to review all electronically stored information in advance. The amendments were derived from the 2006 versions of Fed.R.Civ.P. 26 (b)(5) and Fed.R.Civ.P. 45 (d)(2)(B). The Rules Committee believes that MLRPC 4.4 no longer is compatible with the discovery rules and recommends that Rule 19-304.4 be amended to mirror ABA Model Rule 4.4.

Provisions compatible with the ethical requirements of Rule 19-304.4 are included in proposed new Rule 2-510.1 and amendments to Rules 2-402 and 2-510.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-402 to add to section (e) a certain notification requirement pertaining to items that may have been inadvertently sent, to delete a sentence pertaining to options available to a party that had received certain information, to permit any party to file a motion under section (e) and add language clarifying the circumstances under which the motion is appropriate, to require preservation of a certain item pending a ruling by the court, to add a cross reference following section (e), to delete "attorney-client" from references to "privilege," to delete "work product" from references to "protection," and to make stylistic changes, as follows:

Rule 2-402. SCOPE OF DISCOVERY

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

(a) Generally

A party may obtain discovery regarding any matter that is not privileged, including the existence, description, nature, custody, condition, and location of any documents, electronically stored information, and tangible things and the

identity and location of persons having knowledge of any discoverable matter, if the matter sought is relevant to the subject matter involved in the action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. It is not ground for objection that the information sought is already known to or otherwise obtainable by the party seeking discovery or that the information will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. An interrogatory or deposition question otherwise proper is not objectionable merely because the response involves an opinion or contention that relates to fact or the application of law to fact.

(b) Limitations and Modifications; Electronically Stored Information Not Reasonably Accessible

(1) Generally

In a particular case, the court, on motion or on its own initiative and after consultation with the parties, by order may limit or modify these rules on the length and number of depositions, the number of interrogatories, the number of requests for production of documents, and the number of requests for admissions. The court shall limit the frequency or extent of use of the discovery methods otherwise permitted under these rules if it determines that (A) the discovery sought is unreasonably cumulative or duplicative or is obtainable from

some other source that is more convenient, less burdensome, or less expensive; (B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (C) the burden or cost of the proposed discovery outweighs its likely benefit, taking into account the complexity of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

(2) Electronically Stored Information Not Reasonably Accessible

A party may decline to provide discovery of electronically stored information on the ground that the sources are not reasonably accessible because of undue burden or cost. A party who declines to provide discovery on this ground shall identify the sources alleged to be not reasonably accessible and state the reasons why production from each identified source would cause undue burden or cost. The statement of reasons shall provide enough detail to enable the requesting party to evaluate the burdens and costs of providing the discovery and the likelihood of finding responsive information in the identified sources. On a motion to compel discovery, the party from whom discovery is sought shall first establish that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the party requesting discovery shall establish that its need for the discovery

outweighs the burden and cost of locating, retrieving, and producing the information. If persuaded that the need for discovery does outweigh the burden and cost, the court may order discovery and specify conditions, including an assessment of costs.

Committee note: The term "electronically stored information" has the same broad meaning in this Rule that it has in Rule 2-422, encompassing, without exception, whatever is stored electronically. Subsection (b)(2) addresses the difficulties that may be associated with locating, retrieving, and providing discovery of some electronically stored information. Ordinarily, the reasonable costs of retrieving and reviewing electronically stored information are borne by the responding party. At times, however, the information sought is not reasonably available to the responding party in the ordinary course of business. For example, restoring deleted data, disaster recovery tapes, residual data, or legacy systems may involve extraordinary effort or resources to restore the data to an accessible format. This subsection empowers the court, after considering the factors listed in subsection (b)(1), to shift or share costs if the demand is unduly burdensome because of the nature of the effort involved to comply and the requesting party has demonstrated substantial need or justification. See, The Sedona Conference, The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production, (2d ed. 2007), Principle 13 and related Comment.

(c) Insurance Agreement

A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business might be liable to satisfy part or all of a judgment that might be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For

purposes of this section, an application for insurance shall not be treated as part of an insurance agreement.

(d) Work Product

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

(e) Claims of Privilege or Protection

(1) Information Withheld

A party who withholds information on the ground that it is privileged or subject to protection shall describe the nature of the documents, electronically stored information, communications, or things not produced or disclosed in a manner

that, without revealing the privileged or protected information, will enable other parties to assess the applicability of the privilege or protection.

(2) Duty of Recipient

A party who receives a document, electronically stored information, or other property that the party knows or reasonably should know was inadvertently sent shall promptly notify the sender.

~~(2)~~ (3) Information Produced

Within a reasonable time after information is produced in discovery that is subject to a claim of privilege or of protection, the party who produced the information shall notify each party who received the information of the claim and the basis for it. ~~Promptly after being notified, each receiving party shall return, sequester, or destroy the specified information and any copies and may not use or disclose the information until the claim is resolved.~~ A ~~receiving~~ party who wishes to determine the validity of a claim of privilege or protection that is not controlled by a court order or a disclosure agreement entered into pursuant to subsection (e)(5) of this Rule shall promptly file a motion under seal requesting that the court determine the validity of the claim. ~~A receiving party who disclosed the information before being notified shall take reasonable steps to retrieve it. The person who produced the information shall preserve it until the claim is resolved.~~

A party in possession of information that is the subject of the motion shall appropriately preserve the information pending a ruling. A receiving party may not use or disclose the information until the claim is resolved and shall take reasonable steps to retrieve any information the receiving party disclosed before being notified.

Cross reference: Rule 19-304.4 (b) of the Maryland Attorneys' Rules of Professional Conduct.

Committee note: Subsection ~~(e)(2)~~ (e)(3) allows a producing party to assert a claim of privilege or ~~work-product~~ protection after production because it is increasingly costly and time-consuming to review all electronically stored information in advance. Unlike the corresponding federal rule, a party must raise a claim of privilege or ~~work product~~ protection within a "reasonable time." See *Elkton Care Center Associates v. Quality Care Management, Inc.*, 145 Md. App. 532 (2002).

~~(3)~~ (4) Effect of Inadvertent Disclosure

A disclosure of a communication or information covered by ~~the attorney-client~~ a privilege or ~~work product~~ protection does not operate as a waiver if the holder of the privilege or ~~work product~~ protection (A) made the disclosure inadvertently, (B) took reasonable precautions to prevent disclosure, and (C) took reasonably prompt measures to rectify the error once the holder knew or should have known of the disclosure.

Committee note: Courts in other jurisdictions are in conflict over whether an inadvertent disclosure of privileged or protected information ~~or work product~~ constitutes a waiver. A few courts find that a disclosure must be intentional to be a waiver. Most courts find a waiver only if the disclosing party acted carelessly in disclosing the communication or information and failed to request its return in a timely manner. A few other courts hold that any mistaken disclosure of protected information constitutes waiver without regard to the protections

taken to avoid such a disclosure. See generally *Hopson v. City of Baltimore*, 232 F.R.D. 228 (D. Md. 2005) for a discussion of this case law.

This subsection opts for the middle ground: inadvertent disclosure of privileged or protected information in connection with a state or federal proceeding constitutes a waiver only if the party did not take reasonable precautions to prevent disclosure and did not make reasonable and prompt efforts to rectify the error. This position is in accord with Maryland common law, see, e.g., *Elkton Care Center Associates v. Quality Care Management, Inc.*, 145 Md. App. 532 (2002), and the majority view on whether inadvertent disclosure is a waiver. See, e.g., *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576-77 (D. Kan. 1997) (work product); *Hydraflow, Inc. v. Enidine, Inc.*, 145 F.R.D. 626, 637 (W.D.N.Y. 1993) (attorney-client privilege); *Edwards v. Whitaker*, 868 F.Supp. 226, 229 (M.D. Tenn. 1994) (attorney-client privilege).

~~(4)~~ (5) Controlling Effect of Court Orders and Agreements

Unless incorporated into a court order, an agreement as to the effect of disclosure of a communication or information covered by ~~the attorney-client~~ a privilege or ~~work product~~ protection is binding on the parties to the agreement but not on other persons. If the agreement is incorporated into a court order, the order governs all persons or entities, whether or not they are or were parties.

Committee note: Parties may agree to certain protocols to minimize the risk of waiver of a claim of privilege or protection. One example is a "clawback" agreement, meaning an agreement that production will occur without a waiver of privilege or protection as long as the producing party promptly identifies the privileged or protected documents that have been produced. See The Sedona Conference, The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production, (2d ed. 2007), Comment 10.a. Another example is a "quick peek" agreement, meaning that the responding party provides certain requested materials for initial examination without waiving any privilege or protection. The requesting party then designates the documents it wishes to have actually produced, and the producing party may assert any

privilege or protection. Id., Comment 10.d.

Subsection ~~(e)(4)~~ (e)(5) codifies the well-established proposition that parties can enter into an agreement to limit the effect of waiver by disclosure between or among them. See, e.g., *Dowd v. Calabrese*, 101 F.R.D. 427, 439 (D.D.C. 1984) (no waiver where the parties stipulated in advance that certain testimony at a deposition "would not be deemed to constitute a waiver of the attorney-client or work product privileges"); *Zubulake v. UBS Warburg LLC*, 216 F.R.D. 280, 290 (S.D.N.Y. 2003) (noting that parties may enter into "so-called 'claw-back' agreements that allow the parties to forego privilege review altogether in favor of an agreement to return inadvertently produced privileged documents"). Of course, such an agreement can bind only the parties to the agreement. The subsection makes clear that if parties want protection from a finding of waiver by disclosure in separate litigation, the agreement must be made part of a court order. Confidentiality orders are important in limiting the costs of privilege review and retention, especially in cases involving electronic discovery. The utility of a confidentiality order is substantially diminished if it provides no protection outside the particular litigation in which the order is entered. Parties are unlikely to be able to reduce the costs of preproduction review for privilege ~~and work product~~ or protection if the consequence of disclosure is that the information can be used by nonparties to the litigation.

Subsection ~~(e)(4)~~ (e)(5) provides that an agreement of the parties governing confidentiality of disclosures is enforceable against nonparties only if it is incorporated in a court order, but there can be no assurance that this enforceability will be recognized by courts other than those of this State. There is some dispute as to whether a confidentiality order entered in one case can bind nonparties from asserting waiver by disclosure in separate litigation. See generally *Hopson v. City of Baltimore*, 232 F.R.D. 228 (D.Md. 2005), for a discussion of this case law.

(f) Trial Preparation - Party's or Witness' Own Statement

A party may obtain a statement concerning the action or its subject matter previously made by that party without the showing required under section (d) of this Rule. A person who is not a party may obtain, or may authorize in writing a party

to obtain, a statement concerning the action or its subject matter previously made by that person without the showing required under section (d) of this Rule. For purposes of this section, a statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(g) Trial Preparation - Experts

(1) Expected to be Called at Trial

(A) Generally

A party by interrogatories may require any other party to identify each person, other than a party, whom the other party expects to call as an expert witness at trial; to state the subject matter on which the expert is expected to testify; to state the substance of the findings and the opinions to which the expert is expected to testify and a summary of the grounds for each opinion; and to produce any written report made by the expert concerning those findings and opinions. A party also may take the deposition of the expert.

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

as an expert. See *Turgut v. Levin*, 79 Md. App. 279 (1989).

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

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

(2) Not Expected to be Called at Trial

When an expert has been retained by a party in anticipation of litigation or preparation for trial but is not expected to be called as a witness at trial, discovery of the identity, findings, and opinions of the expert may be obtained only if a showing of the kind required by section (d) of this Rule is made.

(3) Fees and Expenses of Deposition

Unless the court orders otherwise on the ground of manifest injustice, the party seeking discovery: (A) shall pay each expert a reasonable fee, at a rate not exceeding the rate charged by the expert for time spent preparing for a deposition, for the time spent in attending a deposition and for the time and expenses reasonably incurred in travel to and from the

deposition; and (B) when obtaining discovery under subsection (g)(2) of this Rule, shall pay each expert a reasonable fee for preparing for the deposition.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 400 c and the 1980 version of Fed. R. Civ. P. 33 (b).
Section (b) is new and is derived from the 2000 version of Fed. R. Civ. P. 26 (b)(2), except that subsection (b)(2) is derived from the 2006 Fed. R. Civ. P. 26 (b)(2)(B).
Section (c) is new and is in part derived from the 1980 version of Fed. R. Civ. P. 26 (b)(2).
Section (d) is derived from former Rule 400 d.
Section (e) is new and is derived from the 2006 version of Fed. R. Civ. P. 26 (b)(5).
Section (f) is derived from former Rule 400 e.
Subsection (g)(1) is derived in part from the 1980 version of Fed. R. Civ. P. 26 (b)(4) and former Rule 400 f and is in part new.
Subsection (g)(2) is derived from the 1980 version of Fed. R. Civ. P. 26 (b)(4) and former Rule U12 b.
Subsection (g)(3) is derived in part from the 1980 version of Fed. R. Civ. P. 26 (b)(4) and is in part new.

REPORTER'S NOTE

Amendments to Rule 2-402 (e) conform to proposals to amend Rule 2-510 (k). See the Reporter's note to that Rule.

References to "attorney-client" privilege and "work product" protection are replaced by references to "privilege" and "protection," to encompass all bases of claims of privilege or protection that a party may assert.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-551 to provide that a notice for in banc review may be filed within 10 days after the withdrawal of certain post-judgment motions; to provide that a notice for in banc review filed before the withdrawal or disposition of these motions does not deprive the trial court of jurisdiction to dispose of the motion; to provide that if a notice for in banc review is filed before certain post-judgment motions are filed, the notice shall be treated as filed on the same day as, but after, the entry of a notice withdrawing the motion or an order disposing of it; to provide that a notice for in banc review filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket; and to make certain conforming and stylistic changes, as follows:

Rule 2-551. IN BANC REVIEW

(a) Generally

When review by a court in banc is permitted by the Maryland Constitution, a party may have a judgment or determination of any point or question reviewed by a court in

banc by filing a notice for in banc review. Issues are reserved for in banc review by making an objection in the manner set forth in Rules 2-517 and 2-520. Upon the filing of the notice, the Circuit Administrative Judge shall designate three judges of the circuit, other than the judge who tried the action, to sit in banc.

(b) Time for Filing

Except as otherwise provided in this ~~section~~ Rule, the notice for in banc review shall be filed within ten days after entry of judgment. When a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice for in banc review shall be filed within ten days after (1) entry of an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534 or (2) withdrawal of the motion. A notice for in banc review filed before the withdrawal or disposition of any of these motions ~~that was timely filed shall have no effect, and a new notice for in banc review must be filed within the time specified in this section~~ does not deprive the trial court of jurisdiction to dispose of the motion. If a notice for in banc review is filed and thereafter a party files a timely motion pursuant to Rule 2-532, 2-533, or 2-534, the notice for in banc review shall be treated as filed on the same day as, but after, the entry of a notice withdrawing the motion or an order disposing of it.

(c) Memoranda

Within 30 days after the filing of the notice for in banc review, the party seeking review shall file four copies of a memorandum stating concisely the questions presented, any facts necessary to decide them, and supporting argument. Within 15 days thereafter, an opposing party who wishes to dispute the statement of questions or facts shall file four copies of a memorandum stating the alternative questions presented, any additional or different facts, and supporting argument. In the absence of such dispute, an opposing party may file a memorandum of argument.

(d) Transcript

Promptly after the filing of memoranda, a judge of the panel shall determine, by reviewing the memoranda and, if necessary, by conferring with counsel, whether a transcript of all or part of the proceeding is reasonably required for decision of the questions presented. If a transcript is required, the judge shall order one of the parties to provide the transcript and shall fix a time for its filing. The expenses of the transcript shall be assessed as costs against the losing party, unless otherwise ordered by the panel.

(e) Hearing and Decision

A hearing shall be scheduled as soon as practicable but need not be held if all parties notify the clerk in writing at least 15 days before the scheduled hearing date that the hearing has been waived. In rendering its decision, the panel shall

prepare and file or dictate into the record a brief statement of the reasons for the decision.

(f) Motion to Shorten or Extend Time Requirements

Upon motion of any party filed pursuant to Rule 1-204, any judge of the panel may shorten or extend the time requirements of this Rule, except the time for filing a notice for in banc review.

(g) Dismissal

(1) Generally

The panel, on its own initiative or on motion of any party, shall dismiss an in banc review if ~~(1)~~ (A) in banc review is not permitted by the Maryland Constitution, ~~(2)~~ (B) the notice for in banc review was prematurely filed or not timely filed except as provided in subsection (g)(2) of this Rule, or ~~(3)~~ (C) the case has become moot.~~, and the~~ The panel may dismiss if the memorandum of the party seeking review was not timely filed.

(2) Judgment Entered After Notice Filed

A notice for in banc review filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

(h) Further Review

Any party who seeks and obtains review under this Rule has no further right of appeal. The decision of the panel does

not preclude an appeal to the Court of Special Appeals by an opposing party who is otherwise entitled to appeal.

Source: This Rule is new, is consistent with Md. Const., Art. IV, §22, and replaces former Rule 510.

REPORTER'S NOTE

Proposed amendments to Rule 2-551 add to the Rule savings provisions for certain prematurely filed notices for in banc review. Under the amended Rule, treatment of prematurely filed notices would be comparable to the treatment of prematurely filed notices of appeal under the Rules in Title 8.

The savings provisions added to sections (b) and (d) are patterned after Rules 8-202 (c) and 8-602 (d), respectively.

Additionally, for completeness and consistency with Rule 8-202 (c), language pertaining to withdrawal of a motion filed pursuant to Rule 2-532, 2-533, or 2-534 is added to Rule 2-551 (b).

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 300 – PLEADINGS AND MOTIONS

AMEND Rule 3-306 by adding a cross reference following section (d), as follows:

Rule 3-306. JUDGMENT ON AFFIDAVIT

. . .

(d) If Claim Arises from Assigned Consumer Debt

If the claim arises from consumer debt and the plaintiff is not the original creditor, the affidavit also shall include or be accompanied by (i) the items listed in this section, and (ii) an Assigned Consumer Debt Checklist, substantially in the form prescribed by the Chief Judge of the District Court, listing the items and information supplied in or with the affidavit in conformance with this Rule. Each document that accompanies the affidavit shall be clearly numbered as an exhibit and referenced by number in the Checklist.

(1) Proof of the Existence of the Debt or Account

Proof of the existence of the debt or account shall be made by a certified or otherwise properly authenticated photocopy or original of at least one of the following:

(A) a document signed by the defendant evidencing the debt or the opening of the account;

(B) a bill or other record reflecting purchases, payments, or other actual use of a credit card or account by the defendant; or

(C) an electronic printout or other documentation from the original creditor establishing the existence of the account and showing purchases, payments, or other actual use of a credit card or account by the defendant.

(2) Proof of Terms and Conditions

(A) Except as provided in subsection (d)(2)(B) of this Rule, if there was a document evidencing the terms and conditions to which the consumer debt was subject, a certified or otherwise properly authenticated photocopy or original of the document actually applicable to the consumer debt at issue shall accompany the affidavit.

(B) Subsection (d)(2)(A) of this Rule does not apply if (i) the consumer debt is an unpaid balance due on a credit card; (ii) the original creditor is or was a financial institution subject to regulation by the Federal Financial Institutions Examination Council or a constituent federal agency of that Council; and (iii) the claim does not include a demand or request for attorneys' fees or interest on the charge-off balance in excess of the Maryland Constitutional rate of six percent per annum.

Committee note: This Rule is procedural only, and subsection (d)(2)(B)(iii) is not intended to address the substantive issue of whether interest in any amount may be charged on a part of

the charge-off balance that, under applicable and enforceable Maryland law, may be regarded as interest.

Cross reference: See Federal Financial Institutions Examination Council Uniform Retail Credit Classification and Account Management Policy, 65 Fed. Reg. 36903 - 36906 (June 12, 2000).

(3) Proof of Plaintiff's Ownership

The affidavit shall contain a statement that the plaintiff owns the consumer debt. It shall include or be accompanied by:

(A) a chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership of the debt, beginning with the name of the original creditor; and

(B) a certified or other properly authenticated copy of the bill of sale or other document that transferred ownership of the debt to each successive owner, including the plaintiff.

Committee note: If a bill of sale or other document transferred debts in addition to the consumer debt upon which the action is based, the documentation required by subsection (d)(3)(B) of this Rule may be in the form of a redacted document that provides the general terms of the bill of sale or other document and the document's specific reference to the debt sued upon.

(4) Identification and Nature of Debt or Account

The affidavit shall include the following information:

(A) the name of the original creditor;

(B) the full name of the defendant as it appears on the original account;

(C) the last four digits of the social security number for the defendant appearing on the original account, if known;

(D) the last four digits of the original account number; and

(E) the nature of the consumer transaction, such as utility, credit card, consumer loan, retail installment sales agreement, service, or future services.

(5) Future Services Contract Information

If the claim is based on a future services contract, the affidavit shall contain facts evidencing that the plaintiff currently is entitled to an award of damages under that contract.

(6) Account Charge-off Information

If there has been a charge-off of the account, the affidavit shall contain the following information:

(A) the date of the charge-off;

(B) the charge-off balance;

(C) an itemization of any fees or charges claimed by the plaintiff in addition to the charge-off balance;

(D) an itemization of all post-charge-off payments received and other credits to which the defendant is entitled; and

(E) the date of the last payment on the consumer debt or of the last transaction giving rise to the consumer debt.

(7) Information for Debts and Accounts Not Charged Off

If there has been no charge-off, the affidavit shall contain:

(A) an itemization of all money claimed by the plaintiff, (i) including principal, interest, finance charges, service charges, late fees, and any other fees or charges added to the principal by the original creditor and, if applicable, by subsequent assignees of the consumer debt and (ii) accounting for any reduction in the amount of the claim by virtue of any payment made or other credit to which the defendant is entitled;

(B) a statement of the amount and date of the consumer transaction giving rise to the consumer debt, or in instances of multiple transactions, the amount and date of the last transaction; and

(C) a statement of the amount and date of the last payment on the consumer debt.

(8) Licensing Information

The affidavit shall include a list of all Maryland collection agency licenses that the plaintiff currently holds and provide the following information as to each:

(A) license number,

(B) name appearing on the license, and

(C) date of issue.

Cross reference: See Code, Courts Article, §5-1203 (b)(2), concerning the plaintiff's requirements if a judgment on affidavit under section (d) of this Rule is denied.

. . .

REPORTER'S NOTE

A cross reference is proposed to be added to Rule 3-306 to draw attention to Code, Courts Article, §5-1203 (b)(2). This provision, which was enacted as part of Chapter 579, Laws of 2016 (SB771), requires that, in an assigned consumer debt collection action, "unless the action is resolved by judgment on affidavit," the plaintiff debt buyer or collector acting on behalf of a debt buyer introduce specified documents into evidence "in accordance with the Rules of Evidence applicable to actions that are not small claims actions brought under §4-405 of [Code, Courts] Article."

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 300 – PLEADINGS AND MOTIONS

AMEND Rule 3-308 by adding to the Committee note a reference to Code, Courts Article, §5-1203 (b)(2), as follows:

Rule 3-308. DEMAND FOR PROOF

When the defendant desires to raise an issue as to (1) the legal existence of a party, including a partnership or a corporation, (2) the capacity of a party to sue or be sued, (3) the authority of a party to sue or be sued in a representative capacity, (4) the averment of the execution of a written instrument, or (5) the averment of the ownership of a motor vehicle, the defendant shall do so by specific demand for proof. The demand may be made at any time before the trial is concluded. If not raised by specific demand for proof, these matters are admitted for the purpose of the pending action. Upon motion of a party upon whom a specific demand for proof is made, the court may continue the trial for a reasonable time to enable the party to obtain the demanded proof.

Committee note: This Rule does not affect the proof requirements set forth in Code, Courts Article, §5-1203 (b)(2) and Rules 3-306 (d) and 3-509 (a) that are applicable to claims arising from consumer debt when the plaintiff is not the original creditor.

Source: This Rule is derived from former M.D.R. 302 a.

REPORTER'S NOTE

The proposed addition to the Committee note to Rule 3-308 draws attention to proof requirements of Code, Courts Article, §5-1203 (b)(2) that are not waived by a failure to make a demand under Rule 3-308.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 500 – TRIAL

AMEND Rule 3-509 (a)(1) to make it mandatory in assigned consumer debt collection actions not resolved by judgment on affidavit for the court to require proof of liability and apply certain statutory requirements for admission of documents, as follows:

Rule 3-509. TRIAL UPON DEFAULT

(a) Requirements of Proof

When a motion for judgment on affidavit has not been filed by the plaintiff, or has been denied by the court, and the defendant has failed to appear in court at the time set for trial:

(1) if the defendant did not file a timely notice of intention to defend, the plaintiff shall not be required to prove the liability of the defendant, but shall be required to prove damages; except that for claims arising from consumer debt, as defined in Rule 3-306 (a)(3), when the plaintiff is not the original creditor, as defined in Rule 3-306 (a)(5), the court (A) ~~may~~ shall require proof of liability, (B) shall ~~consider~~ apply the requirements set forth in ~~Rule 3-306 (d)~~

Code, Courts Article, §5-1203 (b)(2), and (C) may also consider other competent evidence;

(2) if the defendant filed a timely notice of intention to defend, the plaintiff shall be required to introduce prima facie evidence of the defendant's liability and to prove damages. For claims arising from consumer debt, as defined in Rule 3-306 (a)(3), when the plaintiff is not the original creditor, as defined in Rule 3-306 (a)(5), the court shall ~~consider~~ (A) require proof of liability, (B) apply the requirements set forth in ~~Rule 3-306 (d)~~ Code, Courts Article, §5-1203 (b)(2), and (C) may also consider other competent evidence.

. . .

REPORTER'S NOTE

Amendments are proposed to Rule 3-509 to reflect Chapter 579, Laws of 2016 (SB 771). Code, Courts Article, §5-1203 (b)(2) provides that "in addition to any other requirement of law or Rule, unless the action is resolved by judgment on affidavit, a court may not enter a judgment in favor of a debt buyer or a collector unless the debt buyer or collector introduces into evidence the documents specified in paragraph (3) of this subsection in accordance with the Rules of Evidence applicable to actions that are not small claims actions brought under §4-405 of this Article."

In Rule 3-509, subsection (a)(1) currently provides that, in an assigned consumer debt collection action, the court "may" require proof of liability, and, as to proof requirements in such actions, subsections (a)(1) and (a)(2) state that the court shall "consider" the requirements set forth in Rule 3-306 (b). To conform to the new statute, subsections (a)(1) and (a)(2) of Rule 3-509 are amended to provide that in assigned consumer debt collection actions , the court "shall require" proof of liability and "shall apply" the requirements set forth in Code, Courts Article, §5-1203 (b)(2).

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 700 – SPECIAL PROCEEDINGS

AMEND Rule 3-701 by adding a certain exception to section (f) and by adding to the cross reference following section (f) a citation to Code, Courts Article, §5-1203 (b)(2), as follows:

Rule 3-701. SMALL CLAIM ACTIONS

(a) Applicable Rules

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

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

(b) Forms

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

(c) Trial Date and Time

A small claim action shall be tried at a special session of the court designated for the trial of small claim actions. Upon the filing of the complaint, the clerk shall fix the date and time for trial of the action. When the notice of intention to defend is due within 15 days after service, the original trial date shall be within 60 days after the complaint was

filed. When the notice of intention to defend is due within 60 days after service, the original trial date shall be within 90 days after the complaint was filed. With leave of court, an action may be tried sooner than on the date originally fixed.

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

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

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

Cross reference: Rule 3-331 (f).

(e) Discovery Not Available

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

(f) Conduct of Trial

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

Cross reference: See Code, Courts Article, §5-1203 (b)(2) and Rule 5-101 (b)(4).

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

REPORTER'S NOTE

For the reasons stated in the Reporter's note to Rule 5-902, the phrase, "Except as otherwise required by law," is proposed to be added to section (f) of Rule 3-701 and a reference to Code, Courts Article, §5-1203 (b)(2) is added to the cross reference following section (f).

MARYLAND RULES OF PROCEDURE

TITLE 5 – EVIDENCE

CHAPTER 900 – AUTHENTICATION AND IDENTIFICATION

AMEND Rule 5-902 by adding language pertaining to Code, Courts Article, §5-1203 (b)(2) to the Committee note following subsection (b)(1), as follows:

Rule 5-902. SELF-AUTHENTICATION

. . .

(b) Certified Records of Regularly Conducted Business Activity

(1) Procedure

Testimony of authenticity as a condition precedent to admissibility is not required as to the original or a duplicate of a record of regularly conducted business activity, within the scope of Rule 5-803 (b)(6) that has been certified pursuant to subsection (b)(2) of this Rule, provided that at least ten days prior to the commencement of the proceeding in which the record will be offered into evidence, (A) the proponent (i) notifies the adverse party of the proponent's intention to authenticate the record under this subsection and (ii) makes a copy of the certificate and record available to the adverse party and (B) the adverse party has not filed within five days after service of the proponent's notice written objection on the ground that

the sources of information or the method or circumstances of preparation indicate lack of trustworthiness.

Committee note: An objection to self-authentication under subsection (b)(1) of this Rule made in advance of trial does not constitute a waiver of any other ground that may be asserted as to admissibility at trial.

In a consumer debt collection action not resolved by judgment on affidavit, Code, Courts Article, §5-1203 (b)(2) requires that a debt buyer or a collector acting on behalf of a debt buyer introduce specified documents "in accordance with the Rules of Evidence applicable to actions that are not small claims actions brought under §4-405 of this Article." Consequently, if the debt buyer or collector intends to offer business records into evidence in a small claim action without in-court testimony of a witness, the debt buyer must provide notice to the opposing party in conformance with Rule 5-902 (b).

(2) Form of Certificate

For purposes of subsection (b)(1) of this Rule, the original or duplicate of the business record shall be certified in substantially the following form:

Certification of Custodian of Records

or Other Qualified Individual

I, _____, do hereby certify that:

(1) I am the Custodian of Records of or am otherwise qualified to administer the records for:

_____ (identify the organization that maintains the records), and

(2) The attached records

(a) are true and correct copies of records that were made at or near the time of the occurrence of the matters set forth

by, or from the information transmitted by, a person with knowledge of these matters; and

(b) were kept in the course of regularly conducted activity; and

(c) were made and kept by the regularly conducted business activity as a regular practice.

I declare under penalty of perjury that the foregoing is true and correct.

Signature and Title: _____

Date: _____

Source: This Rule is in part derived from F.R.Ev. 902 and in part new.

REPORTER'S NOTE

Code, Courts Article, §5-1203 (b)(2)was added by Chapter 579, Laws of 2016 (SB771). The new statute requires that a debt buyer or a collector on behalf of a debt buyer in a consumer debt collection action that was not resolved by judgment on affidavit introduce specified documents "in accordance with the Rules of Evidence applicable to actions that are not small claims actions brought under §4-405 of this Article."

Before the enactment, a debt buyer or collector in a small claim action did not need "to provide any notice that it intend[ed] to prove its case without any witnesses available for cross-examination." *Bartlett v. Portfolio Recover Associates, LLC*, 438 Md. 255, 298 n. 16 (2015) (McDonald, J., concurring and dissenting).

As a result of Chapter 579, if the debt buyer or collector intends to offer business records without the in-court testimony of a witness, the debt buyer or collector must provide notice to the opposing party in conformance with Rule 5-902 (b). The Committee note following subsection (b)(1) of the Rule is proposed to be amended to call attention to the new statute.

Amendments to Rule 3-701, Small Claim Actions, also are proposed.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

DELETE current Rule 4-215 and ADD new Rule 4-215, as follows:

Rule 4-215. RIGHT TO ATTORNEY - WAIVER - DISTRICT COURT

(a) Scope

This Rule applies to proceedings in the District Court.

(b) Definition

In this Rule, "trial" includes any hearing at which the defendant has a right to the assistance of an attorney, other than an initial appearance before a judicial officer pursuant to Rules 4-213 and 4-216.

(c) First Appearance Without Attorney

(1) Duty of Court

At the defendant's first appearance before a judge in the District Court without an attorney, the court shall:

(A) determine whether the defendant has received a copy of the charging document containing notice as to the right to an attorney and, if not, have a copy served on the defendant and direct the clerk to docket that event;

(B) inform the defendant of the right to an attorney, of the importance of having an attorney, of the right to

representation by the Public Defender if the defendant qualifies as indigent, and, if the defendant claims to be indigent, of the need to contact the Office of the Public Defender immediately;

Committee note: The court's advice should include the assistance an attorney can provide in explaining to the defendant and arguing to the court legal issues that may arise; explaining the potential collateral consequences of a conviction, including immigration consequences; assisting in determining whether the defendant may be entitled to a jury trial and should ask for one; helping in the jury selection process if there is to be a jury trial; knowing how to present evidence for the defendant and object to evidence offered by the State that may be inadmissible; examining and cross-examining witnesses; and, if the defendant is convicted, arguing for a fair sentence.

(C) advise the defendant of each offense with which the defendant is charged in the charging document and the allowable penalties that may be imposed upon conviction, including any mandatory or enhanced penalties;

Committee note: If the prospect of a mandatory or enhanced penalty depends on the proof of facts not then known to the court, such as the defendant's prior criminal record, the court should advise that the mandatory or enhanced penalty may apply if the predicate facts are shown.

(D) if the defendant indicates a desire to waive expressly the right to an attorney, conduct a waiver inquiry pursuant to section (d) of this Rule; and

(E) advise the defendant that, if the defendant appears for any subsequent trial in the action without an attorney, the court could determine that the defendant waived the right to an attorney by inaction and proceed with the trial with the defendant unrepresented by an attorney.

(2) Duty of Clerk

The clerk shall note compliance with this section on the docket.

(d) Express Waiver of Right to Attorney

(1) Assurance that Waiver is Knowing and Voluntary

If a defendant appears for trial unrepresented by an attorney and indicates a desire to waive the right to an attorney, the court shall conduct an examination of the defendant on the record. The court may not accept the waiver unless the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to an attorney.

Committee note: The court may find that a waiver is knowing based on the defendant's responses to the waiver inquiry – the advice by the court regarding the right to an attorney, the importance of having an attorney, and, if the defendant is indigent, the right of representation by the Public Defender. The court may find that a waiver is voluntary based on the defendant's assurances that no coercion or inducements have been made in order to cause the defendant to forgo having an attorney and that the defendant is competent and not under the influence of any substances that would impair his or her ability to make an informed decision.

(2) Compliance with Section (c) of this Rule

As part of the waiver inquiry, the court shall comply with section (c) of this Rule and direct the clerk to record that compliance on the docket. At any subsequent appearance of the defendant before the District Court, the docket notation of compliance shall be prima facie proof of the defendant's express waiver of the right to an attorney.

(3) Effect of Waiver

After the court has found that the defendant has expressly waived the right to an attorney, the court may not grant a postponement to allow the defendant to obtain an attorney unless the court finds that it is in the interest of justice to do so.

(e) Waiver by Inaction

(1) Opportunity to Explain Absence of Attorney

(A) If a defendant appears without an attorney on the date set for trial and indicates a desire to have an attorney, the court shall first determine whether the record clearly shows compliance with (i) section (c) of this Rule by a District Court judge at a previous appearance by the defendant, or (ii) Rule 4-213 by a judicial officer at an initial appearance or preliminary inquiry conducted pursuant to that Rule.

(B) If the record fails to show such compliance, the court may not find a waiver by inaction and shall comply with section (c) of this Rule.

(C) If the record shows such compliance, the court shall permit the defendant to explain his or her appearance without an attorney.

Committee note: Rule 4-213 (a)(3) requires that a judicial officer, at an initial appearance, advise the defendant of the right to an attorney in the manner set forth in section (c) of this Rule, and Rule 4-216 (h) requires that the judicial officer include in the record a certification of compliance with that requirement. Rule 16-506 requires that an initial appearance proceeding be electronically recorded. The intent of section

(e) of this Rule is that the court ordinarily may rely on the judicial officer's certification of compliance, if it is in the file, but if there is any genuine dispute about whether the required advice was given, the court may verify compliance by listening to the recording.

(2) If Meritorious Reason

If the court finds a meritorious reason for the defendant's appearance without an attorney, the court shall continue the action to a later time and advise the defendant that, if an attorney does not enter an appearance by that time, the trial will proceed with the defendant unrepresented by an attorney.

(3) If No Meritorious Reason

If the court finds no meritorious reason for the defendant's appearance without an attorney, the court may determine that the defendant has waived the right to an attorney by failing or refusing to obtain one and may proceed with the trial.

(f) Demand for Jury Trial

If the defendant appears without an attorney on a date set for trial and demands a jury trial, the court shall comply with the requirements of section (c) of this Rule and, in a separate document, certify that compliance. The document shall be docketed and, if the demand is granted, included in the record transmitted to the circuit court.

Committee note: In an MDEC county, the "separate document" required by section (f) may be electronic.

(g) Discharge of Attorney

(1) Opportunity to Explain

If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request.

(2) If Meritorious Reason

(A) Subject to subsections (g)(2)(B) and (C) of this Rule, if the court finds a meritorious reason for the defendant's request, the court shall permit the defendant to discharge the attorney, continue the action if necessary, and advise the defendant that if a new attorney does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by an attorney.

(B) If the discharged attorney had been assigned by the Office of the Public Defender, that Office declines to assign another attorney to represent the defendant, and the defendant remains indigent, the court shall appoint an attorney for the defendant at the cost of the State, unless the defendant expressly waives the right to an attorney in accordance with this Rule.

Cross reference: See *Dykes v. State*, 444 Md. 642 (2015) and *State v. Westray*, 444 Md. 672 (2015).

(C) If the discharged attorney had not been assigned by the Office of the Public Defender, the court shall inform the

defendant of the right to be represented by the Public Defender if the defendant qualifies as indigent and, if the defendant claims to be indigent, of the need to contact the Office of the Public Defender immediately.

(3) If No Meritorious Reason

If the court finds no meritorious reason for the defendant's request, the court shall (A) inform the defendant that, if the attorney is discharged and the defendant does not have another attorney prepared to enter an appearance and proceed with trial, trial will proceed as scheduled with the defendant unrepresented by an attorney, and (B) comply with subsections (c)(1)(A) through (D) of this Rule unless the record shows compliance with (i) section (c) of this Rule at a previous appearance by the defendant, or (ii) Rule 4-213 by a judicial officer at an initial appearance or preliminary inquiry conducted pursuant to that Rule. If the defendant still insists on discharging the attorney, the court shall permit the discharge and find that the defendant has waived the right to an attorney.

Committee note: Notwithstanding a defendant's express waiver of the right to an attorney, the court may, but is not required to, appoint a standby attorney to remain in court to provide assistance to the defendant upon the defendant's request and to be available if termination of self-representation becomes necessary. See *Harris v. State*, 344 Md. 497 (1997).

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is new.

Section (c) is derived from former Rule 723 b 1, 2, 3 and 7 and c 1.
Section (d) is derived from former Rule 723.
Section (e) is in part derived from former M.D.R. 726 and in part new.
Section (f) is new.
Section (g) is new.

REPORTER'S NOTE

The Rules Committee proposes splitting Rule 4-215 into two Rules -- new Rule 4-215, dealing with the waiver of the right to an attorney in the District Court, and new Rule 4-215.1, dealing with the waiver of the right to an attorney in the circuit courts. The revisions that the Committee proposes would have lengthened Rule 4-215 to the point of making it too long and somewhat cumbersome. Also, for clarity, the Rule defines "trial" as including any hearing at which the defendant has a right to the assistance of counsel, other than a first appearance before a judicial officer pursuant to Rules 4-213 and 4-216.

Current Rule 4-215 (a)(4) requires that on a defendant's first appearance in court without counsel, the court "shall ...[c]onduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel." The duty is mandatory and advisements given by an Assistant State's Attorney are not sufficient. *Webb v. State*, 144 Md. App. 729, 743 (2002).

In contrast, under current Rule 4-215 (b), which governs express waivers of counsel when a defendant appears without counsel, the examination of the defendant may be "conducted by the court, the State's Attorney, or both," after which "the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to counsel." In *Fowlkes v. State*, 311 Md. 586, 608-09 (1988), the Court held that a court could permit a defendant to discharge counsel pursuant to Rule 4-215 (e), when the trial court in making the required inquiry on whether the defendant was knowingly and voluntarily waiving the right to counsel, had the State's Attorney undertake a thorough waiver inquiry on the day of trial.

The Committee proposes eliminating the language in section (b) of the current Rule that allows the court or the State's Attorney to conduct the examination. It is the Committee's belief that the same considerations that require the trial court to conduct the examination itself at the first appearance

without counsel, as reflected in section (a), should lead to the conclusion that the court itself should conduct the examination in section (c) on whether there is an express waiver. The Committee's proposal has been written accordingly.

An Assistant Public Defender had pointed out an omission from the advice given by a court to a defendant who appears in court without an attorney. The advice pertains to the various ways that an attorney could assist the defendant. The additional recommended language is that an attorney can explain the potential collateral consequences of a conviction. This would be added to the Committee note after subsection (b)(1)(B) of Rules 4-215 and 4-215.1, and it would be added to the notice form contained in the charging document that is in Rule 4-202. This would require amending some District Court forms that have the notice form in them.

The provisions of new Rules 4-215 and 4-215.1 provide a process for creation of a record that can be relied on by a judge to show that a defendant has been advised by a judge at an earlier proceeding about waiver of the right to counsel. For example, Rule 4-215 (d)(2) requires that a District Court judge provide the advisements required by section (c) of the Rule, and then to "direct the clerk to record that compliance on the docket." The docket notation is prima facie proof of a defendant's express waiver of the right to an attorney. Rule 4-215 (e)(1)(A) requires the court to determine whether the record shows compliance with Rule 4-215 (c) by a District Court judge at a previous appearance by the defendant or compliance with Rule 4-213 by a judicial officer at an initial appearance or preliminary inquiry conducted pursuant to that Rule if the defendant appears without an attorney on the date for trial and indicates a desire to have an attorney. Similarly, under Rule 4-215.1 (d)(2), a circuit court judge may rely on the record created earlier by a District Court judge or a circuit court judge that shows compliance. Furthermore, under Rule 4-215 (f), if a defendant appears in the District Court and demands a jury trial, the court shall comply with procedural requirements of section (c) of the Rule, and, on a separate document, certify that compliance. That document shall be docketed and included in the record transmitted to the circuit court. A circuit court judge may find prior compliance by reviewing the record and finding that the District Court judge made the written statement after the defendant demanded a jury trial. See Rule 4-215.1 (e)(1)(B). By following these provisions, a court not only is assuring that the proper advisements are given, it also is creating a record that easily can be relied upon by a judge in a later District Court or circuit court proceeding. It is intended that these changes will promote judicial economy.

An issue had arisen as to who would pay for the cost of another attorney when a defendant discharges his or her attorney, who had been assigned by the Office of the Public Defender, and that office declines to assign another attorney to represent the defendant. *Dykes v. State*, 444 Md. 642 (2015) held that as long as the reason for the discharge was meritorious, and the Public Defender declines to assign another attorney, the trial court has the inherent authority to appoint another attorney for the defendant. The Committee's view is that the State, not the county, has to pay the cost of the new attorney. This is indicated in subsections (g)(2)(B) of Rule 4-215 and (f)(2)(B) of Rule 4-215.1.

To harmonize the advice provisions in Rules 4-213, 4-213.1, 4-215, and 4-215.1, the Committee recommends amending subsection (a)(2) of Rule 4-213 and section (c) of Rule 4-213.1 to conform them to the language of subsection (c)(1)(B) of Rules 4-215 and 4-215.1. Another recommendation is to modify the language of subsection (c)(1)(C) of Rules 4-215 and 4-215.1 to conform to language in Rule 4-213 (a)(2).

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

ADD new Rule 4-215.1, as follows:

Rule 4-215.1. RIGHT TO ATTORNEY – WAIVER - CIRCUIT COURT

(a) Scope

This Rule applies to proceedings in a circuit court.

(b) Definition

In this Rule, “trial” includes any hearing at which the defendant has a right to the assistance of an attorney, other than an initial appearance before a judicial officer pursuant to Rules 4-213 and 4-216.

(c) First Appearance Without Attorney

(1) Duty of Court

At a defendant’s first appearance in a circuit court without an attorney, the court shall:

(A) determine whether the defendant has received a copy of the charging document containing notice as to the right to an attorney and, if not, have a copy served on the defendant and direct the clerk to docket that event;

(B) inform the defendant of the right to an attorney, of the importance of having an attorney, of the right to representation by the Public Defender if the defendant qualifies

as indigent, and, if the defendant claims to be indigent, of the need to contact the Office of the Public Defender immediately;

Committee note: The court's advice should include the assistance an attorney can provide in explaining to the defendant and arguing to the court legal issues that may arise; explaining the potential collateral consequences of a conviction, including immigration consequences; assisting in determining whether the defendant may be entitled to a jury trial and should ask for one; helping in the jury selection process if there is to be a jury trial; knowing how to present evidence for the defendant and object to evidence offered by the State that may be inadmissible, examining and cross-examining witnesses; and, if the defendant is convicted, arguing for a fair sentence.

(C) advise the defendant of each offense with which the defendant is charged in the charging document and the allowable penalties that may be imposed upon conviction, including any mandatory or enhanced penalties;

Committee note: If the prospect of a mandatory or enhanced sentence depends on the proof of facts not then known to the court, such as the defendant's prior criminal record, the court should advise that the mandatory or enhanced penalty may apply if the predicate facts are shown.

(D) if the defendant indicates a desire to waive expressly the right to an attorney, conduct a waiver inquiry pursuant to section (d) of this Rule; and

(E) advise the defendant that, if the defendant appears for any subsequent trial in the action without an attorney, the court could determine that the defendant waived the right to an attorney by inaction and proceed with the trial with the defendant unrepresented by an attorney.

(2) Duty of Clerk

The clerk shall note compliance with this section on the docket.

(d) Express Waiver of Right to Attorney

(1) Assurance that Waiver is Knowing and Voluntary

If a defendant who is not represented by an attorney indicates a desire to waive the right to an attorney, the court shall conduct an examination of the defendant on the record. The court may not accept the waiver unless the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to an attorney.

Committee note: The court may find that a waiver is knowing based on the defendant's responses to the waiver inquiry – the advice by the court regarding the right to an attorney, the importance of having an attorney, and, if the defendant is indigent, the right of representation by the Public Defender. The court may find that a waiver is voluntary based on the defendant's assurances that no coercion or inducements have been made in order to cause the defendant to forgo having an attorney and that the defendant is competent and not under the influence of any substances that would impair his or her ability to make an informed decision.

(2) Required Compliance with either Rule 4-215 (c) or Section (c) of this Rule

(A) Prior to making a finding that a defendant expressly waives the right to an attorney, the court shall review the record to determine prior compliance with either Rule 4-215 (c) or section (c) of this Rule.

(B) The court may find prior compliance by reviewing the record and making a finding that either (i) the defendant previously appeared in the circuit court and the record shows

compliance with section (c) of this Rule; or (ii) the defendant previously appeared in the District Court on a charge not within the exclusive jurisdiction of the circuit court, made a demand for jury trial, and the District Court judge certified compliance with Rule 4-215 (c).

Cross reference: See Rule 4-215 (f) concerning a certification of compliance with Rule 4-215 (c).

(C) If the record fails to show such compliance, the court shall comply with section (c) of this Rule as part of the waiver inquiry and direct the clerk to record the compliance on the docket.

(D) At any subsequent appearance of the defendant before the court, the docket notation of compliance shall be prima facie proof of the defendant's express waiver of the right to an attorney.

(3) Effect of Waiver

After the court has found that the defendant has expressly waived the right to an attorney, the court may not grant a postponement to allow the defendant to obtain an attorney unless the court finds that it is in the interest of justice to do so.

(e) Waiver by Inaction

(1) Opportunity to Explain Absence of Attorney

(A) If a defendant appears without an attorney on the date set for trial and indicates a desire to have an attorney, the

court shall first review the record to determine prior compliance with either Rule 4-215 (c) or section (c) of this Rule.

(B) The court may find prior compliance by reviewing the record and making a finding that either (i) the defendant previously appeared in the circuit court and the record shows compliance with section (c) of this Rule; or (ii) the defendant previously appeared in the District Court on a charge not within the exclusive jurisdiction of the District Court, made a demand for jury trial, and the District Court judge certified compliance with Rule 4-215 (c).

Cross reference: See Rule 4-215 (f).

(C) If the record fails to show such compliance, the court may not find a waiver by inaction and shall comply with section (c) of this Rule.

(D) If the record shows such compliance, the court shall permit the defendant to explain why the defendant has appeared without an attorney.

(2) If Meritorious Reason

If the court finds a meritorious reason for the defendant's appearance without an attorney, the court shall continue the action to a later time and advise the defendant that, if an attorney does not enter an appearance by that time, the trial will proceed with the defendant unrepresented by an attorney.

(3) If No Meritorious Reason

If the court finds no meritorious reason for the defendant's appearance without an attorney, the court may determine that the defendant has waived the right to an attorney by failing or refusing to obtain one, and may proceed with the trial. If the defendant's appearance in the circuit court is pursuant to a demand for jury trial made in the District Court, the court may not find the defendant's appearance without an attorney to be non-meritorious unless the court finds that the defendant had a reasonable opportunity after the demand for jury trial was made to obtain an attorney.

Committee note: In some counties, the circuit court attempts to set jury trial demand cases in for trial very quickly. In those situations, although the circuit court may rely on an adequate advice of rights given by the District Court judge at the time the defendant made the demand for jury trial, it must take into account, in determining whether there is a meritorious reason for the defendant not having an attorney, whether the defendant had a reasonable opportunity to obtain an attorney prepared to try the case following the giving of that advice.

(f) Discharge of Attorney

(1) Opportunity to Explain

If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request.

(2) If Meritorious Reason

(A) Subject to subsections (f)(2)(B) and (C) of this Rule, if the court finds a meritorious reason for the defendant's request, the court shall permit the defendant to

discharge the attorney, continue the action if necessary, and advise the defendant that if a new attorney does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by an attorney.

(B) If the discharged attorney had been assigned by the Office of the Public Defender, that Office declines to assign another attorney to represent the defendant, and the defendant remains indigent, the court shall appoint an attorney for the defendant at the cost of the State, unless the defendant expressly waives the right to an attorney in accordance with this Rule.

Cross reference: See *Dykes v. State*, 444 Md. 642 (2015) and *State v. Westray*, 444 Md. 672 (2015).

(C) If the discharged attorney had not been assigned by the Office of the Public Defender, the court shall inform the defendant of the right to be represented by the Public Defender if the defendant qualifies as indigent and, if the defendant claims to be indigent, of the need to contact the Office of the Public Defender immediately.

(3) If No Meritorious Reason

(A) If the court finds no meritorious reason for the defendant’s request, the court shall (i) inform the defendant that, if the attorney is discharged and the defendant does not have another attorney prepared to enter an appearance and

proceed with the trial, the trial will proceed as scheduled with the defendant unrepresented by an attorney, and (ii) unless the court finds prior compliance with either Rule 4-215 (c) or section (c) of this Rule, the court shall comply with subsections (c)(1)(A) through (D) of this Rule.

(B) The court may find prior compliance with either Rule 4-215 (c) or section (c) of this Rule by reviewing the record and making a finding that either (i) the defendant previously appeared in the circuit court and the record shows compliance with section (c) of this Rule; or (ii) the defendant previously appeared in the District Court, made a demand for jury trial, and the District Court judge made a written statement documenting compliance with Rule 4-215 (c).

Cross reference: See Rule 4-215 (f).

(C) If, after the court has complied with subsection (f)(3)(A), and, if applicable, subsection (f)(3)(B) of this Rule, the defendant still insists on discharging the attorney, the court shall permit the discharge and find that the defendant has waived the right to an attorney.

Committee note: Notwithstanding a defendant's express waiver of the right to an attorney, the court may, but is not required to, appoint a standby attorney to remain in court to provide assistance to the defendant upon the defendant's request and to be available if termination of self-representation becomes necessary. See *Harris v. State*, 344 Md. 497 (1997).

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is new.

Section (c) is derived from former Rule 723 b 1, 2, 3 and 7 and c 1.
Section (d) is derived from former Rule 723.
Section (e) is in part derived from former M.D.R. 726 and in part new.
Section (f) is new.

REPORTER'S NOTE

See the Reporter's note to Rule 4-215.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-212 to update an internal Rule reference, as follows:

Rule 4-212. ISSUANCE, SERVICE, AND EXECUTION OF SUMMONS OR WARRANT

. . .

(e) Execution of Warrant - Defendant not in Custody

Unless the defendant is in custody, a warrant shall be executed by the arrest of the defendant. Unless the warrant and charging document are served at the time of the arrest, the officer shall inform the defendant of the nature of the offense charged and of the fact that a warrant has been issued. A copy of the warrant and charging document shall be served on the defendant promptly after the arrest. The defendant shall be taken before a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after arrest or, if the warrant so specifies, before a judicial officer of the circuit court without unnecessary delay and in no event later than the next session of court after the date of arrest. The court shall process the defendant pursuant to Rule 4-216 or 4-216.1 and may make provision for the appearance or

waiver of counsel pursuant to Rule 4-215 or 4-215.1.

. . .

REPORTER'S NOTE

Amendments to Rules 4-212, 4-213, 4-214, 4-216.1, 4-347, 15-205, and 16-207 are proposed to reflect the proposed splitting of Rule 4-215 into Rules 4-215 and 4-215.1, to apply to the District Court and circuit courts, respectively.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216.1 to update internal Rule references, as follows:

Rule 4-216.1. REVIEW OF COMMISSIONER'S PRETRIAL RELEASE ORDER

. . .

(b) Attorney for Defendant

(1) Duty of Public Defender

Unless another attorney has entered an appearance or the defendant has waived the right to an attorney for purposes of the review hearing in accordance with this section, the Public Defender shall provide representation to an eligible defendant at the review hearing.

(2) Waiver

(A) Unless an attorney has entered an appearance, the court shall advise the defendant that:

(i) the defendant has a right to an attorney at the review hearing;

(ii) an attorney can be helpful in advocating that the defendant should be released on recognizance or on bail with minimal conditions and restrictions; and

(iii) if the defendant is eligible, the Public Defender

will represent the defendant at this proceeding.

Cross reference: For the requirement that the court also advise the defendant of the right to counsel generally, see Rule 4-215 ~~(a)~~ (c).

(B) If, after the giving of this advice, the defendant indicates a desire to waive an attorney for purposes of the review hearing and the court finds that the waiver is knowing and voluntary, the court shall announce on the record that finding and proceed pursuant to this Rule.

(C) Any waiver found under this Rule is applicable only to the proceeding under this Rule.

(3) Waiver of Attorney for Future Proceedings

For proceedings after the review hearing, waiver of an attorney is governed by Rule 4-215 or 4-215.1.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-212.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-347 to update an internal Rule reference, as follows:

Rule 4-347. PROCEEDINGS FOR REVOCATION OF PROBATION

. . .

(d) Waiver of Counsel

The provisions of Rule 4-215 or 4-215.1 apply to proceedings for revocation of probation.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-212.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 200 - CONTEMPT

AMEND Rule 15-205 to update an internal Rule reference, as follows:

Rule 15-205. CONSTRUCTIVE CRIMINAL CONTEMPT; COMMENCEMENT; PROSECUTION

. . .

(e) Waiver of Counsel

The provisions of Rule 4-215 or 4-215.1 apply to constructive criminal contempt proceedings.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-212.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-207 by adding reference to new Rule 4-215.1, as follows:

Rule 16-207. PROBLEM-SOLVING COURT PROGRAMS

. . .

(e) Acceptance of Participant into Program

(1) Written Agreement Required

As a condition of acceptance into a program and after the advice of an attorney, if any, a prospective participant shall execute a written agreement that sets forth:

(A) the requirements of the program;

(B) the protocols of the program, including protocols concerning the authority of the judge to initiate, permit, and consider ex parte communications pursuant to Rule 18-202.9 of the Maryland Code of Judicial Conduct;

(C) the range of sanctions that may be imposed while the participant is in the program, if any; and

(D) any rights waived by the participant, including rights under Rule 4-215 or 4-215.1 or Code, Courts Article, §3-8A-20.

Committee note: The written agreement shall be in addition to any advisements that are required under Rule 4-215 or 4-215.1 or Code, Courts Article, §3-8A-20, if applicable.

(2) Examination on the Record

The court may not accept the prospective participant into the program until, after examining the prospective participant on the record, the court determines and announces on the record that the prospective participant understands the agreement and knowingly and voluntarily enters into the agreement.

(3) Agreement to be Made Part of the Record

A copy of the agreement shall be made part of the record.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-212.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-202 to add language pertaining to collateral consequences of a conviction, including immigration consequences, to the form of a charging document, as follows:

Rule 4-202. CHARGING DOCUMENT - CONTENT

(a) General Requirements

A charging document shall contain the name of the defendant or any name or description by which the defendant can be identified with reasonable certainty, except that the defendant need not be named or described in a citation for a parking violation. It shall contain a concise and definite statement of the essential facts of the offense with which the defendant is charged and, with reasonable particularity, the time and place the offense occurred. An allegation made in one count may be incorporated by reference in another count. The statute or other authority for each count shall be cited at the end of the count, but error in or omission of the citation of authority is not grounds for dismissal of the charging document or for reversal of a conviction.

A charging document also shall contain a notice to the defendant in the following form:

TO THE PERSON CHARGED:

1. This paper charges you with committing a crime.

2. If you have been arrested and remain in custody, you have the right to have a judicial officer decide whether you should be released from jail until your trial.

3. If you have been served with a citation or summons directing you to appear before a judicial officer for a preliminary inquiry at a date and time designated or within five days of service if no time is designated, a judicial officer will advise you of your rights, the charges against you, and penalties. The preliminary inquiry will be cancelled if a lawyer has entered an appearance to represent you.

4. You have the right to have a lawyer.

5. A lawyer can be helpful to you by:

(A) explaining the charges in this paper;

(B) telling you the possible penalties;

(C) explaining any potential collateral consequences of a conviction, including immigration consequences;

~~(C)~~ (D) helping you at trial;

~~(D)~~ (E) helping you protect your constitutional rights; and

~~(E)~~ (F) helping you to get a fair penalty if convicted.

6. Even if you plan to plead guilty, a lawyer can be helpful.

7. If you are eligible, the Public Defender or a court-

appointed attorney will represent you at any initial appearance before a judicial officer and at any proceeding under Rule 4-216.1 to review an order of a District Court commissioner regarding pretrial release. If you want a lawyer for any further proceeding, including trial, but do not have the money to hire one, the Public Defender may provide a lawyer for you. The court clerk will tell you how to contact the Public Defender.

8. If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.

9. DO NOT WAIT UNTIL THE DATE OF YOUR TRIAL TO GET A LAWYER. If you do not have a lawyer before the trial date, you may have to go to trial without one.

REPORTER'S NOTE

See paragraph 5 of the Reporter's note to Rule 4-215.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-213 by adding language to subsection (a)(2) referring to a certain type of penalty and by updating an internal Rule reference in section (c), as follows:

Rule 4-213. INITIAL APPEARANCE OF DEFENDANT

(a) In District Court Following Arrest

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

(1) Appointment, Appearance, or Waiver of Attorney for Initial Appearance

If the defendant appears without an attorney, the judicial officer shall first follow the procedure set forth in Rule 4-213.1 to assure that the defendant either is represented by an attorney or has knowingly and voluntarily waived the right to an attorney.

(2) Advice of Charges

The judicial officer shall inform the defendant of each offense with which the defendant is charged and of the allowable penalties, including <u>any</u> mandatory <u>or enhanced</u> penalties, if any, and shall provide the defendant with a copy of the charging

document if the defendant does not already have one and one is then available. If one is not then available, the defendant shall be furnished with a copy as soon as possible.

(3) Advice of Right to Counsel

The judicial officer shall require the defendant to read the notice to defendant required to be printed on charging documents in accordance with Rule 4-202 (a), or shall read the notice to a defendant who is unable for any reason to do so. A copy of the notice shall be furnished to a defendant who has not received a copy of the charging document. The judicial officer shall advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.

Cross reference: See Rule 4-213.1 with respect to the right to an attorney at an initial appearance before a judicial officer and Rule 4-216.1 (b) with respect to the right to an attorney at a hearing to review a pretrial release decision of a commissioner.

(4) Advice of Preliminary Hearing

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

the judicial officer may either set its date and time or notify the defendant that the clerk will do so.

(5) Pretrial Release

The judicial officer shall comply with the applicable provisions of Rules 4-216 and 4-216.1 governing pretrial release.

(6) Certification by Judicial Officer

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

(7) Transfer of Papers by Clerk

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

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

. . .

(c) In Circuit Court Following Arrest or Summons

The initial appearance of the defendant in circuit court occurs when the defendant (1) is brought before the court by reason of execution of a warrant pursuant to Rule 4-212 (e) or (f) (2), or (2) appears in person or by written notice of counsel in response to a summons. In either case, if the defendant appears without counsel the court shall proceed in

accordance with Rule ~~4-215~~ 4-215.1. If the appearance is by reason of execution of a warrant, the court shall (1) inform the defendant of each offense with which the defendant is charged, (2) ensure that the defendant has a copy of the charging document, and (3) determine eligibility for pretrial release pursuant to Rule 4-216.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-212 and the last paragraph of the Reporter's note to Rule 4-215.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-213.1 to add language to section (c), as follows:

Rule 4-213.1. APPOINTMENT, APPEARANCE, OR WAIVER OF ATTORNEY AT INITIAL APPEARANCE

. . .

(c) General Advice by Judicial Officer

If the defendant appears at an initial appearance without an attorney, the judicial officer shall advise the defendant that the defendant has a right to an attorney at the initial appearance, of the importance of having an attorney, and that, if the defendant is indigent, (1) the Public Defender will provide representation if the proceeding is before a judge, or (2) a court-appointed attorney will provide representation if the proceeding is before a commissioner.

. . .

REPORTER'S NOTE

See the last paragraph of the Reporter's note to Rule 4-215.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-242 by adding to section (f) a reference to a plea of not guilty on an agreed statement of facts or on stipulated evidence, by deleting an obsolete sentence from the Committee note following section (f), by adding a cross reference after section (f), and by making stylistic changes, as follows:

Rule 4-242. PLEAS

(a) Permitted Pleas

A defendant may plead not guilty, guilty, or, with the consent of the court, nolo contendere. In addition to any of these pleas, the defendant may enter a plea of not criminally responsible by reason of insanity.

Committee note: It has become common in some courts for defendants to enter a plea of not guilty but, in lieu of a normal trial, to proceed either on an agreed statement of ultimate fact to be read into the record or on a statement of proffered evidence to which the defendant stipulates, the purpose being to avoid the need for the formal presentation of evidence but to allow the defendant to argue the sufficiency of the agreed facts or evidence and to appeal from a judgment of conviction. That kind of procedure is permissible only if there is no material dispute in the statement of facts or evidence. *See Bishop v. State*, 417 Md. 1 (2010); *Harrison v. State*, 382 Md. 477 (2004); *Morris v. State*, 418 Md. 194 (2011). Parties to a criminal action in a circuit court who seek to avoid a formal trial but to allow the defendant to appeal from specific adverse rulings are encouraged to proceed by way of a conditional plea

of guilty pursuant to section (d) of this Rule, to the extent that section is applicable.

(b) Method of Pleading

(1) Manner

A defendant may plead not guilty personally or by counsel on the record in open court or in writing. A defendant may plead guilty or nolo contendere personally on the record in open court, except that a corporate defendant may plead guilty or nolo contendere by counsel or a corporate officer. A defendant may enter a plea of not criminally responsible by reason of insanity personally or by counsel and the plea shall be in writing.

(2) Time in the District Court

In District Court the defendant shall initially plead at or before the time the action is called for trial.

(3) Time in Circuit Court

In circuit court the defendant shall initially plead within 15 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213 (c). If a motion, demand for particulars, or other paper is filed that requires a ruling by the court or compliance by a party before the defendant pleads, the time for pleading shall be extended, without special order, to 15 days after the ruling by the court or the compliance by a party. A plea of not criminally responsible by reason of

insanity shall be entered at the time the defendant initially pleads, unless good cause is shown.

(4) Failure or Refusal to Plead

If the defendant fails or refuses to plead as required by this section, the clerk or the court shall enter a plea of not guilty.

Cross reference: See *Treece v. State,* 313 Md. 665 (1988), concerning the right of a defendant to decide whether to interpose the defense of insanity.

(c) Plea of Guilty

The court may not accept a plea of guilty, including a conditional plea of guilty, until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section (f) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

(d) Conditional Plea of Guilty

(1) Scope of Section

This section applies only to an offense charged by indictment or criminal information and set for trial in a circuit court or that is scheduled for trial in a circuit court pursuant to a prayer for jury trial entered in the District Court.

Committee note: Section (d) of this Rule does not apply to appeals from the District Court.

(2) Entry of Plea; Requirements

With the consent of the court and the State, a defendant may enter a conditional plea of guilty. The plea shall be in writing and, as part of it, the defendant may reserve the right to appeal one or more issues specified in the plea that (A) were raised by and determined adversely to the defendant, and, (B) if determined in the defendant's favor would have been dispositive of the case. The right to appeal under this subsection is limited to those pretrial issues litigated in the circuit court and set forth in writing in the plea.

Committee note: This Rule does not affect any right to file an application for leave to appeal under Code, Courts Article, §12-302 (e)(2).

(3) Withdrawal of Plea

A defendant who prevails on appeal with respect to an issue reserved in the plea may withdraw the plea.

Cross reference: Code, Courts Article, §12-302.

(e) Plea of Nolo Contendere

A defendant may plead nolo contendere only with the consent of court. The court may require the defendant or counsel to provide information it deems necessary to enable it to determine whether or not it will consent. The court may not accept the plea until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that the defendant is pleading voluntarily with understanding of the nature of the charge and the consequences of the plea. In addition, before accepting the plea, the court shall comply with section (f) of this Rule. Following the acceptance of a plea of nolo contendere, the court shall proceed to disposition as on a plea of guilty, but without finding a verdict of guilty. If the court refuses to accept a plea of nolo contendere, it shall call upon the defendant to plead anew.

(f) Collateral Consequences of ~~a Plea of Guilty, Conditional Plea of Guilty, or Plea of Nolo Contendere~~ Certain Pleas

Before the court accepts a plea of not guilty on an agreed statement of facts or on stipulated evidence, a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere, the court, the State's Attorney, the attorney for the defendant, or any combination thereof shall advise the defendant (1) that by entering the plea, if the defendant is not a United States citizen, the defendant may face additional

consequences of deportation, detention, or ineligibility for citizenship, (2) that by entering a plea to the offenses set out in Code, Criminal Procedure Article, §11-701, the defendant ~~shall~~ will have to register with the defendant's supervising authority as defined in Code, Criminal Procedure Article, §11-701 (p), and (3) that the defendant should consult with defense counsel if the defendant is represented and needs additional information concerning the potential consequences of the plea. The omission of advice concerning the collateral consequences of a plea does not itself mandate that the plea be declared invalid.

Committee note: In determining whether to accept the plea, the court should not question defendants about their citizenship or immigration status. Rather, the court should ensure that all defendants are advised in accordance with this section. ~~This Rule does not overrule *Yoswick v. State*, 347 Md. 228 (1997) and *Daley v. State*, 61 Md. App. 486 (1985)~~.

Cross reference: For the obligation of the defendant's attorney to correctly advise the defendant about the potential immigration consequences of a plea, see *Padilla v. Kentucky*, 559 U.S. 356 (2010) and *State v. Prado*, 448 Md. 664 (2016).

(g) Plea to a Degree

A defendant may plead not guilty to one degree and plead guilty to another degree of an offense which, by law, may be divided into degrees.

(h) Withdrawal of Plea

At any time before sentencing, the court may permit a defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere when the withdrawal serves

the interest of justice. After the imposition of sentence, on motion of a defendant filed within ten days, the court may set aside the judgment and permit the defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere if the defendant establishes that the provisions of section (c) or (e) of this Rule were not complied with or there was a violation of a plea agreement entered into pursuant to Rule 4-243. The court shall hold a hearing on any timely motion to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere.

Committee note: The entry of a plea waives objections to venue and may waive technical defects in the charging document ~~and waives objections to venue~~. See, e.g., Rule 4-202 (b) and *Kisner v. State*, 209 Md. 524~~, 122 A.2d 102~~ (1956).

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 731 a and M.D.R. 731 a.
Section (b)
Subsection (1) is derived from former Rule 731 b 1 and M.D.R. 731 b 1.
Subsection (2) is new.
Subsection (3) is derived from former Rule 731 b 2.
Subsection (4) is derived from former Rule 731 b 3 and M.D.R. 731 b 2.
Section (c) is derived from former Rule 731 c and M.D.R. 731 c.
Section (d) is new.
Section (d) is new.
Section (e) is derived from former Rule 731 d and M.D.R. 731 d.
Section (f) is new.
Section (g) is derived from former Rule 731 e.
Section (h) is derived from former Rule 731 f and M.D.R. 731 e.

Rule 4-242

REPORTER'S NOTE

In light of *State v. Prado*, 664 Md. 664 (No. 100, Sept. Term, 2015, filed July 11, 2016) and *Padilla v. Kentucky*, 559 U.S. 356 (2010), Rule 4-242 is proposed to be amended by requiring compliance with section (f) of the Rule before the court accepts a plea of not guilty on an agreed statement of facts or on stipulated evidence. A cross reference citing *Padilla* and *Prado* is added, and an obsolete sentence in the Committee note after section (f) is deleted. Other changes are stylistic, only.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 600 – CRIMINAL INVESTIGATIONS AND MISCELLANEOUS PROVISIONS

AMEND Rule 4-601 by deleting the second sentence of subsection (f)(3) and by changing the location for filing an executed search warrant and the papers associated with it, as follows:

Rule 4-601. SEARCH WARRANTS

. . .

(f) Executed Warrant--Return

(1) An officer who executes a search warrant shall prepare a detailed search warrant return, which shall include the date and time of the execution of the warrant and a verified inventory.

(2) The officer shall deliver the return to the judge who issued the warrant or, if that judge is not immediately available, to another judge of the same circuit, if the warrant was issued by a circuit court judge, or of the same district, if the warrant was issued by a District Court judge, as promptly as possible and, in any event, (A) within ten days after the warrant was executed, or (B) within any earlier time set forth in the warrant. The return shall be accompanied by the executed warrant and the verified inventory.

(3) Delivery of the return, warrant, and verified inventory may be in person, by secure facsimile, or by secure electronic mail that permits the judge to print the complete text of the documents. ~~If the delivery is by electronic mail, the officer shall sign the return and inventory as required by Rule 20-107 (e) and, no later than the next business day, deliver to the judge the original signed and dated return and inventory and the warrant that was executed~~.

(4) If the return is made to a judge other than the judge who issued the warrant, the officer shall notify the issuing judge of when and to whom the return was made, unless it is impracticable to give such notice.

(5) The officer shall deliver a copy of the return to an authorized occupant of the premises searched or, if such a person is not present, leave a copy of the return at the premises searched.

(g) Executed Warrant - Filing with Clerk

The judge to whom an executed search warrant is returned shall attach to the warrant the return, the verified inventory, and all other papers in connection with the issuance, execution, and return, including the copies retained by the issuing judge, and shall file them with the clerk of the court for the county ~~in~~ from which ~~the property was seized~~ the warrant was issued. The papers filed with the clerk shall be sealed and shall be

opened for inspection only upon order of the court. The clerk shall maintain a confidential index of the search warrants.

. . .

REPORTER'S NOTE

Two amendments to Rule 4-601 are proposed.

The proposed deletion of the second sentence of subsection (f)(3) is based upon a recommendation of a State's Attorney and a judge in a county that has been using the provisions of Rule 4-601 that permit electronic transmission of documents pertaining to the issuance of search warrants. The State's Attorney and judge believe that the requirement in Rule 4-601 (f)(3), "that if the delivery is by electronic mail, the officer shall sign the return and inventory as required by Rule 20-107 (e) and, no later than the next business day, deliver to the judge the original signed and dated return and inventory and the warrant that was executed" is unnecessary. Requiring an officer to submit a paper return defeats the purpose of not making an officer appear in person in these circumstances. The Rules Committee concurs with the suggested deletion of this language from subsection (f)(3).

Section (g) currently requires that an executed search warrant be filed with the clerk of the court in the county in which the property was seized. The Committee is advised, however, that the practice in most counties is to file the executed search warrant in the county from which the warrant was issued. The Committee's view is that the executed warrant should be filed in the county where the warrant was issued, and it recommends amending section (g) accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 600 – CRIMINAL INVESTIGATIONS AND MISCELLANEOUS PROVISIONS

ADD new Rule 4-601.1 as follows:

Rule 4-601.1. PEN REGISTERS AND TRAP AND TRACE DEVICES

(a) Application for Order

Application for a court order under Code, Courts Article §10-4B-03 may be made either in person or by transmission of the application to the judge by secure and reliable electronic mail that permits the judge to print the complete text of the documents. If the documents are transmitted electronically, the application and proposed order shall be sent in an electronic text format approved by the State Court Administrator, and the judge shall retain a copy of the application.

(b) Signature on Application

The signature required on the application may be hand-signed or signed electronically.

(c) Order Authorizing Installation and Use

A court order issued pursuant to Code, Courts Article, §10-4B-04, may be hand-signed or signed electronically by the issuing judge and may be transmitted to the applicant by secure

and reliable electronic mail that permits the applicant to print the complete text of the order and the signature of the judge.

REPORTER'S NOTE

The Rules Committee was informed by a judge that a disagreement has arisen regarding whether applications and court orders under Code, Courts Article, Title 10, Subtitle 4B may be handled electronically.

Title 10, Subtitle 4B, pertains to pen registers and trap and trace devices. The judge requested a Rule that specifies that it is permissible for applications and court orders under that Subtitle to be handled electronically, as search warrants now are permitted to be handled. Proposed new Rule 4-601.1 is intended to provide that capability.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 600 - WITNESSES

AMEND Rule 5-609 (b) by adding an exception as to a conviction for perjury, as follows:

Rule 5-609. IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME

(a) Generally

For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness, but only if (1) the crime was an infamous crime or other crime relevant to the witness's credibility and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party.

Cross reference: Code, Courts Article, §10-905.

Committee note: The requirement that the conviction, when offered for purposes of impeachment, be brought out during examination of the witness is for the protection of the witness. It does not apply to impeachment by evidence of prior conviction of a hearsay declarant who does not testify.

(b) Time Limit

Evidence of a conviction is not admissible under this Rule if a period of more than 15 years has elapsed since the date of the conviction, except as to a conviction for perjury

for which no time limit applies.

(c) Other Limitations

Evidence of a conviction otherwise admissible under section (a) of this Rule shall be excluded if:

(1) the conviction has been reversed or vacated;

(2) the conviction has been the subject of a pardon; or

(3) an appeal or application for leave to appeal from the judgment of conviction is pending, or the time for noting an appeal or filing an application for leave to appeal has not expired.

(d) Effect of Plea of Nolo Contendere

For purposes of this Rule, "conviction" includes a plea of nolo contendere followed by a sentence, whether or not the sentence is suspended.

Committee note: See Code, Courts Article, §3-8A-23 for the effect of juvenile adjudications and for restrictions on their admissibility as evidence generally. Evidence of these adjudications may be admissible under the Confrontation Clause to show bias; see *Davis v. Alaska*, 415 U.S. 308 (1974).

Source: This Rule is derived from F.R.Ev. 609 and Rule 1-502.

REPORTER'S NOTE

Chapter 531, Laws of 2016 (HB 237), repeals the prohibition against testimony by a convicted perjurer and permits evidence of the perjury conviction to be admitted for the purpose of attacking the credibility of the witness, regardless of the date of the conviction. A proposed amendment to section (b) of Rule 5-609 conforms the Rule to the statute.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 800 - HEARSAY

AMEND Rule 5-803 to permit the admissibility of certain electronic recordings made by a body camera or other device under certain circumstances and to add a Committee note explaining the scope of the new provision, as follows:

Rule 5-803. HEARSAY EXCEPTIONS: UNAVAILABILITY OF DECLARANT NOT REQUIRED

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(a) Statement by Party-Opponent

A statement that is offered against a party and is:

(1) The party's own statement, in either an individual or representative capacity;

(2) A statement of which the party has manifested an adoption or belief in its truth;

(3) A statement by a person authorized by the party to make a statement concerning the subject;

(4) A statement by the party's agent or employee made during the agency or employment relationship concerning a matter within the scope of the agency or employment; or

(5) A statement by a coconspirator of the party during the

course and in furtherance of the conspiracy.

Committee note: Where there is a disputed issue as to scope of employment, representative capacity, authorization to make a statement, the existence of a conspiracy, or any other foundational requirement, the court must make a finding on that issue before the statement may be admitted. These rules do not address whether the court may consider the statement itself in making that determination. Compare *Daugherty v. Kessler*, 264 Md. 281, 291-92 (1972) (civil conspiracy); and *Hlista v. Altevogt*, 239 Md. 43, 51 (1965) (employment relationship) with *Bourjaily v. United States*, 483 U.S. 171, 107 S.Ct. 775 (1987) (trial court may consider the out-of-court statement in deciding whether foundational requirements for coconspirator exception have been met.)

(b) Other Exceptions

(1) Present Sense Impression

A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited Utterance

A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then Existing Mental, Emotional, or Physical Condition

A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), offered to prove the declarant's then existing condition or the declarant's future action, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or

terms of declarant's will.

(4) Statements for Purposes of Medical Diagnosis or Treatment

Statements made for purposes of medical treatment or medical diagnosis in contemplation of treatment and describing medical history, or past or present symptoms, pain, or sensation, or the inception or general character of the cause or external sources thereof insofar as reasonably pertinent to treatment or diagnosis in contemplation of treatment.

(5) Recorded Recollection

See Rule 5-802.1 (e) for recorded recollection.

(6) Records of Regularly Conducted Business Activity

A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses if (A) it was made at or near the time of the act, event, or condition, or the rendition of the diagnosis, (B) it was made by a person with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course of a regularly conducted business activity, and (D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation. A record of this kind may be excluded if the source of information or the method or circumstances of the preparation of the record indicate that the information in the record lacks trustworthiness. In this paragraph, “business” includes business, institution,

association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Cross reference: Rule 5-902 (b).

Committee note: Public records specifically excluded from the public records exceptions in subsection (b)(8) of this Rule may not be admitted pursuant to this exception.

(7) Absence of Entry in Records Kept in Accordance With Subsection (b)(6)

Unless the circumstances indicate a lack of trustworthiness, evidence that a diligent search disclosed that a matter is not included in the memoranda, reports, records, or data compilations kept in accordance with subsection (b)(6), when offered to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind about which a memorandum, report, record, or data compilation was regularly made and preserved.

(8) Public Records and Reports

(A) Except as otherwise provided in this paragraph, a memorandum, report, record, statement, or data compilation made by a public agency setting forth

(i) the activities of the agency;

(ii) matters observed pursuant to a duty imposed by law, as to which matters there was a duty to report;

(iii) in civil actions and when offered against the State in criminal actions, factual findings resulting from an investigation made pursuant to authority granted by law; or

(iv) in a final protective order hearing conducted pursuant to Code, Family Law Article, §4–506, factual findings reported to a court pursuant to Code, Family Law Article, §4–505, provided that the parties have had a fair opportunity to review the report.

Committee note: If necessary, a continuance of a final protective order hearing may be granted in order to provide the parties a fair opportunity to review the report and to prepare for the hearing.

(B) A record offered pursuant to paragraph (A) may be excluded if the source of information or the method or circumstance of the preparation of the record indicate that the record or the information in the record lacks trustworthiness.

(C) Except as provided in subsection (b)(8)(D) of this Rule, a record of matters observed by a law enforcement person is not admissible under this paragraph when offered against an accused in a criminal action.

(D) Subject to Rule 5-805, an electronic recording of a matter made by a body camera worn by a law enforcement person or by another type of recording device employed by a law enforcement agency may be admitted when offered against an accused if (i) it is properly authenticated, (ii) it was made contemporaneously with the matter recorded, and (iii) circumstances do not indicate a lack of trustworthiness.

Committee note: Subsection (b)(8)(D) establishes requirements for the admission of certain electronic recordings made by a body camera worn by a law enforcement person or by another type of recording device employed by a law enforcement agency against

an accused. Subsection (b)(8)(D) does not preclude an accused from offering on his or her own behalf a record of matters observed by a law enforcement person. This section does not mandate following the interpretation of the term "factual findings" set forth in *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153 (1988). See *Ellsworth v. Sherne Lingerie, Inc.*, 303 Md. 581 (1985).

(9) Records of Vital Statistics

Except as otherwise provided by statute, records or data compilations of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

Cross reference: See Code, Health General Article, §4-223 (inadmissibility of certain information when paternity is contested) and §5-311 (admissibility of medical examiner's reports).

(10) Absence of Public Record or Entry

Unless the circumstances indicate a lack of trustworthiness, evidence in the form of testimony or a certification in accordance with Rule 5-902 that a diligent search has failed to disclose a record, report, statement, or data compilation made by a public agency, or an entry therein, when offered to prove the absence of such a record or entry or the nonoccurrence or nonexistence of a matter about which a record was regularly made and preserved by the public agency.

(11) Records of Religious Organizations

Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in

a regularly kept record of a religious organization.

(12) Marriage, Baptismal, and Similar Certificates

Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family Records

Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones or the like.

(14) Records of Documents Affecting an Interest in Property

The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and a statute authorizes the recording of documents of that kind in that office.

(15) Statements in Documents Affecting an Interest in Property

A statement contained in a document purporting to establish or affect an interest in property if the matter stated

was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document or the circumstances otherwise indicate lack of trustworthiness.

(16) Statements in Ancient Documents

Statements in a document in existence twenty years or more, the authenticity of which is established, unless the circumstances indicate lack of trustworthiness.

(17) Market Reports and Published Compilations

Market quotations, tabulations, lists, directories, and other published compilations, generally used and reasonably relied upon by the public or by persons in particular occupations.

(18) Learned Treatises

To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in a published treatise, periodical, or pamphlet on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness, by other expert testimony, or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation Concerning Personal or Family History

Reputation, prior to the controversy before the court, among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, or other similar fact of personal or family history.

(20) Reputation Concerning Boundaries or General History

(A) Reputation in a community, prior to the controversy before the court, as to boundaries of, interests in, or customs affecting lands in the community.

(B) Reputation as to events of general history important to the community, state, or nation where the historical events occurred.

(21) Reputation as to Character

Reputation of a person's character among associates or in the community.

(22) [Vacant]

There is no subsection 22.

(23) Judgment as to Personal, Family, or General History, or Boundaries

Judgments as proof of matters of personal, family, or general history, or boundaries, essential to the judgment, if the matter would be provable by evidence of reputation under subsections (19) or (20).

(24) Other Exceptions

Under exceptional circumstances, the following are not

excluded by the hearsay rule: A statement not specifically covered by any of the hearsay exceptions listed in this Rule or in Rule 5-804, but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the intention to offer the statement and the particulars of it, including the name and address of the declarant.

Committee note: The residual exception provided by Rule 5-803 (b)(24) does not contemplate an unfettered exercise of judicial discretion, but it does provide for treating new and presently unanticipated situations which demonstrate a trustworthiness within the spirit of the specifically stated exceptions. Within this framework, room is left for growth and development of the law of evidence in the hearsay area, consistently with the broad purposes expressed in Rule 5-102.

It is intended that the residual hearsay exception will be used very rarely, and only in exceptional circumstances. The Committee does not intend to establish a broad license for trial judges to admit hearsay statements that do not fall within one of the other exceptions contained in Rules 5-803 and 5-804 (b). The residual exception is not meant to authorize major judicial revisions of the hearsay rule, including its present exceptions. Such major revisions are best accomplished by amendments to the

Rule itself. It is intended that in any case in which evidence is sought to be admitted under this subsection, the trial judge will exercise no less care, reflection, and caution than the courts did under the common law in establishing the now-recognized exceptions to the hearsay rule.

Source: This Rule is derived as follows:
Section (a) is derived from F.R.Ev. 801(d)(2).
Section (b) is derived from F.R.Ev. 803.

REPORTER'S NOTE

Rule 5-803 (b)(8) is proposed for amendment to permit an electronic recording of a matter made by a body camera worn by a law enforcement person, or by another type of recording device employed by a law enforcement agency, to be offered into evidence as a hearsay exception against an accused in a criminal action.

Chapters 128 and 129, Laws of 2015 (SB 402 and HB 583) established the Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers, charged the Commission with studying and making findings and recommendations regarding the use of body cameras by law enforcement officers, and required the Commission to report its findings and recommendations to the General Assembly. The Commission issued its final report to the General Assembly on September 16, 2015. Also pursuant to Chapters 128 and 129 and Code, Public Safety Article, §3-511, the Maryland Police Training Commission published a Body-worn Camera Policy on January 8, 2016.

The Report and Policy do not address the issue of admissibility. Rule 5-803 (b)(8)(C) currently prohibits the admission into evidence of "a record of matters observed by a law enforcement officer ... when offered against an accused in a criminal action." The rationale for the prohibition was to place police narrative reports outside of the business records exception.

Rule 5-803 (b)(8) is proposed for amendment to permit body camera recordings and recordings made by other recording devices employed by law enforcement agencies to be admitted into evidence, subject to four conditions: (1) the recording is subject to the limitations of Rule 5-805, the Rule governing the admissibility of a hearsay statement within another hearsay statement, (2) the recording was made contemporaneously with the matter recorded,(3) the recording is be properly authenticated, and (4) circumstances do not indicate that the recording is

untrustworthy.

As noted in the Committee note following Rule 5-803 (b)(8)(D), the amendment establishes criteria for the admission of body camera and other electronic recordings made by law enforcement against an accused, and subsection (b)(8)(D) does not preclude an accused from offering on his or her own behalf a record of matters observed by a law enforcement person.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW

IN CIRCUIT COURT

CHAPTER 200 - JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY DECISIONS

AMEND Rule 7-202 to permit an administrative agency to provide a certain notice by electronic means to a party to the agency proceeding if the party has consented to receive notices from the agency electronically and to make stylistic changes, as follows:

Rule 7-202. METHOD OF SECURING REVIEW

. . .

(d) Copies; Filing; ~~Mailing~~ Notices

(1) Notice to Agency

Upon filing the petition, the petitioner shall deliver to the clerk a copy of the petition for the agency whose decision is sought to be reviewed. The clerk shall promptly mail a copy of the petition to the agency, informing the agency of the date the petition was filed and the civil action number assigned to the action for judicial review.

(2) Service by Petitioner in Workers' Compensation Cases

Upon filing a petition for judicial review of a decision of the Workers' Compensation Commission, the petitioner shall

serve a copy of the petition, together with all attachments, by first-class mail on the Commission and each other party of record in the proceeding before the Commission. If the petitioner is requesting judicial review of the Commission's decision regarding attorneys' fees, the petitioner also shall serve a copy of the petition and attachments by first-class mail on the Attorney General.

Committee note: The first sentence of this subsection is required by Code, Labor and Employment Article, §9-737. It does not relieve the clerk from the obligation under subsection (d)(1) of this Rule to mail a copy of the petition to the agency or the agency from the obligation under subsection (d)(3) of this Rule to give written notice to all parties to the agency proceeding.

(3) ~~By~~ Notice from Agency to Parties

(A) ~~Generally~~ Duty

Unless otherwise ordered by the court, the agency, upon receiving the copy of the petition from the clerk, shall give written notice promptly ~~by first-class mail or, if permitted by subsection (d)(3)(B) of this Rule, electronically~~ to all parties to the agency proceeding that:

(i) a petition for judicial review has been filed, the date of the filing, the name of the court, and the civil action number; and

(ii) a party ~~wishing~~ who wishes to oppose the petition must file a response within 30 days after the date the agency's notice was ~~mailed~~ sent unless the court shortens or extends the time.

(B) ~~Electronic Notification in Workers' Compensation Cases~~ Method

The ~~Commission~~ agency may give the ~~written~~ notice ~~required under subsection (d)(3)(A) of this Rule electronically to a party to the Commission proceeding if the party has subscribed to receive electronic notices from the Commission~~ by first class mail or, if the party has consented to receive notices from the agency electronically, by electronic means.

(e) Certificate of Compliance

Within five days after mailing or electronic transmission, the agency shall file with the clerk a certificate of compliance with section (d) of this Rule, showing the date the agency's notice was mailed or electronically transmitted and the names and addresses of the persons to whom it was ~~mailed~~ sent. Failure to file the certificate of compliance does not affect the validity of the agency's notice.

. . .

REPORTER'S NOTE

The Maryland Department of the Environment requested that it be permitted to notify parties electronically in actions for judicial review of its administrative agency decisions, which often pertain to multi-party permitting matters. It pointed to Rule 7-202 (d)(3)(B), which permits the Workers' Compensation Commission to give the written notice required under subsection (d)(3)(A) of the Rule to a party electronically if the party has subscribed to receive electronic notices from the Commission.

Rule 7-202 is proposed to be amended to permit all administrative agencies to provide the subsection (d)(3)(A) notice electronically, "to the extent that a party has consented

to receive notices from the agency electronically." It is increasingly the case that administrative agencies communicate with parties electronically throughout the administrative proceeding, using email addresses instead of postal addresses. The proposed change permits an agency to give the notice required under subsection (d)(3)(A) by electronic means if the party has consented to receive notices by that means. If the party has not consented, or if the agency does not wish to use electronic notification, the required notice must be sent by first class mail.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 8-121 to remove the requirement in appeals from courts exercising juvenile jurisdiction that the proceeding be styled using the child's first name and the initial of the child's last name; to substitute the requirement that the proceeding be styled using the initials of the child's first and last names; and to add a requirement that only the initials of the name of a child, parent, or guardian be used in certain documents pertaining to the appeal; as follows:

Rule 8-121. APPEALS FROM COURTS EXERCISING JUVENILE JURISDICTION - CONFIDENTIALITY

(a) Scope

This Rule applies to an appeal from an order relating to a child entered by a court exercising juvenile jurisdiction.

(b) Caption

Unless the court orders otherwise, the proceedings shall be styled ~~"In re ..... (first name and initial of last name of child)"~~ "In re A. B. (initial of the child's first name and initial of child's last name).

(c) Confidentiality

The ~~last~~ name of the child, and any parent or guardian of the child, other than their initials, shall not be used in any opinion, oral argument, brief, record extract, petition, or other document pertaining to the appeal that is generally available to the public.

(d) Transmittal of Record

The record shall be transmitted to the appellate court in a manner that ensures the secrecy of its contents.

(e) Access to Record

Except by order of the Court, the record shall be open to inspection only by the Court, authorized court personnel, parties, and their attorneys.

Source: This Rule is derived from former Rules 1097 and 897.

REPORTER'S NOTE

The Rules Committee received a joint request from the Office of the Attorney General, the Office of the Public Defender, and the Maryland Legal Aid Bureau to improve confidentiality protections for children in appeals from an order relating to a child entered by a court exercising juvenile jurisdiction. The persons making the request suggested that references to a child's name include only the first and last initials of the name. They referred to a 2004 reported appellate opinion where, in accordance with provisions of the current Rule, a child was referred to by her first name and the initial of her surname, but she nevertheless was teased and harassed. The child's identity was easily discovered because her first name was relatively uncommon, which, together with specific facts described in the opinion, made it relatively easy for her to be identified.

Rule 8-121 is proposed to be amended to require that initials of the first and last names of children and their parents or guardians be used in case captions and in any document pertaining to the appeal that is generally available to

the public. Through that change, the identities of children would be better protected.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 8-122 to remove the requirement in an appeal from certain orders relating to a child in a proceeding for adoption or for guardianship that the proceeding be styled using the child's first name and the initial of the child's last name; to substitute the requirement that the proceeding be styled using the initials of the child's first and last names; to require that only the first and last initials of a child, the parents of the child, and the adopting parents be used in any document pertaining to the appeal; as follows:

Rule 8-122. APPEALS FROM PROCEEDINGS FOR ADOPTION OR GUARDIANSHIP - CONFIDENTIALITY

(a) Scope

This Rule applies to an appeal from an order relating to a child in a proceeding for adoption or for guardianship with right to consent to adoption or long-term care short of adoption.

(b) Caption

The proceeding shall be styled ~~"In re Adoption/ Guardianship of .....(first name and initial of~~

~~last name of adoptee or ward)"~~ “In re Adoption/Guardianship of A. B. (initial of the adoptee or ward’s first name and initial of adoptee or ward’s last name)”.

(c) Confidentiality

The ~~last~~ name of the child, the natural parents of the child, and the adopting parents, other than their initials, shall not be used in any opinion, oral argument, brief, record extract, petition, or other document pertaining to the appeal that is generally available to the public. The parties, with the approval of the appellate court, may waive the requirements of this section.

(d) Transmittal of Record

The record shall be transmitted to the appellate court in a manner that ensures the secrecy of its contents.

(e) Access to the Record

(1) Adoption Proceeding

Except by order of the Court and subject to reasonable conditions and restrictions imposed by the Court, the record in an appeal from an adoption proceeding shall be open to inspection only by the Court and authorized court personnel.

(2) Guardianship Proceeding

Except by order of the Court, the record in an appeal from a guardianship proceeding shall be open to inspection only by the Court, authorized court personnel, parties, and their attorneys.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 8-121. Rule 8-122 (c) is proposed to be amended for similar reasons to require that the natural parents and the adopting parents be referred to only by the initials of their names, because of the concern that identities can be readily discovered when there are uncommon first names in the context of a given case.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-402 to change the title of the Rule, to state that an individual may appear by an attorney or in proper person, to require that the appearance of a person other than an individual be by an attorney except as otherwise provided by rule or statute, and to make stylistic changes, as follows:

Rule 8-402. APPEARANCE ~~OF COUNSEL~~

(a) By Attorney or in Proper Person

Except as otherwise provided by rule or statute:

(1) an individual may appear by an attorney or in proper person, and

(2) a person other than an individual may enter an appearance only by an attorney.

~~(a)~~ (b) Continuance of Appearance from Lower Court

The appearance of an attorney entered in a lower court shall continue in the Court of Special Appeals and the Court of Appeals unless (1) the attorney's appearance has been stricken in the lower court pursuant to Rule 2-132 or 4-214, (2) the attorney notifies the Clerk of the appellate court in writing not to enter the attorney's appearance in the appellate court

and sends a copy of the notice to the clerk of the lower court and the client, or (3) the attorney's appearance has automatically terminated pursuant to section (g) of this Rule.

~~(b)~~ (c) New Appearance

An attorney newly appearing on appeal may enter an appearance by filing a written request (1) in the Court of Special Appeals if the record on appeal has already been filed in that Court, (2) in the Court of Appeals if a petition for a writ of certiorari has been filed or the Court has issued a writ on its own initiative, or (3) in the lower court in all other cases.

~~(c)~~ (d) In Certification Cases

In a proceeding pursuant to Rule 8-305, the appearance of an attorney entered in the certifying court shall continue in the Court of Appeals if the attorney has been admitted to practice law in this State. An attorney newly appearing in the case may enter an appearance by filing a written request in the Court of Appeals at any time after the certification order is filed.

Cross reference: For special admission of an out-of-state attorney, see Bar Admission Rule 14.

~~(d) Corporation~~

~~A corporation may enter an appearance only by an attorney, except as otherwise provided by rule or statute.~~

(e) When Entered by Clerk

The Clerk of the appellate court shall formally enter the appearance of the attorney (1) in the Court of Special Appeals when the record on appeal is filed, (2) in the Court of Appeals when a petition for a writ of certiorari is filed or, if the Court issues the writ on its own initiative, when the writ is issued, or (3) when properly requested pursuant to section (b) or (c).

(f) Striking Appearance

The appearance of an attorney may be stricken pursuant to Rule 2-132, except that a motion to withdraw an appearance must be in writing and may not be made in open court.

(g) Automatic Termination of Appearance

The appearance of an attorney entered in the lower court is automatically terminated upon the entry of an appearance by the Public Defender or an attorney designated by the Public Defender.

Source: This Rule is in part derived from former Rules 1005 a and 805 a and in part new.

REPORTER'S NOTE

Rules 2-131 (a) and 3-131 (a), governing appearances in the circuit courts and District Court, respectively, provide that "Except as otherwise provided by rule or statute: (1) an individual may enter an appearance by an attorney or in proper person and (2) a person other than an individual may enter an appearance only by an attorney." Under Rule 1-202 (l), an "individual" "means a human being," and under Rule 1-202 (t), a "person" "includes any individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated associations, limited liability partnership, limited liability

company, the State, its agencies or political subdivisions, any court, or any other governmental entity."

Rule 8-402 (d) currently provides that "A corporation may enter an appearance only by an attorney." The Rule is silent with respect whether an attorney is required to enter an appearance for other "persons" who are neither individuals nor corporations.

Amendments are proposed to make Rule 8-402 *in pari materia* with Rule 2-131 and Rule 3-131, by requiring the appearance of an attorney for each person other than an individual, except as otherwise provided by rule or statute. The requirement for appearance of counsel is moved from current section (d) to section (a) of Rule 8-402, and the other sections are relettered accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-412 to add a reference to Rule 8-204, as follows:

Rule 8-412. RECORD - TIME FOR TRANSMITTING

(a) To the Court of Special Appeals

Unless a different time is fixed by Rule 8-204 or by an order entered pursuant to section (d) of this Rule, the clerk of the lower court shall transmit the record to the Court of Special Appeals within the applicable time specified in this section:

(1) in a civil action proceeding under Rule 8-207 (a), thirty days after the first notice of appeal is filed;

(2) in all other civil actions subject to Rule 8-205 (a), sixty days after the date of an order entered pursuant to Rule 8-206 (c); or

(3) in all other actions, sixty days after the date the first notice of appeal is filed.

Cross reference: Rule 8-207 (a).

(b) To the Court of Appeals

Unless a different time is fixed by order entered

pursuant to section (d) of this Rule, the clerk of the court having possession of the record shall transmit it to the Court of Appeals within 15 days after entry of a writ of certiorari directed to the Court of Special Appeals, or within sixty days after entry of a writ of certiorari directed to a lower court other than the Court of Special Appeals.

(c) When Record is Transmitted; Notice

For purposes of this Rule the record is transmitted when it is (1) delivered to the Clerk of the appellate court; (2) sent by certified mail by the clerk of the lower court, addressed to the Clerk of the appellate court; or (3) transmitted to the Clerk of the appellate court in accordance with Rule 20-402. Upon receipt and docketing of the record by the Clerk of the appellate court, the Clerk shall send a notice to the parties stating (1) the date the record was received and docketed and (2) the date by which an appellant other than a cross-appellant shall file a brief conforming with Rule 8-503. Unless otherwise ordered by the appellate court, the date by which the appellant's brief must be filed shall be no earlier than 40 days after the date the Clerk sends the notice.

(d) Shortening or Extending the Time

On motion or on its own initiative, the appellate court having jurisdiction of the appeal may shorten or extend the time for transmittal of the record. If the motion is filed after the prescribed time for transmitting the record has expired, the

Court will not extend the time unless the Court finds that the failure to transmit the record was caused by the act or omission of a judge, a clerk of court, the court reporter, or the appellee.

Source: This Rule is derived from former Rules 1025 and 825.

REPORTER'S NOTE

The time for transmitting the record pertaining to an application for leave to appeal is fixed by provisions contained in Rule 8-204, which differ from the provisions of Rule 8-412. Because of the differences, a reference to Rule 8-204 is proposed to be added to the first line of Rule 8-412 (a).

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-504 to require that an appendix to a brief in certain appellate proceedings be separate from the brief and filed under seal, as follows:

Rule 8-504. CONTENTS OF BRIEF

(a) Contents

A brief shall comply with the requirements of Rule 8-112 and include the following items in the order listed:

(1) A table of contents and a table of citations of cases, constitutional provisions, statutes, ordinances, rules, and regulations, with cases alphabetically arranged. When a reported Maryland case is cited, the citation shall include a reference to the official Report.

Cross reference: Citation of unreported opinions is governed by Rule 1-104.

(2) A brief statement of the case, indicating the nature of the case, the course of the proceedings, and the disposition in the lower court, except that the appellee's brief shall not contain a statement of the case unless the appellee disagrees with the statement in the appellant's brief.

(3) A statement of the questions presented, separately

numbered, indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail.

(4) A clear concise statement of the facts material to a determination of the questions presented, except that the appellee's brief shall contain a statement of only those additional facts necessary to correct or amplify the statement in the appellant's brief. Reference shall be made to the pages of the record extract supporting the assertions. If pursuant to these rules or by leave of court a record extract is not filed, reference shall be made to the pages of the record or to the transcript of testimony as contained in the record.

Cross reference: Rule 8-111 (b).

(5) A concise statement of the applicable standard of review for each issue, which may appear in the discussion of the issue or under a separate heading placed before the argument.

(6) Argument in support of the party's position on each issue.

(7) A short conclusion stating the precise relief sought.

(8) The citation and verbatim text of all pertinent constitutional provisions, statutes, ordinances, rules, and regulations except that the appellee's brief shall contain only those not included in the appellant's brief.

(9) If the brief is prepared with proportionally spaced type, the font used and the type size in points shall be stated

on the last page.

Cross reference: For requirements concerning the form of a brief, see Rule 8-112.

(b) Appendix

(1) Generally

Unless the material is included in the record extract pursuant to Rule 8-501, the appellant shall reproduce, as an appendix to the brief, the pertinent part of every ruling, opinion, or jury instruction of each lower court that deals with points raised by the appellant on appeal. If the appellee believes that the part reproduced by the appellant is inadequate, the appellee shall reproduce, as an appendix to the appellee's brief, any additional part of the instructions or opinion believed necessary by the appellee.

(2) Appeals in Juvenile and Termination of Parental Rights Cases

In an appeal from an order relating to a child entered by a court exercising juvenile jurisdiction or from an order in a proceeding involving termination of parental rights, each appendix shall be filed as a separate volume and, unless otherwise ordered by the court, shall be filed under seal.

Committee note: Rule 8-501 (j) allows a party to include in an appendix to a brief any material that inadvertently was omitted from the record extract.

(c) Effect of Noncompliance

For noncompliance with this Rule, the appellate court may

dismiss the appeal or make any other appropriate order with respect to the case, including an order that an improperly prepared brief be reproduced at the expense of the attorney for the party for whom the brief was filed.

Source: This Rule is derived as follows:
Section (a) is derived from former Rules 831 c and d and 1031 c 1 through 5 and d 1 through 5, with the exception of subsection (a)(6)
which is derived from FRAP 28 (a)(5).
Section (b) is derived from former Rule 1031 c 6 and d 6.
Section (c) is derived from former Rules 831 g and 1031 f.

REPORTER'S NOTE

Rule 8-504 is proposed to be amended to require appendices in appeals from a court exercising juvenile jurisdiction and proceedings involving termination of parental rights to be separate from the briefs and filed under seal in the appellate courts. The proposed change would reflect the treatment of materials in those types of actions in the circuit courts. The change also would eliminate the need for counsel to redact information in source documents, which creates the possibility that information could inadvertently be revealed through redaction mistakes.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 6-122 by adding language to the forms in sections (c) and (d) and by making stylistic changes, as follows:

Rule 6-122. PETITIONS

. . .

(c) Limited Order to Locate Assets

Upon the filing of a verified petition pursuant to Rule 6-122 (a), the ~~orphans'~~ Orphans' Court may issue a limited order to search for assets titled in the sole name of a decedent. The petition shall contain the name, address, and date of death of the decedent and a statement as to why the limited order is necessary. The limited order to locate assets shall be in the following form:

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ LIMITED ORDER NO. _____

LIMITED ORDER TO LOCATE ASSETS

Upon the foregoing petition by a person interested in the proceedings and pursuant to Rule 6-122 (c), it is this _____ day of _____, _____ by the Orphans' Court for _____ (county), Maryland, ORDERED that:

1. The following institutions shall disclose to _____

_____ the assets, and the values
(Name of petitioner)

thereof, titled in the sole name of the above decedent:

_____	_____
(Name of financial institution)	(Name of financial institution)
_____	_____
(Name of financial institution)	(Name of financial institution)
_____	_____
(Name of financial institution)	(Name of financial institution)

2. **THIS ORDER MAY NOT BE USED TO TRANSFER ASSETS.** See Maryland Rule 6-122 (c).

(d) Limited Order to Locate Will

Upon the filing of a verified petition pursuant to Rule 6-122 (a), the ~~orphans'~~ Orphans' Court may issue a limited order to a financial institution to enter the safe deposit box of a decedent in the presence of the Register of Wills or the Register's authorized deputy for the sole purpose of locating the decedent's will and, if it is located, to deliver it to the

Register of Wills or the authorized deputy. The limited order to locate a will shall be in the following form:

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ LIMITED ORDER NO. _____

LIMITED ORDER TO LOCATE WILL

Upon the foregoing Petition and pursuant to Rule 6-122 (d), it is this _____ day of _____ (month), _____ (year) by the Orphans' Court for _____ (County), Maryland,

ORDERED that:

_____, located at
(Name of financial institution)

_____ enter the
(Address)

safe deposit box titled in the sole name of _____

_____, in the presence of
(Name of decedent)

the Register of Wills _____ OR the Register's authorized deputy _____ for the sole purpose of locating the decedent's will and, if the will is located, deliver it to the Register of Wills OR the Register's authorized deputy.

_____
JUDGE

_____
JUDGE

_____
JUDGE

See Maryland Rule 6-122 (d).

Committee note: This procedure is not exclusive. Banks may also rely on the procedure set forth in Code, Financial Institutions Article, 12-603.

REPORTER'S NOTE

During the pendency of the settlement of an estate, financial institutions may be asked to disclose certain assets relating to the estate or to allow the register of wills to look into a safe deposit box to locate a will. The forms in Rule 6-122 (c) and (d) formalize these requests. Because some financial institutions have not been honoring these requests, a register of wills asked that language be added to the forms indicating the source of the authority for making the request of the financial institution. Stylistic changes also are made.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 6-125 (a) to delete a reference to "certified mail" in section (a) and replace it with a reference to "another method" and to add language to section (d), as follows:

Rule 6-125. SERVICE

(a) Method of Service – Generally

Except where these rules specifically require that service shall be made by ~~certified mail~~ another method, service may be made by personal delivery or by first class mail. Service by certified mail is complete upon delivery. Service by first class mail is complete upon mailing. If a person is represented by an attorney of record, service shall be made on the attorney pursuant to Rule 1-321. Service need not be made on any person who has filed a waiver of notice pursuant to Rule 6-126.

Cross reference: For service on a person under disability, see Code, Estates and Trusts Article, §1-103 (d).

(b) Certificate of Service

(1) When Required

A certificate of service shall be filed for every paper that is required to be served.

(2) Service by Certified Mail

If the paper is served by certified mail, the certificate shall be in the following form:

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, (month) _____ (year) I mailed by certified mail a copy of this paper to the following persons:

_____
(name and address)

_____
Signature

(3) Service by Personal Delivery or First Class Mail

If the paper is served by personal delivery or first class mail, the certificate shall be in the following form:

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, (month) _____ (year) I delivered or mailed, postage prepaid, a copy of this paper to the following persons:

_____.
(name and address)

_____
Signature

(c) Affidavit of Attempts to Contact, Locate, and Identify Interested Persons

An affidavit of attempts to contact, locate, and identify interested persons shall be substantially in the following form:

[CAPTION]

AFFIDAVIT OF ATTEMPTS TO CONTACT, LOCATE, AND IDENTIFY INTERESTED PERSONS

I, _____ am: (check one)

[ ] a party

[ ] a person interested in the above-captioned matter

[ ] an attorney.

I have reason to believe that the persons listed below are persons interested in the estate of _____

_____

(Provide any information you have)

Name	Relationship	Addresses
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I have made a good faith effort to contact, locate, or identify the persons listed above by the following means:

_____

_____

I solemnly affirm under the penalties of perjury that the contents of this document are true to be best of my knowledge, information, and belief.

_____ _____
Signature Date

(d) Proof

If first class mail is returned as undeliverable, or if certified mail is required and no return receipt is received apparently signed by the addressee and there is no proof of actual notice, no action taken in a proceeding may prejudice the rights of the person entitled to notice unless proof is made by verified writing to the satisfaction of the court or register that reasonable efforts have been made to locate and warn the addressee of the pendency of the proceeding.

Cross reference: Code, Estates and Trusts Article, §1-103 (c).

REPORTER'S NOTE

In section (a) of Rule 6-125, the Rules Committee proposes that the term "certified mail" be replaced by the more general term "another method." In section (d), language is added to clarify and enhance due process notice requirements pertaining to persons whose rights may be prejudiced by actions taken in a proceeding.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 200 – SMALL ESTATE

AMEND Rule 6-210 to add a requirement of mailing by first class mail, as follows:

Rule 6-210. NOTICE TO INTERESTED PERSONS

Promptly after the personal representative files a notice of appointment pursuant to Rule 6-209, ~~at the expense of the estate~~ the register shall send by ~~certified~~ first class mail and, at the expense of the estate, by certified mail to each interested person a copy of that notice and a notice in the following form:

NOTICE TO INTERESTED PERSONS

In accordance with Maryland law, you are hereby given legal notice of the proceedings in a decedent's estate as more fully set forth in the enclosed copy of the newspaper publication or Notice of Appointment.

This notice is sent to all persons who might inherit if there is no will or who are persons designated to inherit under a will.

This notice does not necessarily mean that you will inherit under this estate.

Further information can be obtained by reviewing the estate file in this office or by contacting the personal representative or the attorney.

Any subsequent notices regarding this estate will be sent to you at the address to which this notice was sent. If you wish notice sent to a different address, you must notify me in writing.

_____
Register of Wills

_____
Address

_____

Cross reference: Code, Estates and Trusts Article, §§2-210 and 5-603 (b).

REPORTER'S NOTE

The Rules Committee has been advised by a group of registers of wills that certified mail often is returned marked "unclaimed" or that the return receipt is not returned to them. The registers requested that the requirement of sending notices by certified mail be replaced by a requirement that the notices be sent by first class mail, wherever "certified mail" appears in the Rules in Title 6.

The recommendation of the Rules Committee is that the initial notice to interested persons be sent both certified and first class mail, and Rules 6-210, 6-302, and 6-317 are proposed to be amended, accordingly. The recommended procedure is the same as the procedure used to provide notice to interested persons in guardianship proceedings pursuant to Rules 10-203 (b)(2) and 10-302 (b)(2).

As to other Rules in Title 6 in which certified mail is required, the Committee agrees with that registers' suggested

change, and recommends that Rules 6-432 and 6-452 be amended, accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 300 – OPENING ESTATES

AMEND Rule 6-302 (b) to delete a certain time period and add another word, to delete language referring to a certain obligation of the estate and service on interested persons, to add a certain word, to delete a reference to a certain type of mail, and to add a reference to another type, as follows:

Rule 6-302. PROCEEDINGS FOR JUDICIAL PROBATE

(a) Service of Petition

A copy of a petition for judicial probate (Rule 6-301 (a)) shall be served by the petitioner on the personal representative, if any.

Cross reference: Code, Estates and Trusts Article, §5-401.

(b) Notice of Judicial Probate

~~Within five days~~ Promptly after receiving the names and addresses of the interested persons, ~~at the expense of the estate~~ the register shall ~~serve on the interested persons~~ send by ~~certified~~ first class mail to each interested person a Notice of Judicial Probate. Unless a Notice to Interested persons had been sent by certified mail pursuant to Rule 6-210 or 6-317, the register, at the expense of the estate, also shall send the Notice of Judicial Probate by certified mail to each interested

person. The register shall publish the notice once a week for two successive weeks in a newspaper of general circulation in the county where judicial probate is requested. The notice shall be in the following form:

[CAPTION]

NOTICE OF JUDICIAL PROBATE

To all Persons Interested in the above estate:

You are hereby notified that a petition has been filed by _____ for judicial probate of the will dated _____ (and codicils, if any, dated _____) and for the appointment of a personal representative. A hearing will be held _____ on
(place)

_____ at _____.
(date) (time)

This hearing may be transferred or postponed to a subsequent time. Further information may be obtained by reviewing the estate file in the office of the Register of Wills.

_____
Register of Wills

Cross reference: Code, Estates and Trusts Article, §§1-103 (a) and 5-403.

(c) Hearing

The court shall hold a hearing on the petition for

judicial probate and shall take any appropriate action.

Cross reference: Code, Estates and Trusts Article, §5-404.

(d) Notice of Appointment

After a personal representative has been appointed and if no Notice of Appointment has been published, notice shall be in the form as set forth in Rule 6-311 and published as set forth in Rule 6-331 (a).

Cross reference: Code, Estates and Trusts Article, §5-403.

REPORTER'S NOTE

See the Reporter's note to Rule 6-210.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 300 – OPENING ESTATES

AMEND Rule 6-317 to delete language referring to a certain obligation of the estate and a certain type of mail, and to add language referring to another type of mail, as follows:

Rule 6-317. NOTICE TO INTERESTED PERSONS

~~At the expense of the estate, the~~ The register shall send by ~~certified~~ first class mail and, at the expense of the estate, by certified mail to each interested person a copy of the published Notice of Appointment as required by Rule 6-331 (b) and a notice in the following form:

NOTICE TO INTERESTED PERSONS

In accordance with Maryland law, you are hereby given legal notice of the proceedings in a decedent's estate as more fully set forth in the enclosed copy of the newspaper publication or Notice of Appointment.

This notice is sent to all persons who might inherit if there is no will or who are persons designated to inherit under a will.

This notice does not necessarily mean that you will inherit under this estate.

Further information can be obtained by reviewing the estate file in this office or by contacting the personal representative or the attorney.

Any subsequent notices regarding this estate will be sent to you at the address to which this notice was sent. If you wish notice sent to a different address, you must notify me in writing.

_____
Register of Wills

_____
Address

_____

Cross reference: Code, Estates and Trusts Article, §2-210.

REPORTER'S NOTE

See the Reporter's note to Rule 6-210.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER – 400 – ADMINISTRATION OF ESTATES

AMEND the form in Rule 6-416, Consent to Compensation for Personal Representative and/or Attorney, by changing some of the terminology and by adding a sentence to address when consents have not been obtained, as follows:

Rule 6-416. ATTORNEY'S FEES OR PERSONAL REPRESENTATIVE'S COMMISSIONS

(a) Subject to Court Approval

(1) Contents of Petition

When a petition for the allowance of attorney's fees or personal representative's commissions is required, it shall be verified and shall state: (A) the amount of all fees or commissions previously allowed, (B) the amount of fees or commissions that the petitioner reasonably estimates will be requested in the future, (C) the amount of fees or commissions currently requested, (D) the basis for the current request in reasonable detail, and (E) that the notice required by subsection (a) (3) of this Rule has been given.

(2) Filing - Separate or Joint Petitions

Petitions for attorney's fees and personal

representative's commissions shall be filed with the court and may be filed as separate or joint petitions.

(3) Notice

The personal representative shall serve on each unpaid creditor who has filed a claim and on each interested person a copy of the petition accompanied by a notice in the following form:

NOTICE OF PETITION FOR ATTORNEY'S FEES OR PERSONAL REPRESENTATIVE'S COMMISSIONS

You are hereby notified that a petition for allowance of attorney's fees or personal representative's commissions has been filed. You have 20 days after service of the petition within which to file written exceptions and to request a hearing.

(4) Allowance by Court

Upon the filing of a petition, the court, by order, shall allow attorney's fees or personal representative's commissions as it considers appropriate, subject to any exceptions.

(5) Exception

An exception shall be filed with the court within 20 days after service of the petition and notice and shall include the grounds therefor in reasonable detail. A copy of the exception shall be served on the personal representative.

(6) Disposition

If timely exceptions are not filed, the order of the court allowing the attorney's fees or personal representative's commissions becomes final. Upon the filing of timely exceptions, the court shall set the matter for hearing and notify the personal representative and other persons that the court deems appropriate of the date, time, place, and purpose of the hearing.

(b) Payment of Attorney's Fees and Personal Representative's Commissions Without Court Approval.

(1) Payment of contingency fee for services other than estate administration.

Payment of attorney's fees may be made without court approval if:

(A) the fee is paid to an attorney representing the estate in litigation under a contingency fee agreement signed by the decedent or by a previous personal representative;

(B) the fee is paid to an attorney representing the estate in litigation under a contingency fee agreement signed by the current personal representative of the decedent's estate provided that the personal representative is not acting as the retained attorney and is not a member of the attorney's firm;

(C) the fee does not exceed the terms of the contingency fee agreement;

(D) a copy of the contingency fee agreement is on file with the register of wills; and

(E) the attorney files a statement with each account stating that the scope of the representation by the attorney does not extend to the administration of the estate.

(2) Consent in Lieu of Court Approval

Payment of attorney's fees and personal representative's commissions may be made without court approval if:

(A) the combined sum of all payments of attorney's fees and personal representative's commissions does not exceed the amounts provided in Code, Estates and Trusts Article, §7-601; and

(B) a written consent stating the amounts of the payments signed by (i) each creditor who has filed a claim that is still open and (ii) all interested persons, is filed with the register in the following form:

BEFORE THE REGISTER OF WILLS FOR ....., MARYLAND

IN THE ESTATE OF:

_____ Estate No. _____

CONSENT TO COMPENSATION FOR
PERSONAL REPRESENTATIVE AND/OR ATTORNEY

I understand that the law, Estates and Trusts Article, §7-601, provides a formula to establish the maximum total ~~compensation~~ commissions to be paid for personal representative's commissions ~~and/or attorney's fees without~~

~~order of court~~. If the total compensation for personal representative's commissions and attorney's fees being requested falls within the maximum allowable ~~amount~~ commissions, and the request is consented to by all unpaid creditors who have filed claims and all interested persons, this payment need not be subject to review or approval by the Court. A creditor or an interested party may, but is not required to, consent to these fees.

The formula sets total compensation at 9% of the first $20,000 of the ~~gross~~ adjusted estate subject to administration PLUS 3.6% of the excess over $20,000. Based on this formula, the adjusted estate subject to administration known at this time is _____. ~~the~~ The total allowable statutory maximum commission based on the ~~gross~~ adjusted estate subject to administration known at this time is _____, LESS any personal representative's commissions and~~/or~~ attorney's fees previously approved as required by law and paid. To date, $_____ in personal representative's commissions and $_____ in attorney's fees have been paid.

IF ALL REQUIRED CONSENTS ARE NOT OBTAINED, A PETITION SHALL BE FILED, AND THE COURT SHALL DETERMINE THE AMOUNT TO BE PAID.

Cross reference: See 90 Op. Att'y. Gen. 145 (2005).

Total combined fees being requested are $_____, to be paid as follows:

Amount	To	Name of Personal Representative/Attorney
_____		_____
_____		_____
_____		_____
_____		_____

I have read this entire form and I hereby consent to the payment of personal representative and/or attorney's fees in the above amount.

Date	Signature	Name (Typed or Printed)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____
Attorney

_____
Address

_____
Address

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

_____
Personal Representative

_____
Personal Representative

Committee note: Nothing in this Rule is intended to relax requirements for approval and authorization of previous payments.

(3) Designation of Payment

When rendering an account pursuant to Rule 6-417 or a final report under modified administration pursuant to Rule 6-455, the personal representative shall designate any payment made under this section as an expense.

Cross reference: Code, Estates and Trusts Article, §§7-502, 7-601, 7-602, 7-603, and 7-604.

REPORTER'S NOTE

The Conference of Orphans' Court Judges has requested changes to the form "Consent to Compensation for Personal Representative and/or Attorney" found in Rule 6-416. The judges have noticed that when attorneys fill out the form, some fill in the blank intended for the total allowable statutory maximum by putting in the amount of the total gross estate.

The judges also pointed out that the form does not address what happens if a consent is not signed. The changes to the form are being proposed to address the concerns of the Conference.

Additionally, it was suggested that the term "adjusted estate subject to administration" is more accurate than the term "gross estate" and conforms to the language in Code, Estates and Trusts Article, §7-601. The Rules Committee recommends deleting the term "gross estate" and adding, in its place, the term "adjusted estate subject to administration."

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 – ADMINISTRATION OF ESTATES

AMEND Rule 6-431 to add language to section 1. of the form in section (e) after the line for date of the codicil, to add language to section 3. of the form in section (e) after the word "codicil," and to add another line for date of the will and language at the end of the first sentence of the form in section (f), as follows:

Rule 6-431. CAVEAT

(a) Petition

A petition to caveat may be filed by an heir of the decedent or a legatee in any instrument purporting to be a will or codicil of the decedent. The petition may challenge the validity of any instrument purporting to be the decedent's will or codicil, whether or not offered for or admitted to probate.

(b) Time for Filing

(1) Generally

Except as otherwise provided by this Rule, a petition to caveat shall be filed within six months after the first appointment of a personal representative under a will, even if there has been a subsequent judicial probate or appointment of a personal representative under that will. If another will or

codicil is subsequently offered for probate, a petition to caveat that will or codicil shall be filed within three months after that will or codicil is admitted to probate or within six months after the first appointment of a personal representative under the first probated will, whichever is later.

(2) Exceptions

Upon petition filed within 18 months after the death of the decedent, a person entitled to file a petition to caveat may request an extension of time for filing the petition to caveat on the grounds that the person did not have actual or statutory notice of the relevant probate proceedings, or that there was fraud, material mistake, or substantial irregularity in those proceedings. If the court so finds, it may grant an extension.

Cross reference: Code, Estates and Trusts Article, §§5-207, 5-304, 5-406, and 5-407.

(c) Contents

The petition to caveat shall be signed and verified by the petitioner and shall include the following:

(1) the name and address of the petitioner;

(2) the relationship of the petitioner to the decedent or the nature of the petitioner's interest in the decedent's estate upon which the petitioner claims the right to file the petition;

(3) the date of the decedent's death;

(4) an identification of the instrument being challenged

including a statement as to whether it has been offered for or admitted to probate;

(5) an allegation that the instrument challenged is not a valid will or codicil of the decedent and the grounds for challenging its validity;

(6) an identification of the instrument, if any, claimed by the petitioner to be the decedent's last will, with a copy of the instrument attached to the petition or an explanation why a copy cannot be attached;

(7) a statement that the list of interested persons filed with the petition contains the names and addresses of all interested persons who could be affected by the proceeding to the extent known by the petitioner; and

(8) the relief sought, including a request for the probate of the instrument, if any, that the petitioner claims is the true last will or codicil of the decedent.

(d) Additional Documents

A petition to caveat shall be accompanied by a list of all interested persons who could be affected by the proceeding in the form prescribed by Rule 6-316, a Notice of Caveat in the form set forth in section (e) of this Rule, and a Public Notice of Caveat in the form set forth in section (f) of this Rule.

(e) Notice to Interested Persons of Caveat

A notice to interested persons of the filing of a caveat shall be in the following form:

Rule 6-431

[CAPTION]

NOTICE OF CAVEAT

As an interested person, you are notified that:

(1) A petition to caveat challenging the decedent's will dated _____ or codicil dated _____ or both has been filed with the court _____ by_____
(name of petitioner and relationship to decedent or

_____
other basis for interest in the estate)

(2) The present status of the will or codicil or both being challenged is:

[ ] admitted to probate on _____, or
(date)

[ ] offered for probate but not admitted; or not offered for probate.

(3) As to defense of the will or codicil or both by a personal representative:

[ ] The following person has been appointed personal representative:

_____
name(s) and address(es)

[ ] No person is serving as personal representative. A copy of the petition to caveat is enclosed.

(4) This caveat proceeding may affect adversely any rights you may have in the decedent's estate. Further information can be obtained by reviewing the estate file in the office of the

Register of Wills or by contacting the personal representative or the attorney for the estate. If you want to respond, you must do so in writing filed with the court or with this office within 20 days after service of this notice or any extension of that period granted by the court. A copy of any response you file must be sent to the petitioner or the petitioner's attorney

_____
(name and address)

and to the personal representative or the personal representative's attorney.

Date: _____ _____
Register of Wills for

_____

_____
Address

_____
Telephone Number

(f) Public Notice of Caveat

A public notice of the filing of a caveat shall be in the following form:

[CAPTION]

PUBLIC NOTICE OF CAVEAT

To all persons interested in the above estate:

Notice is given that a petition to caveat has been filed by _____challenging the will dated _____ or codicil dated

_____ or both. You may obtain from the Register of Wills the date and time of any hearing on this matter.

_____
Register of Wills

(g) Number of Copies

The petitioner shall file a sufficient number of copies of the petition to caveat and Notice of Caveat for the register to comply with Rule 6-432.

REPORTER'S NOTE

A register of wills requested that in each place the phrase "will or codicil" appears in Rules 6-431 and 6-432, it be changed to indicate that both can exist when an estate is probated, and not just one or the other.

The Rules Committee recommends adding the language "or both" after the phrase "will or codicil." It is also recommended that another line be added to the Public Notice of Caveat form in section (f) of Rule 6-431 so that when there are both a will and a codicil the date of each can be filled in.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 – ADMINISTRATION OF ESTATES

AMEND Rule 6-432 to add language after the word "codicil" in sections (a) and (c) and to delete references to a certain type of mail and add references to another type, as follows:

Rule 6-432. ORDER TO ANSWER; REGISTER'S NOTICE AND SERVICE

Within five days after the filing of the petition to caveat, the Register shall:

(a) issue an Order to Answer requiring the personal representative appointed as a result of the probate of the will or codicil or both being challenged, if one is currently serving, to respond to the petition to caveat within 20 days after service;

(b) serve the Order together with a copy of the petition on the personal representative by ~~certified~~ first class mail, unless the petitioner requests service by the sheriff;

(c) serve on each interested person a copy of the Notice of Caveat by ~~certified~~ first class mail, and if no personal representative appointed under the will or codicil or both is currently serving, furnish with the notice a copy of the petition to caveat; and

(d) publish the Public Notice of Caveat once a week for two successive weeks in a newspaper of general circulation in the county where the petition to caveat is filed.

REPORTER'S NOTE

For proposed amendments to change from certified to first class mail, see the Reporter's note to Rule 6-210. For proposed changes adding the words "or both" after the language "will or codicil," see the Reporter's note to Rule 6-431.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 – ADMINISTRATION OF ESTATES

AMEND Rule 6-452 to remove certain language requiring permission by a court, to change the type of mail sent to the personal representative, to add language providing for a certain type of mail to be sent to interested persons, and to delete language referring to other persons, as follows:

Rule 6-452. REMOVAL OF A PERSONAL REPRESENTATIVE

(a) Commencement

The removal of a personal representative may be initiated by the court or the register, or on petition of an interested person.

(b) Show Cause Order and Hearing

The court shall issue an order (1) stating the grounds asserted for the removal, unless a petition for removal has been filed, (2) directing that cause be shown why the personal representative should not be removed, and (3) setting a hearing. The order may contain a notice that the personal representative, after being served with the order, may exercise only the powers of a special administrator or such other powers as the court may direct. ~~Unless otherwise permitted by the court, the~~ The order shall be ~~served~~ sent to the personal representative by ~~certified~~

first class mail ~~on the personal representative~~, unless otherwise required by the Court, and shall be sent by first class mail to ~~all~~ each interested person~~s, and such other persons as the court may direct~~. The court shall conduct a hearing for the purpose of determining whether the personal representative should be removed.

Cross reference: Rule 6-124.

(c) Appointment of Successor Personal Representative

Concurrently with the removal of a personal representative, the court shall appoint a successor personal representative or special administrator.

(d) Account of Removed Personal Representative

Upon appointment of a successor personal representative or special administrator, the court shall order the personal representative who is being removed from office to (1) file an account with the court and deliver the property of the estate to the successor personal representative or special administrator or (2) comply with Rule 6-417 (c).

Cross reference: Code, Estates and Trusts Article, §6-306 (removal of personal representative) and Courts Article, §12-701 (no stay by appeal; power of successor).

REPORTER'S NOTE

See the Reporter's note to Rule 6-210.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 800 - ACTION TO QUIET TITLE

TABLE OF CONTENTS

Back to Top

Table of Contents

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 800 - ACTION TO QUIET TITLE

Rule 12-801. DEFINITIONS

In this Chapter, the terms “claim,” “holder,” “property,” and “security instrument” have the meanings set forth in Code, Real Property Article, §14-601.

Source: This Rule is new.

REPORTER’S NOTE

Code, Real Property Article, §14-108 authorizes the initiation of a civil action to quiet title in the circuit courts, but there had been no procedures provided to be followed in an action to quiet title. The Maryland Land Title Association had reported that inconsistent procedures were being used from case to case and county to county.

Chapter 396, Laws of 2016 (HB 920) now provides a uniform procedure for actions to quiet title. Proposed new Title 12, Chapter 800 is based on the procedures set out in the new statute.

Rule 12-801 is derived from Code, Real Property Article, §14-601.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 800 - ACTION TO QUIET TITLE

Rule 12-802. SCOPE

(a) Generally

An action may be brought under this Chapter to establish title to property pursuant to Code, Real Property Article, Title 14, Subtitle 6.

(b) Authority of Court

(1) Possession and Control

In an action under this Chapter, the court is deemed to have obtained possession and control of the property.

(2) Court Not Limited

This Chapter does not limit any authority the court may have to grant equitable relief that may be proper under the circumstances of the case.

Cross reference: See Code, Real Property Article, §§14-602 and 14-603.

Source: This Rule is new.

REPORTER'S NOTE

The scope of actions to quiet title has been governed by Code, Real Property Article, §14-108, which has been in effect for many years. The scope has now been expanded by Code, Real Property Article, Title 14, Subtitle 6.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 800 - ACTION TO QUIET TITLE

Rule 12-803. VENUE

An action to quiet title shall be filed in the circuit court for the county where the property lies or where any part of the property is located.

Cross reference: See Code, Real Property Article, §§14-108. See Rule 12-102 for property located in more than one jurisdiction.

Source: This Rule is new.

REPORTER'S NOTE

Since real property may be located in more than one county, an action to quiet title may be filed where any part of the property is located. The Rules Committee recommends including in Rule 12-803 a cross reference to Rule 12-102, because filing a lis pendens in one or more counties in which part of the property is located provides notice that an action to quiet title has been filed in a different county.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 800 - ACTION TO QUIET TITLE

Rule 12-804. COMPLAINT TO QUIET TITLE

The complaint shall be signed and verified by the plaintiff and shall contain at least the following information:

(a) a description of the property that is the subject of the action, including its legal description and its street address or common designation, if any;

(b) the title of the plaintiff as to which a determination is sought and the basis of the title;

(c) if the title is based on adverse possession, the specific facts constituting the adverse possession;

(d) the names of all persons having adverse claims to the title of the plaintiff that are of record, known to the plaintiff, or reasonably apparent from an inspection of the property;

(e) the adverse claims asserted against plaintiff’s title for which determination is sought;

(f) if the plaintiff admits the validity of any adverse claim, a statement to this effect;

(g) if the name of a person required to be named as a defendant is not known to the plaintiff, a statement that the name is unknown and, if applicable, a statement that there are

persons unknown to the plaintiff who may (1) have a legal or equitable interest in the property or (2) assert that there may be a cloud on plaintiff's title;

(h) if the claim of a person required to be named as a defendant is unknown, uncertain, or contingent, a statement by the plaintiff to this effect;

(i) if the lack of knowledge, uncertainty, or contingency is caused by a transfer to an unborn or unascertained person or class member, or by a transfer in the form of a contingent remainder, vested remainder subject to defeasance, executory interest, or similar disposition, the name, age, and legal disability, if any, of the person in being who would be entitled to assert the claim had the contingency on which the claim depends occurred before the commencement of the action, if known; and

(j) a prayer for a determination of the title of the plaintiff against the adverse claims.

Cross reference: See Code, Real Property Article, §§14-606, 14-608, and 14-609.

Source: This Rule is new.

REPORTER'S NOTE

The contents of a complaint in an action to quiet title are derived from Code, Real Property Article, §§14-606, 14-608, and 14-609, but the contents have been reorganized into one Rule according to the way complaints are generally drafted. Requiring the plaintiff to state that there may be defendants whose claims are unknown, uncertain, or contingent provides the

court with the knowledge that there may be people with possible claims to the property.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 800 - ACTION TO QUIET TITLE

Rule 12-805. JOINDER OF ADDITIONAL PARTIES

(a) Generally

The court on its own motion or on motion of any party may issue any appropriate order to require joinder of any additional parties that are necessary or proper.

(b) By Plaintiff - Deceased Defendants

(1) Personal Representative Known

If a person required to be named as a defendant pursuant to Rule 12-804 (d) is dead or is believed by the plaintiff to be dead, and the plaintiff knows of a personal representative, the plaintiff shall join the personal representative as a defendant.

(2) Personal Representative Unknown

If a person required to be named as defendant pursuant to Rule 12-804 (d) is dead, or is believed by the plaintiff to be dead, and the plaintiff knows of no personal representative, the plaintiff shall state those facts in an affidavit filed with the court.

(3) Testate and Intestate Successors

If, by affidavit under subsection (b)(2) of this Rule, the plaintiff states that a person is dead, or is believed to be dead, the plaintiff may join as defendants “the testate and

intestate successors of _____
(Naming the decedent)

or _____, and all
(Naming the person believed to be deceased)

persons claiming by, through or under _____
(Naming the decedent)

or _____."
(Naming the person believed to be deceased)

Cross reference: See Code, Real Property Article, §§14-610, 14-611, and 14-612.

(c) By Any Other Claimant

A person who has a claim to the property described in a complaint under this Chapter may appear in the proceeding.

Source: This Rule is new.

REPORTER'S NOTE

Rule 12-805 is based on Code, Real Property Article, §§14-610, 14-611, and 14-612, but these have been reorganized into one Rule containing all of the joinder provisions.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 800 - ACTION TO QUIET TITLE

Rule 12-806. APPOINTMENT OF ATTORNEY TO PROTECT INDIVIDUALS NOT IN BEING OR WHOSE IDENTITY OR WHEREABOUTS IS UNKNOWN

The court on its own motion or on motion of any party may issue an order for appointment of an attorney to protect the interest of any party to the same extent and effect as provided under Rule 2-203 with respect to individuals not in being or of any party whose identity or whereabouts is unknown.

Cross reference: See Code, Real Property Article, §14-614.

Source: This Rule is new.

REPORTER'S NOTE

Code, Real Property Article, §14-614 addresses the appointment of an attorney to protect the interest of any individual not in being. To afford greater due process, the Rules Committee has expanded this to include protecting the interests of any party whose identity or whereabouts is unknown.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 800 - ACTION TO QUIET TITLE

Rule 12-807. NOTICE TO HOLDERS NOT NAMED AS DEFENDANTS

(a) Contents of Notice

At the time a complaint is filed, the plaintiff shall send each holder that is not named as a party in the action a copy of the complaint with exhibits as well as a statement that the holder is not a party in the proceeding, and that any judgment in the proceeding will not affect any claims of the holder. If the holder elects to appear in the proceeding, the holder will appear as a defendant and be bound by any judgment entered in the proceeding.

(b) By Certified and First-Class Mail

The complaint and statement shall be sent by certified mail, return receipt requested, and by first-class mail to the holder at the address set forth in the security instrument for the holder's receipt of notices, or if no address for the holder's receipt of notices is set forth in the security instrument, at the last known address of the holder.

Cross reference: See Code, Real Property Article, §14-605.

Source: This Rule is new.

REPORTER'S NOTE

Rule 12-807 is derived from Code, Real Property Article,

§14-605. It requires that the plaintiff send notice to any holder (a mortgage, trustee, beneficiary, nominee, or assignee of record) who is not a party in the proceeding to protect the holder's interest. The statute requires notice to be sent by certified and first-class mail to the address in the security instrument or to the last known address of the holder if there is no address in the security instrument.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 800 - ACTION TO QUIET TITLE

Rule 12-808. PROCESS

(a) Service on Defendants Named in Complaint

Upon the filing of the complaint, the clerk shall issue a summons as in any other civil action. The summons, complaint, and exhibits shall be served in accordance with Rule 2-121 on each defendant required by the plaintiff to be named pursuant to Rule 12-804 (d).

(b) Service by Publication

(1) Generally

If, on affidavit of the plaintiff, it appears to the satisfaction of the court that the plaintiff has used reasonable diligence to ascertain the identity and residence of the persons named as unknown defendants and persons joined as testate or intestate successors of a person known or believed to be dead, the court shall order service by publication in accordance with Rule 2-122 of the Maryland Rules and the provisions of this Chapter.

(2) Exception

Subsection (b)(1) of this Rule does not authorize service by publication on any person named as an unknown defendant who is in open and actual possession of the property.

(3) Content and Posting of Order of Publication

If the court orders service by publication, the plaintiff shall:

(A) use the legal description of the property and its street address, or other common description, if any;

(B) not later than 10 days after the date the order is issued, post a copy of the summons and complaint in a conspicuous place on the property that is the subject of the action; and

(C) file proof that the summons has been served, posted, and published as required in the order.

Cross reference: See Code, Real Property Article, §§14-608, 14-615, and 14-616.

Source: This Rule is new.

REPORTER'S NOTE

Code, Real Property Article, §14-604 provides that the Maryland Rules apply to actions to quiet title, except to the effect that they are inconsistent with the provisions of Code, Real Property Article, Title 14, Subtitle 6, Actions to Quiet Title. The statute does not address process on defendants named in the complaint. Section (a) of Rule 12-808 is similar to the language of Rule 14-503, Process, pertaining to tax sales. Section (b) is derived from Code, Real Property Article, §§14-615 and 14-616. The Rules Committee noted that subsection (b)(3)(B) requiring the plaintiff to post a copy of the summons and complaint in a conspicuous place on the property that is the subject of the action not later than 10 days after the date the order is issued may not comport with the actual practice in some counties. The 10-day period may not be sufficient. The Rules Committee suggests that the legislature be apprised of this issue and consider revising the 10-day period in the statute to a 15-day period.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 800 - ACTION TO QUIET TITLE

Rule 12-809. ANSWER

(a) Generally

An answer to a complaint under this Chapter shall be verified and shall set forth:

(1) any claim the defendant has to the property that is the subject of the action;

(2) any facts tending to controvert material allegations of the complaint; and

(3) a statement of any new facts constituting a defense to the plaintiff's claim.

(b) No Recovery of Costs

If the defendant disclaims any interest in the title of the property in the answer or allows judgment to be taken by default, the plaintiff may not recover costs.

Cross reference: See Code, Real Property Article, §14-607.

Source: This Rule is new.

REPORTER'S NOTE

Rule 12-809 is substantially the same as Code, Real Property Article, §14-607. If a defendant disclaims any interest in the title or allows judgment to be taken by default, the statute provides that the plaintiff may not recover costs.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 800 - ACTION TO QUIET TITLE

Rule 12-810. HEARING

In all contested cases, the plaintiff shall submit evidence at a hearing to establish plaintiff's title. The court may receive any evidence offered supporting the claims of any defendant other than those defendants' claims admitted by the plaintiff in the complaint.

Committee note: This Rule is a procedural Rule in an action to quiet title and does not affect any right to a jury trial that a party may have.

Cross reference: See Code, Real Property Article, §§14-612 and 14-617.

Source: This Rule is new.

REPORTER'S NOTE

Rule 12-810 is derived from Code, Real Property Article, §14-617, except that a provision is added to require a hearing in all *contested* cases, as opposed to all cases. This comports with actual practice in many of the counties.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 800 - ACTION TO QUIET TITLE

Rule 12-811. JUDGMENT

(a) Recording

The prevailing party in an action under this Chapter shall cause the judgment to be recorded in the land records of the counties in which any portion of the property is located.

(b) Indexing

The clerk shall index the judgment in accordance with Code, Real Property Article, §3-302, with the parties against whom the judgment is entered as grantor, and the party in whose favor the judgment is entered as grantee.

Cross reference: Code, Real Property Article, §14-617. See Code, Real Property Article, §§14-618 through 14-621 for the effects of a judgment in an action to quiet title.

Source: This Rule is new.

REPORTER'S NOTE

Rule 12-811 incorporates the substance of Code, Real Property Article, §14-617. Additionally, the Rule clarifies that it is the responsibility of the prevailing to cause the judgment to be recorded in the land records.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – APPLICABILITY AND CITATION

AMEND Rule 1-101 (l) to add severed mineral interests and actions to quiet title to the statement of the applicability of Title 12, as follows:

Rule 1-101. Applicability

. . .

(l) Title 12

Title 12 applies to property actions relating to writs of survey, lis pendens, actions for release of lien instruments, condemnation, mechanics' liens, partition, redemption of ground rents, replevin, ~~and~~ detinue, severed mineral interests, and actions to quiet title.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 1-101 (l) updates the statement of the applicability of Title 12 to include Chapter 700 (Severed Mineral Interests) and proposed new Chapter 800 (Action to Quiet Title).

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-216 by requiring that all motions for a deficiency judgment be served in accordance with Rule 2-121, as follows:

Rule 14-216. PROCEEDS OF SALE

(a) Distribution of surplus

At any time after a sale of property and before final ratification of the auditor's account, any person claiming an interest in the property or in the proceeds of the sale of the property may file an application for the payment of that person's claim from the surplus proceeds of the sale. The court shall order distribution of the surplus equitably among the claimants.

(b) Deficiency Judgment

At any time within three years after the final ratification of the auditor's report, a secured party or any appropriate party in interest may file a motion for a deficiency judgment if the proceeds of the sale, after deducting all costs and expenses allowed by the court, are insufficient to satisfy the debt and accrued interest. ~~If the person against whom the judgment is sought is a party to the action, the motion shall be~~

~~served in accordance with Rule 1-321. Otherwise, the~~ The motion shall be served in accordance with Rule 2-121. ~~and~~ It shall be accompanied by a notice advising the person that any response to the motion must be filed within 30 days after being served or within any applicable longer time prescribed by Rule 2-321 (b) for answering a complaint. A copy of Rule 2-321 (b) shall be attached to the notice.

Source: This Rule is derived in part from the 2008 version of former Rule 14-208 and is in part new.

REPORTER'S NOTE

A question has been raised as to whether notice to the person against whom a deficiency judgment is sought comports with due process. If the last known address of the person against whom the deficiency judgment is sought is the address of the property that was sold, it is not likely that the person will receive notice mailed to that address several years after ratification of the auditor's report. To address this concern, the Rules Committee recommends an amendment to Rule 14-216 (b) to require service of a motion for a deficiency judgment in accordance with Rule 2-121, even if the person against whom judgment is sought is a party to the action.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 500 - TAX SALES

AMEND Rule 14-504 by deleting a reference to a common area and by adding two references to a condominium association, as follows:

Rule 14-504. NOTICE TO PERSONS NOT NAMED AS DEFENDANTS

The plaintiff shall send the notice prescribed by Rule 14-502 (c)(3) to each person having a recorded interest, claim or judgment, or other lien who has not been made a defendant in the proceeding. If all or part of the property is ~~a common area~~ owned by or legally dedicated to a homeowners' association or condominium association, the plaintiff shall also send the notice to the homeowners' association or condominium association governing the property. The notice shall be sent to the person's last reasonably ascertainable address by certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service, and shall be accompanied by a copy of the complaint. The plaintiff shall file the return receipt from the notice or an affidavit that the provisions of this section have been complied with or that the address of the holder of the subordinate interest is not reasonably ascertainable. If the filing is made before final

ratification of the sale, failure of a holder of a subordinate interest to receive the notice does not invalidate the sale.

The plaintiff shall send notice to each tenant of the property, as required by Code, Tax - Property Article, §14-836 (b)(4).

Source: This Rule is new but is derived from Code, Tax-Property Article, §14-836.

REPORTER'S NOTE

Chapter 566, Laws of 2016 (HB 970) amended Code, Tax-Property Article, §14-836 (b)(4) to require a plaintiff in an action to foreclose the right of redemption in property sold at a tax sale to also notify the condominium association governing the property if the property is part of a condominium association.

The Rules Committee recommends amending Rule 14-504 to conform to the changes in the statute.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 – STRUCTURED SETTLEMENT TRANSFERS

TABLE OF CONTENTS

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 – STRUCTURED SETTLEMENT TRANSFERS

AMEND Rule 15-1301 to correct a reference to the definitions in Code, Courts Article, §5-1101 as applying to the "Chapter," rather than just to the Rule, as follows:

Rule 15-1301. APPLICABILITY; DEFINITIONS

This Chapter applies to transfers of structured settlement payment rights governed by Code, Courts Article, Title 5, Subtitle 11. In this ~~Rule~~ Chapter, the definitions in Code, Courts Article, §5-1101 shall apply.

Source: This Rule is new.

REPORTER'S NOTE

An amendment is proposed to Rule 15-1301 to correct an error in the Rule. The Rule currently provides that "In this Rule, the definitions in Code, Courts Article, §5-1101 shall apply." The definitions in Courts Article, §5-1101 should apply to Chapter 1300 of Title 15, rather than just to Rule 15-1301.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 – STRUCTURED SETTLEMENT TRANSFERS

AMEND Rule 15-1302 to conform to Chapter 722, Laws of 2016 (SB 734); to add a Committee note following subsection (c)(5); and to make stylistic changes, as follows:

Rule 15-1302. PETITION FOR APPROVAL

(a) Petitioner

A petition for court approval of a transfer of structured settlement payment rights pursuant to Code, Courts Article, Title 5, Subtitle 1100, shall be filed by the proposed transferee of the structured settlement benefits.

(b) Venue

(1) If the payee resides in this State, the petition shall be filed in the circuit court for the county in which the payee resides.

(2) ~~If the payee does not reside in this State and one or more prior petitions for approval of a proposed transfer have been filed in this State, the petition shall be filed in the circuit court for the county in which the most recent of those petitions was filed. If the payee does not reside in this State and no prior petitions for approval of a proposed transfer have been filed in this State, the petition may be filed in any~~

~~circuit court.~~ If the payee does not reside in this State and:

(A) the structured settlement was approved by a Maryland court, the petition shall be filed in the circuit court for the county in which the structured settlement was approved; or

(B) the structured settlement arose from an action pending in a Maryland court but the structured settlement was not court-approved, the petition shall be filed in the circuit court for the county in which the action was pending when the parties entered into the structured settlement agreement.

(c) Contents of Petition

In addition to any other necessary averments, the petition shall:

(1) subject to section (d) of this Rule, include as exhibits:

(A) a copy of the structured settlement agreement;

(B) a copy of any order of a court or other governmental authority approving the structured settlement;

(C) a copy of each annuity contract that provides for payments under the structured settlement agreement or, if any such annuity contract is not available, a copy of a document from the annuity issuer or obligor evidencing the payments payable under the annuity policy;

(D) a copy of the transfer agreement;

(E) a copy of any disclosure statement provided to the payee by the transferee;

(F) a written Consent by the payee substantially in the form specified in Rule 15-1303; ~~and~~

Cross reference: For shielding requirements applicable to identifying information contained in the payee's Consent, see Rule 16-1007 (f).

(G) an affidavit by the independent professional advisor selected by the payee, in conformance with Rule 15-1304;

(H) a copy of any complaint that was pending when the structured settlement was established; and

(I) proof of the petitioner's current registration with the Office of the Attorney General as a structured settlement transferee or a copy of a pending application for registration as specified in Code, Courts Article, §5-1107, if the Office of the Attorney General has not acted within the time specified in Code, Courts Article, Title 5, Subtitle 11.

(2) if the petitioner is not an individual, state (i) the legal status of the petitioner, (ii) whether it is registered to do business in Maryland; and (iii) the name, address, e-mail address, and telephone number of any resident agent in Maryland;

(3) state the names and addresses and, if known, the telephone numbers and e-mail addresses of all interested parties, as defined in Code, Courts Article, §5-1101 ~~(d)~~ (e);

(4) state whether, to the best of the petitioner's knowledge, information, and belief, the structured settlement arose from (A) a claim of lead poisoning, or (B) any other claim in which an allegation was made in a court record of a mental or

cognitive impairment on the part of the payee;

(5) identify any allegations or statements in any complaint attached under subsection (c)(1)(H) of this Rule that describe the nature, extent, or consequences of the payee's cognitive injuries or disabling impairment;

Committee note: To comply with subsection (c)(5) of this Rule, the petitioner should refer to places in the complaint containing the allegations or statements, rather than repeating the allegations or statements in the petition.

~~(5)~~ (6) state whether there have been any prior transfers or proposed transfers of any of the payee's structured settlement payment rights, and for each prior transfer or proposed transfer:

(A) state whether the transferee in each transfer agreement was the petitioner, an affiliate or predecessor of the petitioner, or a person unrelated in any way to the petitioner;

(B) identify the court and the number of the case in which the transfer or proposed transfer was submitted for approval;

(C) state the disposition of the requested approval; and

(D) include as an exhibit a copy of (i) the transfer agreement, (ii) any disclosure statement provided to the payee by the transferee, and (iii) a copy of any court order approving or declining to approve such transfer or otherwise finally disposing of an application for approval of such transfer.

~~(6)~~ (7) state the amounts and due dates of the structured settlement payments to be transferred and the aggregate amount

of these payments;

~~(7)~~ (8) state (A) the total amount to be paid under the transfer agreement; (B) the net amount to be received by the payee, after deducting all fees, costs, and amounts chargeable to the payee; and (C) the discounted present value of the payments that would be transferred as determined in accordance with Code, Courts Article, §5-1101 (b); and

~~(8)~~ (9) contain a calculation and statement in the following form: "Based on the net amount that the payee will receive from the transferee and the amounts and timing of the structured settlement payments that the payee is transferring to the transferee, the payee will be paying an implied, annual interest rate of ___ percent per year on this transaction, if it were a loan transaction";

~~(9)~~ (10) state whether, prior to the filing of the petition, there have been any written, oral, or electronic communications between the petitioner and the independent professional advisor selected by the payee with respect to the transfer and, if so, the dates and nature of those communications; and

~~(10)~~ (11) state whether, to the best of the petitioner's knowledge after making reasonable inquiry, the proposed transfer would not contravene any applicable law, statute, Rule, or the order of any court or other government authority.

(d) Exhibits

If a settlement agreement, complaint, court order, or

other document contains sensitive personal financial or medical information or information subject to a non-disclosure obligation, it shall be filed under seal. If any document required to be attached as an exhibit is unavailable, the petitioner shall state that fact and any effort made by the petitioner to locate and obtain the document.

(e) Oath

The petition shall be under oath.

(f) Hearing Date and Notice

Upon the filing of a petition under this Rule, the court shall set a hearing date. Unless otherwise ordered by the court, the hearing date shall be no earlier than 40 days after the date of filing. The court shall send to the petitioner a written notice of the date, time, and location of the hearing.

(g) Service on Interested Parties

(1) The petitioner shall serve on each interested party:

(A) subject to subsection (g)(2) of this Rule, a copy of the petition;

(B) a copy of the notice of the hearing issued by the court pursuant to section (f) of this Rule; and

(C) a separate notice substantially in the following form:

[Caption of case]

IMPORTANT COURT NOTICE

_____ has filed the enclosed
(Name of Petitioner)

Petition requesting court approval of a transfer of some or all of the structured settlement payment rights of _____.
(Name of Payee)

You are named as an "interested party" in the petition. As an "interested party," you are entitled to support, oppose, or otherwise respond to the petition, in person or by counsel, by submitting written comments to the court or by participating in the hearing.

Notice of the date, time, and location of the hearing is enclosed.

(2) Unless otherwise ordered by the court, the petitioner shall not serve a copy of any exhibit that was filed under seal.

(h) Method of Service and Proof of Service

The method of service on interested parties required by section (g) of this Rule shall be as provided in Rule 2-121. Proof of service shall be filed in accordance with the method described in Rule 2-126.

Source: This Rule is new.

REPORTER'S NOTE

Rule 15-1302 is proposed for amendment to conform the Rule to Chapter 722, Laws of 2016 (SB 734). Chapter 722 did several things concerning the petitions for the collection of structured settlement payment rights.

First, the definition of "structured settlement payment rights" was amended to limit it to rights of payees who either (i) reside in Maryland, or (ii)(A) reside in another State or other U.S. jurisdiction that has not enacted a statute providing for entry of a qualified order, as defined in 26 U.S.C. §5891

(b)(2), and (B) receive their payments under settlements that were approved by Maryland courts or resolved claims that were pending in Maryland courts when the settlements were reached.

Second, the venue provisions were changed so that if the payee does not reside in this State, the petition is required to be filed in the circuit court: "(i) that approved the structured settlement; or (ii) in which the settled claim was pending when the parties entered into the structured settlement agreement, if the structured settlement agreement was not court approved." See Code, Courts Article, §5-1103 (a)(2).

Third, complaints that sought compensation for cognitive injuries that resulted in the structured settlement agreement must be attached to the petition. See Code, Courts Article, §5-1104 (a)(2).

Fourth, the petitioner must "identify any allegations or statements in the complaint that describe the nature, extent, or consequences of the payee's cognitive injuries." See Code, Courts Article, §5-1104 (a)(3).

Fifth, the petitioner must be currently registered with the Office of the Attorney General as a structured settlement transferee or have an application for registration pending, as specified in Code, Courts Article, §5-1107, if the Office of the Attorney General has not acted within the time specified in Title 5, Subtitle 11, of the Courts Article.

Amendments are proposed to Rule 15-1302 to reflect those statutory changes.

A Committee note following subsection (c)(5) and a stylistic, clarifying amendment to subsection (c)(10) also are proposed.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 – STRUCTURED SETTLEMENT TRANSFERS

AMEND Rule 15-1303 to conform to Chapter 722, Laws of 2016 (SB 734), as follows:

Rule 15-1303. CONSENT BY PAYEE

A Consent by the payee shall be substantially in the following form.

CONSENT TO PETITION FOR APPROVAL OF TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS

Identifying Information

1. My name is _____.

2. I live at _____.

3. My telephone number is _____.

4. [ ] My e-mail address is _____.

[ ] I do not have an e-mail address.

5. [ ] I do not have a guardian of the person, guardian of the property, or representative payee.

[ ] I do have a guardian of the person, guardian of the property, or representative payee, whose name, address, and telephone number are _____

_____.

Employment

6. [ ] I am employed by _____.

[ ] I am not currently employed.

Dependents

7. I am [ ] married [ ] divorced [ ] single.

8. I have [ ] _____ children under the age of 18 [ ] no children under the age of 18.

9. I am [ ] under an order of the _____ (Name of court(s)) to pay a total of $___ per _____ (week/month) in spousal support

[ ] not under a court order to pay spousal support.

10. I am [ ] under an order of the _____
(Name of court(s))
to pay a total of $_____ per _____ (week/month) in child support [ ] not under any court order to pay child support.

Structured Settlement Agreement

11. In _____ (year):

[ ] a case was filed [ ] by me] [ ] by my parent or guardian on my behalf in the _____

_____
(Name of court).

The case number is _____.

[ ] a claim was made [ ] by me [ ] by my parent or guardian on my behalf. No court case was filed and the claim was settled without litigation.

12. I was represented in that case or claim by

_____.
(Name of attorney)

13. In or as a result of that case or claim, I received a structured settlement pursuant to a structured settlement agreement.

Independent Professional Advisor

14. I have selected _____ as my independent professional advisor to explain the terms and consequences to me of the transfer and advise me regarding whether it is in my best interest to accept those terms, taking into account the welfare and support of my dependents.

15. My independent professional advisor has:

[ ] met with me in person on _____ occasion(s);

[ ] explained the terms and consequences of the proposed transfer agreement;

[ ] answered all my questions;

16. I learned about _____
(Name of independent professional advisor)
from:

[ ] TV, radio, or other advertising

[ ] Personal solicitation by the independent professional advisor

[ ] Other: _____ (explain)

17. [ ] I have not previously transferred any of my structured settlement payments.

18. [ ] I have made _____ previous transfers of some of my structured settlement payments and I have

[ ] disclosed to my independent professional advisor the details of each such transfer and

[ ] given to my independent professional advisor copies of the transfer agreements from each such transfer.

[ ] I used the money I received from the prior transfer(s) for the following purposes: _____

_____

19. If the current transfer is approved, I intend to use the money that I receive for the following purposes:

_____

_____.

20. After consultation with my independent professional advisor, I understand:

[ ] that I am presently entitled to receive from my structured settlement $_____ each [ ] month [ ] year; and that those payments will continue

[ ] for the rest of my life or

[ ] until _____, 20___.

[ ] that I am entitled to receive lump sum payments due on the dates and in the amounts specified below:

_____

_____

[ ] that the payments I now propose to transfer, in

exchange for a net purchase price of $_____, have a discounted present value of $_____, as determined for federal tax purposes, and

[ ] that the "effective annual interest rate" of the proposed transfer is ___%. Based on the net amount that I will receive and the amounts and timing of the structured settlement payments that I am transferring, I will, in effect, be paying interest at a rate of ___% per year so that I can get money now rather than later.

21. [ ] I have not received any advances or gifts of money, other property, or services in connection with the proposed assignment.

22. [ ] I have received an advance or gift of _____, from _____ in connection with this assignment.

23. [ ] I have agreed to pay my independent professional advisor a fee of $_____ for the services rendered by him/her.

[ ] My independent professional advisor has told me that he/she will receive no other compensation from anyone with respect to this transaction, except as follows: _____

_____.

My Understanding

24. I understand that, if the proposed transfer is approved:

[ ] the aggregate amount of the future payments I would be

transferring and would no longer be entitled to is $_____;

[ ] the discounted present value of the future payments that I would be transferring and would no longer be entitled to receive is $_____; and

[ ] as consideration for the transfer, I would receive from the transferee the sum of $_____; which is ___% of the discounted present value.

[ ] From that sum, [ ] fees and other charges in the amount of $_____ will be deducted or [ ] no fees or other charges will be deducted.

25. I understand that the proposed transfer cannot proceed unless approved by the Court and that a petition for Court approval has been or will be filed by the transferee _____ _____.

26. I have received a copy of the petition and

[ ] have read it.

[ ] had it read to me by _____.

Consent

WITH THIS KNOWLEDGE, I HEREBY CONFIRM THAT I UNDERSTAND THE PROPOSED TRANSFER AND ITS CONSEQUENCES TO ME, AND I CONSENT TO THE PETITION. MY CONSENT IS VOLUNTARY. I HAVE NOT BEEN THREATENED WITH ANY LEGAL ACTION OR OTHER PENALTY IF I FAIL OR REFUSE TO FILE THIS CONSENT.

_____ _____

Signature of Transferor Date

_____ _____
Signature of Witness Date

Source: This Rule is new.

REPORTER'S NOTE

Rule 15-1303 is proposed for amendment to conform the Rule to Chapter 722, Laws of 2016 (SB 734). In addition to the statutory changes discussed in the Reporter's note to Rule 15-1302, Code, Courts Article, §5-1102 (b)(1) requires that there be an express finding by the court that the transfer is necessary, reasonable, and appropriate and in the best interest of the payee, "taking into account the welfare and support of the payee's dependents." Consequently, paragraph 14 of the consent form in Rule 15-1303 is amended to require the payee's averment that the independent professional advisor's advice as to the best interest of the payee takes into account the welfare and support of the payee's dependents.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 – STRUCTURED SETTLEMENT TRANSFERS

AMEND Rule 15-1304 to conform to Chapter 722, Laws of 2016 (SB734) and to make stylistic changes, as follows:

Rule 15-1304. AFFIDAVIT OF INDEPENDENT PROFESSIONAL ADVISOR

The affidavit of the independent professional advisor shall include an affirmation that the affiant's compensation is not affected by whether the proposed structured settlement transfer occurs and shall state:

~~(1)~~ (a) The full name, address, e-mail address, and telephone number of the affiant;

~~(2)~~ (b) The status of the affiant as an attorney, certified public accountant, actuary, or other licensed professional advisor, including:

~~(A)~~ (1) each state in which the affiant is licensed in that capacity; and

~~(B)~~ (2) each state in which the affiant has been the subject of any disciplinary proceedings regarding such a license.

~~(3)~~ (c) The number of times in the past five years that the affiant has acted as an independent professional advisor with respect to a proposed transfer of structured settlement payment rights to the petitioner or to an affiliate or predecessor of

the petitioner.

~~(4)~~ (d) The nature and extent of personal contact by the affiant with the payee regarding the proposed transfer, including the date and place of each such contact and whether the contact was in-person, by telephone, or by e-mail.

~~(5)~~ (e) The fee charged by the affiant for the services rendered to the payee and the name, address, e-mail address (if any), and telephone number of each person, other than the payee, from whom any compensation for services rendered with respect to the proposed transfer has been or will be sought.

~~(6)~~ (f) The amount of any fees, costs, expenses, or other charges that will be deducted from the amount payable to the payee under the transfer agreement and a particularized explanation of the nature of each such fee, cost, expense, or other charge.

~~(7)~~ (g) Whether there have been any prior transfers or proposed transfers of any of the payee's structured settlement rights and, if so, as to each such transfer or proposed transfer, whether the affiant acted as an independent professional advisor for the payee.

~~(8)~~ (h) Whether the structured settlement arose from a claim of lead poisoning or a case in which an allegation was made in a court record of a mental or cognitive impairment on the part of the payee, and, if so:

~~(A)~~ (1) The nature and extent of the affiant's

investigation into the ability of the payee to understand the nature and economic consequences of the proposed transfer, including any contact with the payee's attorney in the claim or case leading to the structured settlement;

~~(B)~~ (2) The basis for the affiant's conclusion that the payee is capable of understanding, and does understand, the nature and economic consequences of the transfer, and

~~(C)~~ (3) A list of any documents upon which the advisor relied in reaching that conclusion.

~~(9)~~ (i) The discounted present value of the payment rights being transferred and the applicable federal rate used in determining that value;

~~(10)~~ (j) The annual interest rate implied in the transfer, treating the net purchase price as the principal amount of a loan, to be repaid in installments corresponding to the transferred payments; and

~~(11)~~ (k) Whether the affiant investigated and advised the payee about possible alternatives to the proposed transfer, including any option for acceleration of future annuity payments; ~~and~~

~~(12)~~ (l) That the advisor has advised the payee concerning ~~the legal, tax, and financial implications of the transfer of settlement payment rights, to the extent permitted by the advisor's professional license~~ whether the proposed transfer would be in the best interest of the payee, taking into account

the welfare and support of the payee's dependents; and;

(m) That the advisor is not affiliated with or compensated by the transferee.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 722, Laws of 2016 (SB 734) changed the nature of the advice that the adviser must give to the payee. Code, Courts Article, §5-1101 (d) was amended to change the definition of independent professional advice to mean the advice of "an attorney, certified public accountant, actuary, or other licensed professional adviser ... who is engaged by a payee to render advice concerning whether a proposed transfer of structured settlement payment rights would be in the best interest of the payee, taking into account the welfare and support of the payee's dependents." An amendment to section (l) is proposed to conform it to the statutory change.

A new section (m) is proposed for addition to Rule 15-1304 to require that the affidavit of the independent professional advisor state that "the advisor is not affiliated with or compensated by the transferee." The statute defines an independent professional adviser as someone who satisfies both criteria. See Code, Courts Article, §§5-1101 (d)(2) and (d)(3). Proposed new section (m) incorporates that definition into a substantive requirement that must be part of the affidavit.

Stylistic changes to the lettering and numbering of Rule 15-1304 conform to the style of other Rules.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 – STRUCTURED SETTLEMENT TRANSFERS

AMEND Rule 15-1305 to modify language in subsection (b)(4) pertaining to who may satisfy the requirement of personal attendance by the petitioner, as follows:

Rule 15-1305. HEARING

(a) Generally

(1) The court may not act on a petition under this Chapter without holding a hearing.

(2) The petitioner shall have the burden of producing sufficient credible evidence to permit the court to make the findings required under Rule 15-1307.

(3) The payee or the payee's guardian shall testify at the hearing.

(b) Personal Attendance

Personal attendance at the hearing is required by:

(1) the payee, unless, for good cause, the court excuses the payee's personal attendance;

(2) if a person serves as a (A) guardian of the person of the payee, (B) guardian of the property of the payee, or (C) representative payee of the payee, each such person;

(3) the independent professional advisor; and

(4) the petitioner or ~~a duly authorized~~ an officer or

employee of the petitioner~~, other than an attorney for the petitioner bound by an attorney-client privilege~~ authorized to testify on behalf of the petitioner in the proceeding.

Committee note: Section (b) of this Rule is not intended to preclude the court from exercising its discretion under Rule 2-513 to permit testimony of a witness by telephone. The court should be mindful, however, that the petitioner bears the burden of providing sufficient evidence to permit the court to make the findings required under Rule 15-1307 and consider whether taking the testimony of a witness for the petitioner by telephone may adversely affect the credibility of that testimony. Except under extraordinary circumstances, the court should not permit testimony of the payee or a guardian of the payee by telephone.

(c) Examination

The court may examine under oath the payee, any guardian of the payee, the independent professional advisor, and the petitioner or representative of the petitioner, and any other witness.

Source: This Rule is new.

REPORTER'S NOTE

The Committee is advised that, in many instances, the officer or employee of the petitioner who has the most relevant information pertaining to the proposed transfer is an attorney. Rule 15-1305 is proposed to be amended to permit that individual to testify in the proceeding if authorized by the petitioner to do so. The attorney remains bound by attorney-client privilege as to matters that are entirely unrelated to the proceeding, and, ordinarily, may not also serve as an advocate in the proceeding. See Rule 19-303.7

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 – STRUCTURED SETTLEMENT TRANSFERS

Rule 15-1306. GUARDIAN AD LITEM; INDEPENDENT EVALUATION

If the structured settlement arose from a claim of lead poisoning or a case in which an allegation was made in a court record of a mental or cognitive impairment on the part of the payee, or if it otherwise appears that the payee may suffer from a mental or cognitive impairment, the court, at the expense of the petitioner, may (1) appoint a guardian ad litem for the payee; or (2) require the payee to be examined by a qualified and independent mental health specialist designated by the court.

Source: This Rule is new.

REPORTER'S NOTE

No amendment to Rule 15-1306 is proposed. The Rule is included for completeness.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 – STRUCTURED SETTLEMENT TRANSFERS

AMEND Rule 15-1307 to conform to Chapter 722, Laws of 2016 (SB 734), as follows:

Rule 15-1307. FINDINGS

In deciding whether to grant the petition, the court shall consider the standards set forth in Code, Courts Article, §5-1102 and Internal Revenue Code, §5891 (b)(2)(A), and make ~~a~~ an express finding upon a preponderance of the evidence as to each and whether the payee's consent is knowing and voluntary.

Committee note: Internal Revenue Code, §5891 (b)(2) requires that, to avoid imposition of an excise tax on the transfer of structured settlement payment rights, there must be a final order of a court that finds that the transfer (i) does not contravene any federal or state statute or order of any court or responsible administrative authority, and (ii) is in the best interest of the payee, taking into account the welfare and support of the payee's dependents.

Source: This Rule is new.

REPORTER'S NOTE

Code, Courts Article, §5-1102 (b), as amended by Chapter 722, Laws of 2016 (SB 734), requires the court to make "express" findings. Rule 15-1307 is proposed to be amended accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 500 – RECORDING OF PROCEEDINGS

AMEND Rule 16-501 by adding a reference to recording proceedings before a District Court commissioner, as follows:

Rule 16-501. APPLICATION OF CHAPTER

The Rules in this Chapter apply to the recording of proceedings in the circuit and District courts by the respective courts and to the recording of proceedings before a District Court commissioner on an audio recording device provided by the District Court. See Chapter 600 for Rules governing the recording of court proceedings by other persons.

Source: This Rule is new.

REPORTER'S NOTE

Rule 16-501 is amended to conform to the proposed addition of new Rule 16-506, pertaining to the recording of proceedings before a District Court commissioner.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 500 – RECORDING OF PROCEEDINGS

ADD new Rule 16-506, as follows:

Rule 16-506. PROCEEDINGS BEFORE DISTRICT COURT COMMISSIONERS

(a) Applicability

This Rule applies to the recording of proceedings before a District Court commissioner on an audio recording device provided by the District Court.

Cross reference: For the recording of proceedings before a judge in the District Court, see Rule 16-502.

(b) Definition

In this Rule, “mute” means to cause an audio recording to be inaudible or unintelligible.

(c) Proceedings to be Recorded

Except as otherwise provided in section (d) of this Rule, all proceedings under Rules 4-213, 4-213.1, and 4-216 and any other proceeding at which an advice of rights is given to a person charged with a crime shall be recorded verbatim in their entirety.

(d) Recordings of Portions of Proceedings to be Muted

The following portions of a recording of a proceeding shall be muted:

(1) a communication pertaining to the disclosure of

financial information regarding a defendant's eligibility for representation by the Public Defender or appointed attorney, and

(2) a confidential, privileged communication between an attorney and the attorney's client.

(e) Control of and Direct Access to Audio Recordings

(1) Under Control of District Court

Audio recordings made pursuant to this Rule shall be under the control of the District Court. The recordings shall be made, filed, and maintained by the court in accordance with the standards specified in an administrative order of the Chief Judge of the District Court.

(2) Restricted Access or Possession

No person other than an authorized court official or employee of the District Court may have direct access to or possession of an official audio recording.

(f) Right to Obtain Copy of Audio Recording

Subject to section (d) of this Rule, the authorized custodian of an official audio recording shall make a copy of the audio recording available to any person upon written request and, unless waived by the court, upon payment of the reasonable costs of making the copy.

(g) Effect of System Malfunction or Unavailability of Recording

Except as otherwise provided in Rule 4-215, a malfunction of the audio recording system or the unavailability of an

intelligible recording does not affect the validity of the determinations and actions of the commissioner at a proceeding otherwise required to be recorded pursuant to section (c) of this Rule.

Committee note: The requirement of making an audio recording under this Rule is in addition to, and not in substitution for, the requirement of a written record in Rule 4-216 (h).

In order to permit a judge, acting under Rule 4-215, to rely on advice regarding the right to an attorney given to a defendant by a commissioner, the audio recording of that proceeding, if needed, must be accessible by the judge without undue delay.

This Rule is not intended to affect Code, Courts Article, §10-922, declaring statements made during the course of a defendant's appearance before a commissioner pursuant to Rule 4-213 inadmissible against the defendant in a criminal or juvenile proceeding.

Source: This Rule is new.

REPORTER'S NOTE

The District Court has installed audio recording devices in all commissioners' offices to record certain proceedings before the commissioners. Under proposed new Rule 16-506, an audio recording will be made of all proceedings at which the commissioner gives an advice of rights to a person charged with a crime. This will provide an audio recording that can be reviewed and relied upon by a District Court judge in making a determination regarding a waiver of the right to counsel by the inaction of a defendant.

The Rules Committee has been advised that the recording system consists of a "passive" component, which makes a back-up recording whenever the system is on, and an "active" component, which records only when the commissioner directs that a specific proceeding be recorded. The Committee also has been advised that the system uses "white noise" to mute or make inaudible or unintelligible both passive and active recordings when it is desired that there be no recording of a portion of a proceeding.

To address concerns of prosecutors, the Office of the Public Defender, and a victims' rights advocate, the Committee is not recommending the recording of (1) proceedings involving

an interim protective order or peace order or (2) proceedings pertaining to a criminal matter if the defendant has been neither arrested nor served with a charging document. The Committee recommends "muting" any portion of a recorded proceeding that involves disclosure of financial information regarding a defendant's eligibility for representation by the Public Defender or appointed attorney and any confidential, privileged communication between an attorney and the attorney's client.

Sections (e) and (f) of the Rule are based upon similar provisions in Rule 16-502 (c), (d), and (g)(1), except that provisions pertaining to making, filing, and maintaining the recordings are to be specified in an administrative order of the Chief Judge of the District Court, rather than in an administrative order of the Chief Judge of the Court of Appeals.

Section (g) provides that, except as otherwise provided in Rule 4-215, the validity of determinations and actions of a commissioner is not affected by a malfunction of the audio recording system or by the unavailability of an intelligible recording.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 800 - MISCELLANEOUS COURT ADMINISTRATION MATTERS

ADD new Rule 16-804, as follows:

Rule 16-804. CONTINUANCES OR POSTPONEMENTS FOR CONFLICTING CASE ASSIGNMENTS OR LEGISLATIVE DUTIES

(a) Responsibilities of Attorneys

(1) Ascertaining Potential Conflict

When consulted as to the availability of dates or times for a trial or other proceeding, an attorney shall check his or her calendar to determine whether the attorney has a conflicting assignment before agreeing to a particular date and time.

(2) When Conflict Exists

If an attorney accepts employment in a case in which a date or time for trial or other proceeding has already been set, the attorney shall:

(A) advise the client that the attorney has a conflicting assignment, that the attorney will promptly attempt to resolve the conflict, and that, after consulting with the client, the attorney will attempt to make suitable arrangements in the event the attorney is unsuccessful in obtaining a continuance or postponement in the client’s case;

(B) unless impracticable, within five business days,

contact the other parties in either or both cases to attempt to obtain (i) consent to a postponement or continuance and (ii) at least three alternative dates for which no conflict exists for any party; and

(C) unless impracticable, no later than 30 days prior to scheduled argument in an appellate court or 15 days prior to the scheduled proceeding in a circuit court or in the District Court, request a postponement or continuance in one or more of the conflicting cases, advise the court whether the other parties consent to the request, and provide to the court the alternative dates obtained in accordance with subsection (a)(2)(B)(ii) of this Rule.

(b) Grant of Postponement or Continuance

Courts shall liberally exercise their discretion to grant a postponement or continuance if (1) the conditions set forth in Code, Courts Article, §6-409 are satisfied, (2) no party or witness will be substantially prejudiced, and (3) the court will not be unduly inconvenienced.

Committee note: Courts should be particularly lenient when the request can be accommodated without undue inconvenience by moving the case to a different position on the docket or on another docket scheduled for the same day or when the defendant otherwise may have been entitled to a postponement to obtain an attorney.

(c) Where Conflict Develops After Representation Accepted

If a conflict in assignment dates or times develops after representation has been accepted, the attorney shall (1) notify

the court having a lesser priority under section (d) of this Rule as soon as practicable upon becoming aware of the conflict, (2) make a prompt and good faith effort to resolve the conflict informally, including where practicable, by obtaining another qualified attorney acceptable to the client to act in one of the cases before a continuance or postponement is requested, subject to any specific obligation that the attorney has to the client, and (3) if a change in an existing scheduling order is required, immediately file a motion for such a change.

(d) Priorities Where Conflicting Assignments Exist

(1) Publicly-Employed Attorneys

Except for good cause, an attorney who (A) holds public office or employment as an attorney, (B) is permitted to engage also in the private practice of law, and (C) faces an assignment conflict between an action in which the attorney appears in a public capacity and an action in which the attorney appears in a private capacity, may not be granted a continuance or postponement in the action in which the attorney appears in a public capacity if the attorney knew of the conflict prior to accepting employment in the private action.

(2) Conflicts in Trial Court Assignments

In the event of a conflict in a hearing or trial date or time between a Maryland circuit court, the United States District Court for the District of Maryland, the United States Bankruptcy Court for the District of Maryland, or the District

Court of Maryland, priority shall be given in accordance with the earliest date on which an assignment for hearing or trial was made, except that:

(A) if the Federal Speedy Trial Act so requires, first priority shall be given to a criminal proceeding in the United States District Court; and

(B) subject to subsection (d)(2)(A) of this Rule, if the provisions of Rule 4-271 so require, first priority shall be given to a criminal proceeding in a Maryland circuit court.

(3) Conflicts Between Appellate and Trial Court Proceedings

In the event of a conflict in a hearing or trial date or time between an action or proceeding pending in (A) the Court of Appeals of Maryland, the Court of Special Appeals, or the United States Court of Appeals for the Fourth Circuit, and (B) a Federal or State trial court, the appellate proceeding shall be given priority over the trial court proceeding unless otherwise agreed by the respective appellate and trial courts.

(4) Conflicts Between Judicial and Administrative Proceedings

In the event of a conflict between a judicial proceeding and an administrative proceeding, even where the attorney in the judicial proceeding is a member of the administrative agency, the judicial proceeding ordinarily will have priority.

(e) Attorneys Who are Members or Desk Officers of the General Assembly

A proceeding shall be continued or postponed in

conformance with Code, Courts Article, §6-402 upon request by an attorney of record in the action who is a member or desk officer of the General Assembly. In accepting employment in the action, however, the attorney should consider the inconvenience to the public, the bar, and the judicial system produced by excessive continuances or postponements.

(f) Resolution of Conflict by Courts

Nothing in this Rule precludes the affected courts, when apprised of a conflict, from attempting to resolve the conflict informally in a manner other than in accordance with the priorities established in section (d) of this Rule.

Source: This Rule is new.

REPORTER'S NOTE

The matter of granting postponements and continuances in scheduled court proceedings due to conflicting assignments on the part of attorneys has been dealt with in two statutes and an Administrative Order of the Chief Judge of the Court of Appeals. Code, Courts Article, §6-402 requires an accommodation for members or desk officers of the General Assembly while the Legislature or committees thereof are in session. Section 6-409 of the Courts Article permits, but does not require, the court to grant a continuance if the attorney's entry of appearance was made in good faith, the case has not been continued previously an unreasonable number of times, and at the time of the attorney's entry of appearance, the attorney is the attorney of record in another court proceeding which previously had been scheduled. The Administrative Order, which generally prohibits an attorney from accepting an assignment with knowledge that he or she already has a conflicting obligation for that date and time, first was adopted in 1977 and was most recently amended in 1995.

The Rules Committee was unaware of any complaint, by any attorney, having been made regarding the Administrative Order at any time during its 40-year existence. When putting together

the reorganization of the court administration Rules submitted to the Court in the 178th Report, the Committee opted to reconstitute the Administrative Order as a Rule, without any significant substantive change, purely for the sake of transparency, so that it would be more visible and readily accessible. The proposal to do that was posted on the Judiciary website along with a Notice of the meeting at which that Rule would be discussed. No comments were received, and no one appeared at the meeting in opposition. The Committee approved the Rule and transmitted it to the Court, first as Rule 16-803 in the original submission of Part I of the 178th Report in July 2013, and subsequently as Rule 16-804 in the Committee's March 2016 Supplement to Part I. No adverse comments were received by the Committee with respect to either submission, and no one appeared in opposition at the Court's August 13, 2013 open hearing on the original submission.

Despite the absence of any written comments, in the manner directed in the Court's Public Notice of the hearing on the Supplement, fourteen attorneys appeared at the May 19, 2016 hearing in opposition to the Rule and were permitted to explain the nature of their opposition. The concerns expressed focused not on any changes introduced by the proposed Rule but on the content of the Administrative Order. No question was raised regarding the legislative privilege or the priorities between the Federal and State courts or the appellate and trial courts. The concerns were directed almost entirely on the prohibition against attorneys knowingly accepting conflicting assignments with the expectation that one or more courts would resolve the conflict by granting a postponement. The Court remanded the proposed Rule for further consideration by the Rules Committee in light of the sudden and belated opposition, to which, caught unaware, the Committee was unable to give an immediate and meaningful response.

Upon the remand, the Attorneys and Judges Subcommittee, with the assistance of invited consultants, including several of the attorneys who testified at the May 19 hearing, took another look at the long-standing policy in light of the concerns expressed and concluded that a better balance could be struck between the need of the courts to be able to manage their dockets in accordance with mandated time standards and not be forced to grant postponements merely at the whim of attorneys who have knowingly accepted conflicting assignments, and the realities of the practice of law in the 21st Century.

The Subcommittee approved amendments to the Rule that would delete the prohibition against knowingly accepting conflicting assignments in favor of placing certain obligations on the

attorneys – obligations already at least implicit in the Code of Professional Responsibility – when asked to accept such assignments. First, before accepting an assignment with a scheduled hearing or trial date already set, attorneys must check their calendar to determine whether they are already committed for that date and time. If there is such a conflict, the attorney must (1) advise the prospective client of the conflict and commit to making an effort to resolve it, (2) within five business days, contact the other parties and attempt to obtain consent to a postponement to at least three alternative dates for which no conflict exists; and, (3) within set time periods, request a postponement from the court, advise the court whether there is consent, and provide the court with the alternative dates.

Section (b) directs that the courts liberally exercise their discretion to grant postponements if the conditions set forth in Code, Courts Article, §6-409 are satisfied, no party or witness will be substantially prejudiced, and the court will not be unduly inconvenienced. A Committee note urges that the courts be particularly lenient when the request can be accommodated without undue inconvenience by moving the case to a different position on the docket or on another docket scheduled for the same day. Together with section (d), which makes clear that nothing in the Rule precludes courts, when apprised of a conflict, from attempting to resolve the conflict informally, the Subcommittee believes that these changes appropriately meet the concerns expressed without adversely affecting the efficient operation of the courts.

At its June 23, 2016 open meeting, the Rules Committee added language to the Committee note following section (b) and approved the Subcommittee’s revisions to proposed Rule 16-804.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO COURT RECORDS

AMEND Rule 16-906 to add at the end of section (h) a cross reference to a certain statute, as follows:

Rule 16-906. REQUIRED DENIAL OF INSPECTION - CERTAIN CATEGORIES OF CASE RECORDS

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

(a) All case records filed in the following actions involving children:

(1) Actions filed under Title 9, Chapter 100 of the Maryland Rules for:

(A) adoption;

(B) guardianship; or

(C) revocation of a consent to adoption or guardianship for which there is no pending adoption or guardianship proceeding in that county.

(2) Delinquency, child in need of assistance, and child in need of supervision actions in Juvenile Court, except that, if a hearing is open to the public pursuant to Code, Courts Article, §3-8A-13 (f), the name of the respondent and the date, time, and location of the hearing are open to inspection unless the record

was ordered expunged.

(b) The following case records pertaining to a marriage license:

(1) A certificate of a physician or certified nurse practitioner filed pursuant to Code, Family Law Article, §2-301, attesting to the pregnancy of a child under 18 years of age who has applied for a marriage license.

(2) Until a license becomes effective, the fact that an application for a license has been made, except to the parent or guardian of a party to be married.

Cross reference: See Code, Family Law Article, §2-402 (f).

(c) Case records pertaining to petitions for relief from abuse filed pursuant to Code, Family Law Article, §4-504, which shall be sealed until the earlier of 48 hours after the petition is filed or the court acts on the petition.

(d) Case records required to be shielded pursuant to Code, Courts Article, §3-1510 or Code, Family Law Article, §4-512.

(e) In any action or proceeding, a record created or maintained by an agency concerning child abuse or neglect that is required by statute to be kept confidential.

(f) The following papers filed by a guardian of the property of a disabled adult:

(1) The annual fiduciary account filed pursuant to Rule 10-706, and

(2) The inventory and information report filed pursuant to

Rule 10-707.

Committee note: Statutes that require child abuse or neglect records to be kept confidential include Code, Human Services Article, §§1-202 and 1-203 and Code, Family Law Article, §5-707.

(g) The following case records in actions or proceedings involving attorneys or judges:

(1) Records and proceedings in attorney grievance matters declared confidential by Rule 19-707 (b).

(2) Case records with respect to an investigative subpoena issued by Bar Counsel pursuant to Rule 19-712.

(3) Subject to the provisions of Rule 19-105 (b), (c), and (d) of the Rules Governing Admission to the Bar, case records relating to bar admission proceedings before the Accommodations Review Committee and its panels, a Character Committee, the State Board of Law Examiners, and the Court of Appeals.

(4) Case records consisting of IOLTA Compliance Reports filed by an attorney pursuant to Rule 19-409 and Pro Bono Legal Service Reports filed by an attorney pursuant to Rule 19-503.

(5) Case records relating to a motion filed with respect to a subpoena issued by Investigative Counsel for the Commission on Judicial Disabilities pursuant to Rule 18-405.

(h) The following case records in criminal actions or proceedings:

(1) A case record that has been ordered expunged pursuant to Rule 4-508.

(2) The following case records pertaining to search

warrants:

(A) The warrant, application, and supporting affidavit, prior to execution of the warrant and the filing of the records with the clerk.

(B) Executed search warrants and all papers attached thereto filed pursuant to Rule 4-601.

(3) The following case records pertaining to an arrest warrant:

(A) A case record pertaining to an arrest warrant issued under Rule 4-212 (d) and the charging document upon which the warrant was issued until the conditions set forth in Rule 4-212 (d)(3) are satisfied.

(B) Except as otherwise provided in Code, General Provisions Article, §4-316, a case record pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued.

(4) A case record maintained under Code, Courts Article, §9-106, of the refusal of an individual to testify in a criminal action against the individual’s spouse.

(5) A presentence investigation report prepared pursuant to Code, Correctional Services Article, §6-112.

(6) A case record pertaining to a criminal investigation by (A) a grand jury, (B) a State's Attorney pursuant to Code, Criminal Procedure Article, §15-108, (C) the State Prosecutor

pursuant to Code, Criminal Procedure Article, §14-110, or (D) the Attorney General when acting pursuant to Article V, §3 of the Maryland Constitution or other law.

Committee note: Although this Rule shields only case records pertaining to a criminal investigation, there may be other laws that shield other kinds of court records pertaining to such investigations. This Rule is not intended to affect the operation or effectiveness of any such other law.

(7) A case record required to be shielded by Code, Criminal Procedure Article, Title 10, Subtitle 3.

Cross reference: See Code, Criminal Law Article, §5-601.1 governing confidentiality of court records pertaining to a citation issued for a violation of Code, Criminal Law Article, §5-601 involving the use or possession of less than 10 grams of marijuana.

(i) A transcript, tape recording, audio, video, or digital recording of any court proceeding that was closed to the public pursuant to rule or order of court.

(j) Backup audio recordings made by any means, computer disks, and notes of a court reporter that are in the possession of the court reporter and have not been filed with the clerk.

(k) The following case records containing medical information:

(1) A case record, other than an autopsy report of a medical examiner, that (A) consists of a medical or psychological report or record from a hospital, physician, psychologist, or other professional health care provider, and (B) contains medical or psychological information about an individual.

(2) A case record pertaining to the testing of an individual for HIV that is declared confidential under Code, Health-General

Article, §18-338.1 or §18-338.2.

(3) A case record that consists of information, documents, or records of a child fatality review team, to the extent they are declared confidential by Code, Health-General Article, §5-709.

(4) A case record that contains a report by a physician or institution concerning whether an individual has an infectious disease, declared confidential under Code, Health-General Article, §18-201 or §18-202.

(5) A case record that contains information concerning the consultation, examination, or treatment of a developmentally disabled individual, declared confidential by Code, Health-General Article, §7-1003.

(6) A case record relating to a petition for an emergency evaluation made under Code, Health-General Article, §10-622 and declared confidential under Code, Health-General Article, §10-630.

(l) A case record that consists of the federal or Maryland income tax return of an individual.

(m) A case record that:

(1) a court has ordered sealed or not subject to inspection, except in conformance with the order; or

(2) in accordance with Rule 16-910 (b), is the subject of a motion to preclude or limit inspection.

(n) As provided in Rule 9-203 (d), a case record that consists

of a financial statement filed pursuant to Rule 9-202.

(o) A document required to be shielded under Rule 20-203 (e)(1).

(p) An unredacted document filed pursuant to Rule 1-322.1 or Rule 20-203 (e)(2).

Source: This Rule is derived from former Rule 16-1006 (2016).

REPORTER'S NOTE

Chapter 514, Laws of 2016 (HB 565) added a list of conditions that a defendant who has violated Code, Criminal Law Article, §5-601 involving the use or possession of less than 10 grams of marijuana must meet in order for the court record pertaining to the violation to be inaccessible to the public.

To draw attention to the conditions in the new statute, the Rules Committee recommends the addition of a cross reference to the new statute after the list in Rule 16-906 (h) of case records in criminal actions or proceedings that are not allowed to be inspected by the public.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 800 -- MISCELLANEOUS COURT ADMINISTRATION MATTERS

DELETE current Rule 16-806 and ADD new Rule 16-806, as follows:

~~Rule 16-806. JUDICIAL PERSONNEL SYSTEM~~

~~(a) Development by State Court Administrator~~

~~The State Court Administrator shall develop one or more comprehensive personnel plans for all employees of the Judiciary other than judges. The plans may vary, as necessary, for different categories of Judiciary employees, but all individuals hired by or subject to supervision and discipline by a court, a judge, or other judicial unit shall be included in a plan, without regard to the source of the funding of their compensation.~~

~~(b) Content~~

~~(1) For all Judiciary employees, regardless of whether they are at-will employees, the plans shall include policies regarding:~~

~~(A) nepotism -- the employment of relatives;~~

~~(B) whistleblower protection;~~

~~(C) rights under the Americans with Disabilities Act;~~

~~(D) rights under civil rights and anti-discrimination laws;~~

~~(E) disciplinary actions;~~

~~(F) grievances, including fair notice of how to present grievances;~~

~~(G) other employment;~~

~~(H) standards of conduct; and~~

~~(I) substance abuse.~~

~~(2) For employees who are not at-will employees, the plans shall contain clear and specific standards and procedures for selection, promotion, classification, transfer, demotion, and other discipline of employees and shall require authorization from the State Court Administrator, or the Administrator's designee, to fill a vacancy. The State Court Administrator may review the selection, promotion, transfer, demotion, or other discipline of such employees to ensure compliance with the standards and procedures in the personnel plan.~~

~~(c) Approval by Chief Judge of the Court of Appeals~~

~~The State Court Administrator shall submit the plans for consideration by the Chief Judge of the Court of Appeals. The plans shall take effect upon approval and as directed by the Chief Judge.~~

~~Source: This Rule is new.~~

Rule 16-806. JUDICIAL PERSONNEL POLICIES AND PROCEDURES

(a) Duty of State Court Administrator

(1) Generally

The State Court Administrator shall develop personnel policies and procedures applicable to employees in the Judicial Branch of the State Government, other than judges and employees of the Orphans' Courts and the Registers of Wills, without regard to the source of the funding of their compensation.

(2) Content

(A) For all such employees, the policies and procedures shall address the rights and responsibilities of employees and management in implementing applicable Federal and Maryland equal opportunity, anti-discrimination, anti-harassment, anti-retaliation, and anti-nepotism laws and provide for the reporting and redressing of violations.

(B) For employees who by statute or Rule are included in a State personnel system or are employed by Judicial units that are required by Rule to comply with personnel standards and guidelines promulgated by the State Court Administrator, the policies and procedures shall address such other matters as are commonly included in such personnel systems and that the State Court Administrator deems appropriate.

Cross reference: See Rules 16-401 and 16-801.

(b) Duty of County Administrative Judges

The county administrative judge shall develop personnel policies and procedures for employees of the circuit court which shall be consistent with the policies and procedures developed by the State Court Administrator under subsection (a)(2)(A).

(c) Approval by Chief Judge of the Court of Appeals

The State Court Administrator or the county administrative judge who developed the policies and procedures required by this Rule shall submit them for consideration by the Chief Judge of the Court of Appeals. The policies and procedures shall take effect upon approval as directed by the Chief Judge.

Source: This Rule is new.

REPORTER'S NOTE

Current Rule 16-806 (Judicial Personnel System) is proposed to be deleted and replaced by revised Rule 16-806 (Judicial Personnel Policies and Procedures).

As revised, Rule 16-806 requires the State Court Administrator to develop personnel policies and procedures applicable to all employees in the Judicial Branch of State Government, except judges and employees of the Orphans' Courts and Registers of Wills.

Pursuant to section (b) of the Rule and Rule 16-105 (b)(10), the county administrative judge of a circuit court retains responsibility for developing personnel policies and procedures applicable to employees of that court, except in the areas of (1) equal opportunity, (2) anti-discrimination, (3) anti-harassment, (4) anti-retaliation, and (5) anti-nepotism, which must be consistent with policies and procedures developed by the State Court Administrator.

Section (c) requires the State Court Administrator or county administrative judge to submit proposed policies and procedures to the Chief Judge of the Court of Appeals. Upon

approval by the Chief Judge, the policies and procedures take effect, as directed by the Chief Judge.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 100 – ADMINISTRATIVE STRUCTURE

AMEND Rule 16-105 by adding a cross reference following subsection (b)(10) and by replacing the word “plan” with the phrase “policies and procedures” in section (c), as follows:

Rule 16-105. CIRCUIT COURT - COUNTY ADMINISTRATIVE JUDGE

(a) Designation

After considering the recommendation of the Circuit Administrative Judge, the Chief Judge of the Court of Appeals shall designate a County Administrative Judge for each circuit court, to serve in that capacity at the pleasure of the Chief Judge. Except as permitted by Rule 16-104 (b)(1), the County Administrative Judge shall be a judge of that circuit court.

(b) Duties

Subject to the provisions of this Chapter, other applicable law, the general supervision of the Chief Judge of the Court of Appeals, and the general supervision of the Circuit Administrative Judge, the County Administrative Judge is responsible for the administration of the circuit court, including:

(1) supervision of the judges, officials, and employees of the court;

(2) assignment of judges within the court pursuant to Rule 16-302 (Assignment of Actions for Trial; Case Management Plan);

(3) supervision and expeditious disposition of cases filed in the court, control over the trial and other calendars of the court, assignment of cases for trial and hearing pursuant to Rule 16-302 (Assignment of Actions for Trial; Case Management Plan) and Rule 16-304 (Chambers Judge), and scheduling of court sessions;

(4) preparation of the court's budget;

(5) preparation of a case management plan for the court pursuant to Rule 16-302;

(6) preparation of a continuity of operations plan for the court pursuant to Rule 16-803;

(7) preparation of a jury plan for the court pursuant to Code, Courts Article, Title 8, Subtitle 2 and implementation of that plan;

Cross reference: See Rule 16-402 (e).

(8) preparation of any plan to create a problem-solving court program for the court pursuant to Rule 16-207;

(9) ordering the purchase of all equipment and supplies for (A) the court, and (B) the ancillary services and officials of the court, including magistrates, auditors, examiners, court administrators, court reporters, jury commissioner, staff of the medical offices, and all other court personnel except personnel comprising the Clerk of Court's office;

(10) except as otherwise provided in section (c) of this Rule, supervision of and responsibility for the employment, discharge, and classification of court personnel and personnel of its ancillary services and the maintenance of personnel files, unless a majority of the judges of the court disapproves of a specific action;

Cross reference: See Rule 16-806 (Judicial Personnel Policies and Procedures).

Committee note: Article IV, §9, of the Maryland Constitution gives the judges of any court the power to appoint officers and, thus, requires joint exercise of the personnel power.

(11) implementation and enforcement of all administrative policies, rules, orders, and directives of the Court of Appeals, the Chief Judge of the Court of Appeals, the State Court Administrator, and the Circuit Administrative Judge of the judicial circuit; and

(12) performance of any other administrative duties necessary to the effective administration of the internal management of the court and the prompt disposition of litigation in it.

Cross reference: See *St. Joseph Medical Center v. Turnbull*, 432 Md. 259 (2013) for authority of the county administrative judge to assign and reassign cases but not to countermand judicial decisions made by a judge to whom a case has been assigned.

(c) Circuit Judge's Personal Secretary and Law Clerk

Subsection (b)(10) of this Rule does not apply to a personal secretary or law clerk of a circuit court judge. Each judge has the exclusive right, subject to budget limitations,

any applicable administrative order, and any applicable personnel ~~plan~~ policies and procedures, to employ and discharge the judge's personal secretary and law clerk.

(d) Delegation of Authority

(1) A County Administrative Judge may delegate one or more of the administrative duties and functions imposed by this Rule to (A) another judge or a committee of judges of the court, including by designation of another judge of the court to serve as acting County Administrative Judge during a temporary absence of the County Administrative Judge, or (B) one or more other officials or employees of the court.

(2) Except as provided in subsection (d)(3) of this Rule, in the implementation of Code, Criminal Procedure Article, §6-103 and Rule 4-271 (a), a County Administrative Judge may (A) with the approval of the Chief Judge of the Court of Appeals, authorize one or more judges to postpone criminal cases on appeal from the District Court or transferred from the District Court because of a demand for jury trial, and (B) authorize not more than one judge at a time to postpone all other criminal cases.

(3) The administrative judge of the Circuit Court for Baltimore City may authorize one judge sitting in the Clarence M. Mitchell courthouse to postpone criminal cases set for trial in that courthouse and one judge sitting in Courthouse East to postpone criminal cases set for trial in that courthouse.

Source: This Rule is derived from former Rule 16-101 d (2016).

REPORTER'S NOTE

In Rule 16-105, a cross reference to Rule 16-806 is added following subsection (b)(10), and the word "plan" is replaced with the phrase "policies and procedures" to reflect the terminology used in proposed revised Rule 16-806.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 600 – MISCELLANEOUS PROVISIONS

AMEND Rule 18-601 to add a statement of the scope of the Rule; to delete a certain definition and add two definitions; to provide for the development, approval, and implementation of a policy on judicial absences; to delete an obsolete subsection; to modify provisions pertaining to personal leave entitlement during the first calendar year of the initial term of certain judges; to revise a provision pertaining to the use of leave for observance of religious holidays; to provide for certain reports to the State Court Administrator; and to make stylistic changes, as follows:

Rule 18-601. JUDICIAL LEAVE

(a) ~~Definition of "Judge"~~ Scope of Rule; Definitions

~~In this~~ This Rule, ~~"judge" means a judge~~ applies to judges of the Court of Appeals ~~of Maryland~~, the Court of Special Appeals, a circuit court ~~or~~, and the District Court ~~of Maryland~~. In this Rule, (1) "qualifies" or "qualified" means when a judge, having received a commission, timely takes the oath of office and signs the appropriate test book; and (2) "Policy on Judicial Absences" means the policy on judicial absences approved in accordance with section (b) of this Rule.

(b) Policy on Judicial Absences

The State Court Administrator shall develop and submit to the Court of Appeals for its consideration and approval a Policy on Judicial Absences. Upon approval by the Court, the Policy shall be implemented.

~~(b)~~ (c) Annual Leave

(1) ~~In General~~ Generally

Subject to ~~the provisions of subsection (b)(2) and section (f)~~ sections (g) and (h) of this Rule, a judge is entitled to annual leave of not more than 27 working days. The leave accrues as of the first day of the calendar year, except that:

~~(1)~~ (A) during the first year of a judge's initial term of office, annual leave accrues at the rate of 2.25 days per month accounting from the date the judge qualifies for office, and

~~(2)~~ (B) during the calendar year in which the judge retires, annual leave accrues at the rate of 2.25 days per month to the date the judge retires.

~~(2) Calendar Year 2010~~

~~(A) Subject to the provisions of subsection (b)(2)(B) and section (f) of this Rule, in calendar year 2010 a judge is entitled to annual leave of not more than 17 working days. The leave accrues as of the first day of the calendar year except that (1) during the first year of a judge's initial term of office, annual leave accrues at the rate of 1.42 days per month~~

~~accounting from the date the judge qualifies for office, and (2) during calendar year 2010, if the judge retires in that year, annual leave accrues at the rate of 1.42 days per month to the date the judge retires.~~

~~(B) For each day, up to ten days, that a judge contributes to the State of Maryland an amount equal to the average daily compensation, after federal and state tax and FICA withholdings, of a judge serving on the court or level of court on which the judge serves, based on a 22-day work month, as calculated by the State Court Administrator, the judge shall be entitled to one additional day of annual leave. The judge shall make the contribution prior to taking the additional day of annual leave in the manner determined by the State Court Administrator.~~

~~(3)~~ (2) Accumulation

~~If in any year a judge takes less than the full amount of annual leave the judge has accrued in that year, the judge may accumulate within any consecutive three year period, the difference between the leave accrued and the annual leave actually taken by the judge in any year during the period. However, no~~ A judge may accumulate and carry over not more than ten working days of unused annual leave ~~may be accumulated~~ in any one calendar year~~,~~ and ~~no judge may accumulate~~ not more than 20 working days of unused annual leave in the aggregate.

~~(c)~~ (d) Personal Leave

(1) ~~In General~~ Generally

In addition to the annual leave ~~as~~ provided ~~above and except as otherwise provided in subsection (2) of this section~~ in section (c) of this Rule, a judge is entitled to six days of personal leave in each calendar year ~~and~~. Personal leave accrues on the first day of each calendar year. Any personal leave unused at the end of the calendar year is forfeited.

(2) First Calendar Year of Initial Term

During the first calendar year of a judge's initial term ~~of office~~, the judge is entitled to:

(A) six days of personal leave if the judge qualified for office in January or February;

(B) five days of personal leave if the judge qualified for office in March or April;

(C) four days of personal leave if the judge qualified for office in May or June; or

(D) three days of personal leave if the judge qualified for office on or after July 1;

(E) two days of personal leave if the judge qualified for office in September or October; or

(F) one day of personal leave if the judge qualified for office in November or December.

~~(d)~~ (e) Sick Leave

(1) Generally

In addition to the annual leave and personal leave as provided for in this Rule, a judge:

~~(1)~~ (A) subject to verification in accordance with the Policy on Judicial Absences, is entitled to unlimited sick leave for any period of the judge's illness or temporary disability that precludes the judge from performing judicial duties; and

~~(2)~~ (B) may take a reasonable amount of sick leave ~~(A)~~ (i) for the judge's medical appointments; ~~(B)~~ (ii) due to the illness or disability of family members; or ~~(C)~~ (iii) ~~due to~~ upon the birth of the judge's child, adoption of a child by the judge, or the foster care placement of a child with the judge, all subject to the ~~definitions,~~ procedures, conditions, and limitations~~, and procedures~~ in ~~an Administrative Order issued by the Chief Judge of the Court of Appeals~~ the Policy on Judicial Absences.

(2) Limitation

Sick leave used for the purposes allowed by subsection ~~(2) of this section~~ (e)(1)(B) of this Rule, together with annual leave and personal leave taken for ~~these~~ purposes~~,~~ of subsection (e)(1)(B) of this Rule may not exceed an aggregate total of 12 weeks for the calendar year. ~~The Chief Judge of the Court of Appeals shall issue an Administrative Order implementing this section. The Order shall be posted on the Judiciary's website and otherwise made publicly available.~~

Committee note: The authority of the Commission on Judicial Disabilities with respect to a disability as defined in Rule 18-401 (h) is not affected by this Rule.

~~(4)~~ (f) Consecutive Appointment

A judge who is appointed or elected as a judge of another Maryland court and whose term on the second court begins immediately following service on the first court has the same leave status as though the judge had remained on the first court.

~~(e)~~ (g) Termination of Judicial Service

A judge whose judicial service is terminated for any reason~~,~~ and who is not appointed or elected ~~or appointed~~ to another Maryland court without a break in service, loses any annual or personal leave unused as of the date of termination of service.

~~(f)~~ (h) ~~Discretion of Chief Judge or Administrative Judge~~ When Annual or Personal Leave May be Taken; Exercise of Discretion

(1) Generally

A judge's annual leave and personal leave shall be taken at the time or times prescribed or permitted:

(A) if the judge is a judge of an appellate court, by the chief judge of ~~the judge's appellate~~ that court;

(B) if the judge is a judge of ~~an appellate~~ a circuit court, by the Circuit Administrative Judge ~~of the judge's judicial circuit,~~; or

(C) if the judge is a judge of ~~a circuit court; or the Chief Judge of~~ the District Court, ~~if the judge is a judge of that court~~ by the Chief Judge of that court.

(2) Exercise of Discretion

In determining when a judge may take annual leave and for what period of time, the judge exercising ~~supervisory~~ administrative authority under this Rule shall be mindful of the necessity of retention of sufficient judicial staffing in the court or courts under the judge's ~~supervisory~~ administrative authority to permit at all times the prompt and effective disposition of the business of that court or those courts. ~~A~~ Subject to subsection (h)(3) of this Rule, a request for leave at a certain time or for a certain period of time may be rejected by the judge exercising ~~supervision under this Rule~~ administrative authority if the granting of the requested leave would prevent the prompt and effective disposition of business of that court or those courts~~, except that personal leave requested for observance of a religious holiday may not be denied~~.

(3) Limitation on Discretion

Where a sufficient leave balance exists, annual or personal leave requested for observance of a religious holiday may not be denied.

Cross reference: See 100 Op. Att'y Gen. 136 (2015).

(i) Other Excused Absences

A judge's entitlement to any other excused absence, including administrative leave, shall be as prescribed in the Policy on Judicial Absences and shall be subject to the

procedures, conditions, and limitations set forth in that document.

(j) Reports to State Court Administrator

Each judge shall report to the State Court Administrator in the manner and form and at the times specified by the State Court Administrator the leave taken by the judge.

~~(g)~~ (k) Supervision by Chief Judge of the Court of Appeals

The operation of this Rule is at all times subject to the supervision and control of the Chief Judge of the Court of Appeals.

Source: This Rule is derived from former Rule 16-104 (2016).

REPORTER'S NOTE

In the proposed amendments to Rule 18-601, the definition of "judge" is deleted, and the substance of the former definition is included in a new "scope" provision. New definitions of "qualify" or "qualified" and "Policy on Judicial Absences" are added to section (a).

Section (b) requires the State Court Administrator to develop and submit to the Court of Appeals a proposed Policy on Judicial Absences, which, upon approval by the Court, would be implemented and replace policies that had been enunciated in a series of administrative orders.

Sections (c) and (d) generally keep in place the current entitlements of judges to not more than 27 days of annual leave and not more than six days of personal leave per year. However, in subsection (d)(2), the personal leave entitlement during the first calendar year of the initial term of a judge who qualifies for office on or after September 1 is revised to reduce disproportionality with personal leave entitlements for judges who had qualified for office earlier in the calendar year.

In section (e), the current policies of unlimited sick leave for the judge's own illness and reasonable sick leave used for other listed purposes are retained, clarified, and made

subject to the Policy, rather than to an Administrative Order of the Chief Judge.

Sections (f), (g), and (k) carry forward current provisions, with stylistic changes.

In section (h), the current prohibition against denial of personal leave requested by a judge for the observance of a religious holiday is expanded and modified to include the option of using annual leave for such observance, provided that a sufficient balance of the type of leave requested exists.

Section (i) includes a “catch-all” provision for other types of excused absences, such as administrative leave, that may be included in the Policy.

Section (j) requires leave reporting by judges in the manner and form specified by the State Court Administrator.

An obsolete provision pertaining to calendar year 2010 is deleted, and stylistic changes are made throughout the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.2 by adding a Comment pertaining to advice given by an attorney about activities involving marijuana that are permitted by Maryland law but forbidden by other law, as follows:

Rule 19-301.2. SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND ATTORNEY (1.2)

(a) Subject to sections (c) and (d) of this Rule, an attorney shall abide by a client's decisions concerning the objectives of the representation and, when appropriate, shall consult with the client as to the means by which they are to be pursued. An attorney may take such action on behalf of the client as is impliedly authorized to carry out the representation. An attorney shall abide by a client's decision whether to settle a matter. In a criminal case, the attorney shall abide by the client's decision, after consultation with the attorney, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) An attorney's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral

views or activities.

(c) An attorney may limit the scope of the representation in accordance with applicable Maryland Rules if (1) the limitation is reasonable under the circumstances, (2) the client gives informed consent, and (3) the scope and limitations of any representation, beyond an initial consultation or brief advice provided without a fee, are clearly set forth in a writing, including any duty on the part of the attorney under Rule 1-324 to forward notices to the client.

(d) An attorney shall not counsel a client to engage, or assist a client, in conduct that the attorney knows is criminal or fraudulent, but an attorney may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

COMMENT

Scope of Representation - [1] Both attorney and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the attorney's professional obligations. Within those limits, a client also has a right to consult with the attorney about the means to be used in pursuing those objectives. At the same time, an attorney is not required to pursue objectives or employ means simply because a client may wish that the attorney do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-attorney relationship partakes of a joint undertaking. In questions of means, the attorney should assume responsibility for technical and legal tactical issues, but

should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected.

[2] On occasion, however, an attorney and a client may disagree about the means to be used to accomplish the client's objectives. Because of the varied nature of the matters about which an attorney and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the attorney. The attorney should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the attorney has a fundamental disagreement with the client, the attorney may withdraw from the representation. See Rule 19-301.16 (b)(4) (1.16). Conversely, the client may resolve the disagreement by discharging the attorney. See Rule 19-301.16 (a)(3) (1.16).

[3] At the outset of a representation, the client may authorize the attorney to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 19-301.4 (1.4), an attorney may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the attorney’s duty to abide by the client's decisions is to be guided by reference to Rule 19-301.14 (1.14).

Independence from Client's Views or Activities - [5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation - [6] The scope of services to be provided by an attorney may be limited by agreement with the client or by the terms under which the attorney’s services are made available to the client. When an attorney has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited

representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the attorney regards as repugnant or imprudent.

[7] Although this Rule affords the attorney and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the attorney and client may agree that the attorney's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt an attorney from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 19-301.1 (1.1).

[8] An attorney and a client may agree that the scope of the representation is to be limited to clearly defined specific tasks or objectives, including: (1) without entering an appearance, filing papers, or otherwise participating on the client's behalf in any judicial or administrative proceeding, (i) giving legal advice to the client regarding the client's rights, responsibilities, or obligations with respect to particular matters, (ii) conducting factual investigations for the client, (iii) representing the client in settlement negotiations or in private alternative dispute resolution proceedings, (iv) evaluating and advising the client with regard to settlement options or proposed agreements, or (v) drafting documents, performing legal research, and providing advice that the client or another attorney appearing for the client may use in a judicial or administrative proceeding; or (2) in accordance with applicable Maryland Rules, representing the client in discrete judicial or administrative proceedings, such as a court-ordered alternative dispute resolution proceeding, a pendente lite proceeding, or proceedings on a temporary restraining order, a particular motion, or a specific issue in a multi-issue action or proceeding. Before entering into such an agreement, the attorney shall fully and fairly inform the client

of the extent and limits of the attorney's obligations under the agreement, including any duty on the part of the attorney under Rule 1-324 to forward notices to the client.

[9] Representation of a client in a collaborative law process is a type of permissible limited representation. It requires a collaborative law participation agreement that complies with the requirements of Code, Courts Article, §3-1902 and Rule 17-503 (b) and is signed by all parties after informed consent.

[10] All agreements concerning an attorney's representation of a client must accord with the Maryland Attorneys' Rules of Professional Conduct and other law. See, e.g., Rule 19-301.1 (1.1), 19-301.8 (1.8) and 19-305.6 (5.6).

Criminal, Fraudulent and Prohibited Transactions - [11] Section (d) of this Rule prohibits an attorney from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the attorney from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make an attorney a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[12] Maryland enacted a medical marijuana law in 2013. See Code, Health General Article, §13-3301 et seq. As a matter of State law, some medical marijuana activities are permissible, and are subject to regulation. Notwithstanding Maryland law, the Federal Controlled Substances Act, 21 U.S.C. §§801 - 904, continues to criminalize the production, use, and distribution of marijuana, even in the context of medical use. As of 2014, the federal government has taken the position, however, that it generally does not wish to interfere with retail sales of medical marijuana permitted under State law.

In this narrow context, an attorney may counsel a client about compliance with the State's medical marijuana law without violating Rule 19-301.2 (d) and provide legal services in connection with business activities permitted by the State statute, provided that the attorney also advises the client about the legal consequences, under other applicable law, of the

client's proposed course of conduct.

~~[12]~~ [13] When the client's course of action has already begun and is continuing, the attorney's responsibility is especially delicate. The attorney is required to avoid assisting the client, for example, by drafting or delivering documents that the attorney knows are fraudulent or by suggesting how the wrongdoing might be concealed. An attorney may not continue assisting a client in conduct that the attorney originally supposed was legally proper but then discovers is criminal or fraudulent. The attorney must, therefore, withdraw from the representation of the client in the matter. See Rule 19-301.16 (a) (1.16). In some cases withdrawal alone might be insufficient. It may be necessary for the attorney to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rules 19-301.6 (1.6), 19-304.1 (4.1).

~~[13]~~ [14] Where the client is a fiduciary, the attorney may be charged with special obligations in dealings with a beneficiary.

~~[14]~~ [15] Section (d) of this Rule applies whether or not the defrauded party is a party to the transaction. Hence, an attorney must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Section (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of section (d) of this Rule recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

~~[15]~~ [16] If an attorney comes to know or reasonably should know that a client expects assistance not permitted by the Maryland Attorneys' Rules of Professional Conduct or other law or if the attorney intends to act contrary to the client's instructions, the attorney must consult with the client regarding the limitations on the attorney's conduct. See Rule 19-301.4 (a)(4) (1.4).

Model Rules Comparison - Rule 19-301.2 (1.2) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for wording changes in Rule 19-301.2 (a) (1.2), the addition of Comments [8], ~~and~~

[9], and [12], and the retention of existing Maryland language in Comment [1].

REPORTER'S NOTE

A new Comment [12] is proposed to be added to Rule 19-301.2 to address an attorney's ethical obligation for advising clients on conducting medical marijuana activities. This topic was addressed by the Maryland State Bar Association's Committee on Ethics in Ethics Docket 2016-10, which concluded that, generally, an attorney could advise a client without running afoul of the Rules of Professional Conduct, with several caveats.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-307.4 by deleting the second sentence of paragraph (a) and by revising the Model Rule Comparison, as follows:

Rule 19-307.4. COMMUNICATION OF FIELDS OF PRACTICE (7.4)

(a) An attorney may communicate the fact that the attorney does or does not practice in particular fields of law, subject to the requirements of Rule 19-307.1 (7.1). ~~An attorney shall not hold himself or herself out publicly as a specialist.~~

(b) An attorney admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

COMMENT

[1] This Rule permits an attorney to indicate areas of practice in communications about the attorney's services; for example, in a telephone directory or other advertising. If attorney practices only in such fields, or will not accept matters except in such fields, the attorney is permitted so to indicate.

[2] Section (b) of this Rule recognizes the long-established policy of the Patent and Trademark Office for the designation of attorneys practicing before the Office.

Model Rules Comparison - This Rule ~~substantially retains existing Maryland language and does not adopt Ethics 2000 Amendments to the~~ adopts Rule 7.4 (a) and (b) of the ABA Model

Rules of Professional Conduct, ~~with the exception of: 1) adding ABA Rule 7.4 (c) (incorporated as Rule 19-307.4 (b) (7.4) above); 2) the first sentence of ABA Comment [2] (included as Comment [2] above)~~ and expressly makes section (a) "subject to the requirement of Rule 19-307.1 (7.1)." The substance of the first two sentences of the ABA Comment on Rule 7.4 (a) is included in Comment [1], and the ABA Comment on Rule 7.4 (b) is included as Comment [2].

REPORTER'S NOTE

To address concerns expressed in a concurring Opinion in *AGC v. Zhang*, 440 Md. 128 (2016), the Rules Committee recommends that the second sentence of Rule 19-307.4 (a) be deleted. The Committee is exploring and studying proposals for further revision of Rule 19-307.4 and related Rules. It recommends the current amendment as an interim measure until the full study can be completed.