

IN THE COURT OF APPEALS OF MARYLAND

R U L E S O R D E R

This Court's Standing Committee on Rules of Practice and Procedure having submitted its One Hundred Fifty-Seventh Report to the Court recommending adoption of proposed new Rules 9-205.1 and 16-804.1; new Forms 9-102.1, 9-102.2, 9-102.3, 9-102.4, 9-102.5, 9-102.6, 9-102.7, 9-102.8, 9-102.9, and 9-102.10; and new Appendix: Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access and proposed amendments to Rules 1-101, 1-104, 1-202, 2-126, 2-201, 2-341, 2-504, 2-532, 2-533, 2-534, 2-535, 2-641, 2-644, 2-645, 2-652, 3-126, 3-201, 3-641, 3-644, 4-214, 4-217, 4-261, 4-342, 4-343, 4-345, 4-347 4-642, 5-615, 7-112, 8-423, 8-605.1, 9-101, 9-102, 9-103, 9-104, 9-105, 9-106, 9-107, 9-108, 9-109, 9-110, 9-111, 9-112, 9-113, 9-203, 14-206, 16-109, 16-803, 16-804, 16-805, 16-806, 16-808, 16-811, 16-819 (d), 16-819 (e), 16-903, 16-1002, and 16-1006; Appendix: Maryland Code of Conduct for Court Interpreters; and Appendix: Maryland Lawyers' Rules of Professional Conduct, Preamble and Scope and the Comments to Rules 1.7, 1.14, and 2.1, all as set forth in that Report published in the *Maryland Register*, Vol. 34, Issue 2, pages 74 - 135 (January 19, 2007); and

This Court having considered at an open meeting, notice of which was posted as prescribed by law, all those proposed rules changes, together with the comments received, and making certain amendments to the proposed rules changes on its own motion, it is this 8th day of May, 2007,

ORDERED, by the Court of Appeals of Maryland, that new Rules 9-205.1 and 16-804.1 and new Appendix: Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access be, and they are hereby, adopted in the form previously published; and it is further

ORDERED that amendments to Rules 1-104, 1-202, 2-126, 2-201, 2-341, 2-504, 2-532, 2-533, 2-534, 2-535, 2-641, 2-644, 2-645, 2-652, 3-126, 3-201, 3-641, 3-644, 4-214, 4-217, 4-261, 4-342, 4-343, 4-345, 4-347 4-642, 5-615, 7-112, 8-423, 8-605.1, 9-203, 14-206, 16-109, 16-803, 16-804, 16-805, 16-806, 16-808, 16-811, 16-819 (d), 16-819 (e), 16-903, 16-1002, and 16-1006; Appendix: Maryland Code of Conduct for Court Interpreters; and Appendix: Maryland Lawyers' Rules of Professional Conduct, Preamble and Scope and the Comments to Rules 1.7 and 1.14 be, and they are

hereby, adopted in the form previously published; and it is further

ORDERED that amendments to Appendix: Maryland Lawyers' Rules of Professional Conduct, Comment to Rule 2.1 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that consideration of proposed amendments to Rules 1-101, 9-101, 9-102, 9-103, 9-104, 9-105, 9-106, 9-107, 9-108, 9-109, 9-110, 9-111, 9-112, and 9-113 and proposed new Forms 9-102.1, 9-102.2, 9-102.3, 9-102.4, 9-102.5, 9-102.6, 9-102.7, 9-102.8, 9-102.9, and 9-102.10 be, and it is hereby, deferred pending further study by this Court, and it is further

ORDERED that the rules changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after the 1st day of July, 2007, and insofar as practicable, to all actions then pending; and it is further

ORDERED that a copy of this Order be published in the next issue of the *Maryland Register*.

/s/ Robert M. Bell

Robert M. Bell

/s/ Irma S. Raker

Irma S. Raker

/s/ Dale R. Cathell

Dale R. Cathell

* /s/ Glenn T. Harrell, Jr.

Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia

Lynne A. Battaglia

/s/ Clayton Greene, Jr.

Clayton Greene, Jr.

* Judge Harrell declined to approve for adoption of new Rule 16-804.1 and amendments to Rules 16-803, 16-804, 16-805, 16-806, and 16-808.

Filed: May 8, 2007

/s/ Alexander L. Cummings

Clerk
Court of Appeals of Maryland

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 100 - APPLICABILITY AND CITATION

AMEND Rule 1-104 to add a Committee note, as follows:

Rule 1-104. UNREPORTED OPINIONS

. . .

(b) Citation

An unreported opinion of either Court may be cited in either Court for any purpose other than as precedent within the rule of stare decisis or as persuasive authority. In any other court, an unreported opinion of either Court may be cited only (1) when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, (2) in a criminal action or related proceeding involving the same defendant, or (3) in a disciplinary action involving the same respondent. A party who cites an unreported opinion shall attach a copy of it to the pleading, brief, or paper in which it is cited.

Committee note: A request that an unreported opinion be designated for reporting is governed by Rule 8-605.1 (b).

Source: This Rule is derived from former Rule 8-114, ~~and is which was~~ derived from former Rules 1092 c and 891 a 2.

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-202 (m) to make a correction, as follows:

Rule 1-202. DEFINITIONS

. . .

(m) Judge

"Judge" means a judge of a court of this State and refers, as applicable under the circumstances, to a judge of ~~(1)~~ the court (1) to which the title, chapter, or rule applies or (2) in which the particular action or proceeding has been filed or properly could be filed.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-126 to add a Committee note following section (e) and to make a certain stylistic change, as follows:

Rule 2-126. PROCESS - RETURN

. . .

(e) Return to Include Process

A return shall include a copy of the process if served ~~and~~
or the original process if not served.

Committee note: Rule 1-202 defines "process" as "any written order issued by a court to secure compliance with its commands or to require action by any person and includes a summons, subpoena, an order of publication, a commission or other writ."

. . .

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

AMEND Rule 2-201 to add a cross reference at the end of the Rule, as follows:

Rule 2-201. REAL PARTY IN INTEREST

Every action shall be prosecuted in the name of the real party in interest, except that an executor, administrator, personal representative, guardian, bailee, trustee of an express trust, person with whom or in whose name a contract has been made for the benefit of another, receiver, trustee of a bankrupt, assignee for the benefit of creditors, or a person authorized by statute or rule may bring an action without joining the persons for whom the action is brought. When a statute so provides, an action for the use or benefit of another shall be brought in the name of the State of Maryland. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for joinder or substitution of the real party in interest. The joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Cross reference: As to filing papers in an action in the name of "John Doe," see *Doe v. Shady Grove Hospital*, 89 Md. App. 351 (1991).

Source: This Rule is derived from former Rule 203 a, b, and c and the 1966 version of Fed. R. Civ. P. 17 (a).

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

AMEND Rule 2-341 to provide that if there is a scheduling order that sets a date for filing an amendment to a pleading without leave of court, the date is that set forth in the scheduling order; to allow an amendment to a pleading without leave of court no later than 30 days before a scheduled trial date in an action in which there is no scheduling order; and to add a case reference to the Committee note that follows section (b), as follows:

Rule 2-341. AMENDMENT OF PLEADINGS

(a) ~~Prior to 15 Days of Trial Date~~ Without Leave of Court

A party may file an amendment to a pleading ~~at any time prior to~~ without leave of court by the date set forth in a scheduling order or, if there is no scheduling order, 60 no later than 30 days ~~of before~~ a scheduled trial date. Within 15 days after service of an amendment, any other party to the action may file a motion to strike setting forth reasons why the court should not allow the amendment. If an amendment introduces new facts or varies the case in a material respect, an adverse party who wishes to contest new facts or allegations shall file a new or additional answer to the amendment within the time remaining to answer the original pleading or within 15 days after service

of the amendment, whichever is later. If no new or additional answer is filed within the time allowed, the answer previously filed shall be treated as the answer to the amendment.

(b) ~~Within 15 days of Trial Date and Thereafter~~ With Leave of Court

~~Within 15 days of a scheduled trial date or after trial has commenced, a~~ A party may file an amendment to a pleading after the dates set forth in section (a) of this Rule only ~~by written consent of the adverse party or by~~ with leave of court. If the amendment introduces new facts or varies the case in a material respect, the new facts or allegations shall be treated as having been denied by the adverse party. The court shall not grant a continuance or mistrial unless the ends of justice so require.

Committee note: ~~By leave of court, the~~ The court may grant leave to amend the amount sought in a demand for a money judgment after a jury verdict is returned. See *Falcinelli v. Cardascia*, 339 Md. 414 (1995).

. . .

Source: This Rule is derived as follows:

Section (a) is derived in part from former Rule 320 and is in part new.

Section (b) is new and is derived in part from former Rule 320 e.

Section (c) is derived from sections a 2, 3, 4, b 1 and d 5 of former Rule 320 and former Rule 379.

Section (d) is new.

Section (e) is derived from the 2001 version of L.R. 103 (6)(c) of the Rules of the United States District Court for the District of Maryland.

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

AMEND Rule 2-504 to require that the date by which all dispositive motions must be filed be no earlier than 15 days after the date by which all discovery must be completed, to transfer the contents of subsection (b)(2)(C) to subsection (b)(1), to add to subsection (b)(1) a date by which amendments to pleadings are allowed as of right, to add to the permitted contents of a scheduling order an order appointing child counsel under certain circumstances, to provide that the scheduling order controls the subsequent course of the action, and to require a modification of a scheduling order to prevent injustice, as follows:

Rule 2-504. SCHEDULING ORDER

(a) Order Required

(1) Unless otherwise ordered by the County Administrative Judge for one or more specified categories of actions, the court shall enter a scheduling order in every civil action, whether or not the court orders a scheduling conference pursuant to Rule 2-504.1.

(2) The County Administrative Judge shall prescribe the general format of scheduling orders to be entered pursuant to this Rule. A copy of the prescribed format shall be furnished to

the Chief Judge of the Court of Appeals.

(3) Unless the court orders a scheduling conference pursuant to Rule 2-504.1, the scheduling order shall be entered as soon as practicable, but no later than 30 days after an answer is filed by any defendant. If the court orders a scheduling conference, the scheduling order shall be entered promptly after conclusion of the conference.

(b) Contents of Scheduling Order

(1) Required

A scheduling order shall contain:

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

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

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

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

(E) a date by which all dispositive motions must be filed, which shall be no earlier than 15 days after the date by which all discovery must be completed;

(F) a date by which any additional parties must be joined;

(G) a date by which amendments to the pleadings are allowed

as of right; and

~~(F)~~ (H) any other matter resolved at a scheduling conference held pursuant to Rule 2-504.1.

(2) Permitted

A scheduling order may also contain:

(A) any limitations on discovery otherwise permitted under these rules, including reasonable limitations on the number of interrogatories, depositions, and other forms of discovery;

(B) the resolution of any disputes existing between the parties relating to discovery;

~~(C) a date by which any additional parties must be joined;~~

~~(D)~~ (C) a specific referral to or direction to pursue an available and appropriate form of alternative dispute resolution, including a requirement that individuals with authority to settle be present or readily available for consultation during the alternative dispute resolution proceeding, provided that the referral or direction conforms to the limitations of Rule 2-504.1
(e);

~~(E)~~ (D) an order designating or providing for the designation of a neutral expert to be called as the court's witness;

(E) in an action involving child custody or child access, an order appointing child's counsel in accordance with Rule 9-205.1;

(F) a further scheduling conference or pretrial conference date; and

(G) any other matter pertinent to the management of the action.

(c) Modification of Order

The scheduling order controls the subsequent course of the action but shall be modified by the court to prevent injustice.

Cross reference: See Rule 5-706 for authority of the court to appoint expert witnesses.

Source: This Rule is new.

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

AMEND Rule 2-532 to allow certain prematurely filed motions,
as follows:

Rule 2-532. MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

. . .

(b) Time for Filing

The motion shall be filed within ten days after entry of judgment on the verdict or, if no verdict is returned, within ten days after the discharge of the jury. If the court reserves ruling on a motion for judgment made at the close of all the evidence, that motion becomes a motion for judgment notwithstanding the verdict if the verdict is against the moving party or if no verdict is returned. A motion for judgment notwithstanding the verdict filed after the announcement or signing by the trial court of a judgment or the return of a verdict 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.

Cross reference: See Rule 8-205 requiring notice to the Clerk of the Court of Special Appeals of information not disclosed in an information report regarding the filing of a motion under this Rule, or its withdrawal or disposition.

. . .

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

AMEND Rule 2-533 to allow certain prematurely filed motions,
as follows:

Rule 2-533. MOTION FOR NEW TRIAL

(a) Time for Filing

Any party may file a motion for new trial within ten days after entry of judgment. A party whose verdict has been set aside on a motion for judgment notwithstanding the verdict or a party whose judgment has been amended on a motion to amend the judgment may file a motion for new trial within ten days after entry of the judgment notwithstanding the verdict or the amended judgment. A motion for new trial filed after the announcement or signing by the trial court of a judgment or the return of a verdict 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.

Cross reference: See Rule 8-205 requiring notice to the Clerk of the Court of Special Appeals of information not disclosed in an information report regarding the filing of a motion under this Rule, or its withdrawal or disposition.

. . .

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

AMEND Rule 2-534 to allow certain prematurely filed motions,
as follows:

Rule 2-534. MOTION TO ALTER OR AMEND A JUDGMENT -- COURT
DECISION

In an action decided by the court, on motion of any party
filed within ten days after entry of judgment, the court may open
the judgment to receive additional evidence, may amend its
findings or its statement of reasons for the decision, may set
forth additional findings or reasons, may enter new findings or
new reasons, may amend the judgment, or may enter a new judgment.
A motion to alter or amend a judgment may be joined with a motion
for new trial. A motion to alter or amend a judgment 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.

Cross reference: See Rule 8-205 requiring notice to the Clerk of
the Court of Special Appeals of information not disclosed in an
information report regarding the filing of a motion under this
Rule, or its withdrawal or disposition.

Source: This Rule is derived from the 1963 version of Fed. R.
Civ. P. 52 (b) and the 1966 version of Fed. R. Civ. P. 59 (a).

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

AMEND Rule 2-535 to allow certain prematurely filed motions,
as follows:

Rule 2-535. REVISORY POWER

(a) Generally

On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict 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.

. . .

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

AMEND Rule 2-641 to add a cross reference at the end of the Rule, as follows:

Rule 2-641. WRIT OF EXECUTION - ISSUANCE AND CONTENT

. . .

(c) Transmittal to Sheriff; Bond

Upon issuing a writ of execution or receiving one from the clerk of another county, the clerk shall deliver the writ and instructions to the sheriff. The sheriff shall endorse on the writ the exact hour and date of its receipt and shall maintain a record of actions taken pursuant to it. If the instructions direct the sheriff to remove the property from the premises where found or to exclude others from access to or use of the property, the sheriff may require the judgment creditor to file with the sheriff a bond with security approved by the sheriff for the payment of any expenses that may be incurred by the sheriff in complying with the writ.

Cross reference: For execution of a judgment against the property of a corporation, joint stock company, association, limited liability company, limited liability partnership, or limited liability limited partnership for the amount of fines or costs awarded against it in a criminal proceeding, see Code, Criminal Procedure Article, §4-203.

. . .

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

AMEND Rule 2-644 to add a cross reference at the end of the Rule, as follows:

Rule 2-644. SALE OF PROPERTY UNDER LEVY

. . .

(g) Report to the Court

The sheriff shall file a report stating the property sold, the purchasers, the amount of the proceeds, and the distribution of the proceeds.

Cross reference: For sale of the property of a corporation, joint stock company, association, limited liability company, limited liability partnership, or limited liability limited partnership on an execution of a judgment against it for the amount of fines or costs awarded against it in a criminal proceeding, see Code, Criminal Procedure Article, §4-203.

. . .

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

AMEND Rule 2-645 to correct an internal reference, as follows:

Rule 2-645. GARNISHMENT OF PROPERTY - GENERALLY

. . .

(h) Interrogatories to Garnishee

The judgment creditor may serve interrogatories directed to the garnishee pursuant to Rule 2-421. The interrogatories shall contain a notice to the garnishee that, unless answers are served within 30 days after service of the interrogatories or within the time for filing an answer to the writ, whichever is later, the garnishee may be held in contempt of court. The interrogatories shall also inform the garnishee that the garnishee must file a notice with the court pursuant to Rule 2-401 ~~(c)~~ (d) at the time the answers are served. If the garnishee fails to serve timely answers to interrogatories, the court, upon petition of the judgment creditor and proof of service of the interrogatories, may enter an order in compliance with Rule 15-206 treating the failure to answer as a contempt and may require the garnishee to pay reasonable attorney's fees and costs.

. . .

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

AMEND Rule 2-652 to correct an obsolete cross reference, as follows:

Rule 2-652. ENFORCEMENT OF ATTORNEY'S LIENS

. . .

(c) Adjudication of Rights and Lien Disputes

(1) When a Circuit Court Action has been Filed

If a lien asserted pursuant to this Rule relates to an action that has been filed in a circuit court of this State, on motion filed by the attorney, the attorney's client in the action, or any person who has received a notice pursuant to section (b) of this Rule, the court shall adjudicate the rights of the parties in relation to the lien, including the attorney's entitlement to a lien, any dispute as to the papers subject to a lien under section (a) of this Rule, and the amount of the attorney's claim.

(2) When no Circuit Court Action has been Filed

If a lien is asserted pursuant to this Rule and a related action has not been filed in a circuit court of this State, the attorney, the attorney's client, or any person who has received a notice pursuant to section (b) of this Rule may file a complaint with a circuit court to adjudicate the rights of the

parties in relation to the lien, including the attorney's entitlement to a lien, any dispute as to the papers subject to a lien under section (a) of this Rule, and the amount of the attorney's claim.

Cross reference: For venue of a complaint filed pursuant to this section, see Code, Courts ~~and Judicial Proceedings~~ Article, ~~§§6-201 - 204~~ §§6-201 - 203.

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MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE--DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-126 to add a Committee note following section (e) and to make a certain stylistic change, as follows:

Rule 3-126. PROCESS - RETURN

. . .

(e) Return to Include Process

A return shall include a copy of the process if served ~~and~~
or the original process if not served.

Committee note: Rule 1-202 defines "process" as "any written order issued by a court to secure compliance with its commands or to require action by any person and includes a summons, subpoena, an order of publication, a commission or other writ."

. . .

MARYLAND RULES OF PROCEDURE
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT
CHAPTER 200 - PARTIES

AMEND Rule 3-201 to add a cross reference at the end of the Rule, as follows:

Rule 3-201. REAL PARTY IN INTEREST

Every action shall be prosecuted in the name of the real party in interest, except that an executor, administrator, personal representative, guardian, bailee, trustee of an express trust, person with whom or in whose name a contract has been made for the benefit of another, receiver, trustee of a bankrupt, assignee for the benefit of creditors, or a person authorized by statute or rule may bring an action without joining the persons for whom the action is brought. When a statute so provides, an action for the use or benefit of another shall be brought in the name of the State of Maryland. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for joinder or substitution of the real party in interest. The joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Cross reference: As to filing papers in an action in the name of "John Doe," see *Doe v. Shady Grove Hospital*, 89 Md. App. 351 (1991).

Source: This Rule is derived from former M.D.R. 203 and the 1966 version of the Fed. R. Civ. P. 17 (a).

MARYLAND RULES OF PROCEDURE
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT
CHAPTER 600 - JUDGMENT

AMEND Rule 3-641 to add a cross reference at the end of the Rule, as follows:

Rule 3-641. WRIT OF EXECUTION - ISSUANCE AND CONTENT

. . .

(c) Transmittal to Sheriff; Bond

Upon issuing a writ of execution or receiving one from the clerk of another county, the clerk shall deliver the writ and instructions to the sheriff. The sheriff shall endorse on the writ the exact hour and date of its receipt and shall maintain a record of actions taken pursuant to it. If the instructions direct the sheriff to remove the property from the premises where found or to exclude others from access to or use of the property, the sheriff may require the judgment creditor to file with the sheriff a bond with security approved by the sheriff for the payment of any expenses that may be incurred by the sheriff in complying with the writ.

Cross reference: For execution of a judgment against the property of a corporation, joint stock company, association, limited liability company, limited liability partnership, or limited liability limited partnership for the amount of fines or costs awarded against it in a criminal proceeding, see Code, Criminal Procedure Article, §4-203.

. . .

MARYLAND RULES OF PROCEDURE
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT
CHAPTER 600 - JUDGMENT

AMEND Rule 3-644 to add a cross reference at the end of the Rule, as follows:

Rule 3-644. SALE OF PROPERTY UNDER LEVY

. . .

(g) Report to the Court

The sheriff shall file a report stating the property sold, the purchasers, the amount of the proceeds, and the distribution of the proceeds.

Cross reference: For sale of the property of a corporation, joint stock company, association, limited liability company, limited liability partnership, or limited liability limited partnership on an execution of a judgment against it for the amount of fines or costs awarded against it in a criminal proceeding, see Code, Criminal Procedure Article, §4-203.

Source: This Rule is new.

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

AMEND Rule 4-214 to correct an obsolete cross reference, as follows:

Rule 4-214. DEFENSE COUNSEL

. . .

Cross reference: ~~Code (1957, 1987 Repl. Vol.), Article 10, §45 (Termination of Appearance)~~ Code, Courts Article, §6-407 (Automatic Termination of Appearance of Attorney).

. . .

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

AMEND Rule 4-217 to add a cross reference after subsections (d)(1) and (d)(2), as follows:

Rule 4-217. BAIL BONDS

. . .

(d) Qualification of Surety

(1) In General

The Chief Clerk of the District Court shall maintain a list containing: (A) the names of all surety insurers who are in default, and have been for a period of 60 days or more, in the payment of any bail bond forfeited in any court in the State, (B) the names of all bail bondsmen authorized to write bail bonds in this State, and (C) the limit for any one bond specified in the bail bondsman's general power of attorney on file with the Chief Clerk of the District Court.

Cross reference: For penalties imposed on surety insurers in default, see Code, Insurance Article, §21-103 (a).

(2) Surety Insurer

No bail bond shall be accepted if the surety on the bond is on the current list maintained by the Chief Clerk of the District Court of those in default. No bail bond executed by a

surety insurer directly may be accepted unless accompanied by an affidavit reciting that the surety insurer is authorized by the Insurance Commissioner of Maryland to write bail bonds in this State.

Cross reference: For the obligation of the District Court Clerk to notify the Insurance Commissioner concerning a surety insurer who fails to resolve or satisfy bond forfeitures, see Code, Insurance Article, §21-103 (b).

(3) Bail Bondsman

No bail bond executed by a bail bondsman may be accepted unless the bondsman's name appears on the most recent list maintained by the Chief Clerk of the District Court, the bail bond is within the limit specified in the bondsman's general power of attorney as shown on the list or in a special power of attorney filed with the bond, and the bail bond is accompanied by an affidavit reciting that the bail bondsman:

(A) is duly licensed in the jurisdiction in which the charges are pending, if that jurisdiction licenses bail bondsmen;

(B) is authorized to engage the surety insurer as surety on the bail bond pursuant to a valid general or special power of attorney; and

(C) holds a valid license as an insurance broker or agent in this State, and that the surety insurer is authorized by the Insurance Commissioner of Maryland to write bail bonds in this State.

Cross reference: Code, Criminal Procedure Article, §5-203 and Rule 16-817 (Appointment of Bail Bond Commissioner - Licensing and Regulation of Bail Bondsmen).

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

AMEND Rule 4-261 to allow a deposition in an action in the District Court under the same circumstances under which a deposition in a circuit court may be taken, as follows:

Rule 4-261. DEPOSITIONS

(a) ~~Availability in District Court~~

~~In District Court a deposition may be taken only with the consent of the State and the defendant and upon order of court.~~

~~(b) Availability in Circuit Court~~

~~In a circuit court the~~ The parties may agree, without an order of court, to take a deposition of a witness, subject to the right of the witness to move for a protective order under section ~~(g)~~ (f) of this Rule. Without agreement, the court, on motion of a party, may order that the testimony of a witness be taken by deposition if the court is satisfied that the witness may be unable to attend a trial or hearing, that the testimony may be material, and that the taking of the deposition is necessary to prevent a failure of justice.

~~(c)~~ (b) Contents of Order for Deposition

An order for a deposition shall state the name and address of each witness to be examined and the time, date, and place of examination. It shall also designate any documents, recordings,

photographs, or other tangible things, not privileged, that are to be produced at the time of the deposition. An order for a deposition shall include such other matters as the court may order, including any applicable provision of section ~~(g)~~ (f) of this Rule.

~~(d)~~ (c) Subpoena

Upon entry by the court of an order for a deposition or upon request pursuant to stipulation entered into under section ~~(b)~~ (a) of this Rule, the clerk of the court shall issue a subpoena commanding the witness to appear at the time, date, and place designated and to produce at the deposition any documents, recordings, photographs, or other tangible things designated in the order of court or in the stipulation.

~~(e)~~ (d) How Taken

. . .

~~(f)~~ (e) Presence of the Defendant

. . .

~~(g)~~ (f) Protective Order

. . .

~~(h)~~ (g) Use

. . .

~~(i)~~ (h) Joint Defendants

. . .

Source: This Rule is derived as follows:

~~Section (a) is new.~~

Section ~~(b)~~ (a) is derived from former Rule 740 a and j.

Section ~~(c)~~ (b) is derived from former Rule 740 c.

Section ~~(d)~~ (c) is derived from former Rule 740 d.
Section ~~(e)~~ (d) is derived from former Rule 740 e.
Section ~~(f)~~ (e) is derived from former Rule 740 f.
Section ~~(g)~~ (f) is derived from former Rule 740 g.
Section ~~(h)~~ (g) is derived from former Rule 740 h.
Section ~~(i)~~ (h) is derived from former Rule 740 i.

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

AMEND Rule 4-342 to add a cross reference after section (g),
as follows:

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

. . .

(g) Reasons

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

Cross reference: For factors related to drug and alcohol abuse
treatment to be considered by the court in determining an
appropriate sentence, see Code, Criminal Procedure Article,
§6-231. For procedures to commit a defendant who has a drug or
alcohol dependency to a treatment program in the Department of
Health and Mental Hygiene as a condition of release after
conviction, see Code, Health General Article, §8-507.

. . .

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

AMEND Rule 4-343 (h) to clarify the capital sentencing form with respect to determinations as to mitigating circumstances and to make stylistic changes, as follows:

Rule 4-343. SENTENCING - PROCEDURE IN CAPITAL CASES

. . .

(h) Form of Written Findings and Determinations

Except as otherwise provided in section (i) of this Rule, the findings and determinations shall be made in writing in the following form:

(CAPTION)

FINDINGS AND SENTENCING DETERMINATION

VICTIM: [Name of murder victim]

Section I

Based upon the evidence, we unanimously find that each of the following statements marked "~~proven~~ proved" has been ~~proven~~ proved BEYOND A REASONABLE DOUBT and that each of those statements marked "not ~~proven~~ proved" has not been ~~proven~~ proved BEYOND A REASONABLE DOUBT.

1. The defendant was a principal in the first degree to the murder.

<u>proven</u> <u>proved</u>	<u>not</u> <u>proven</u> <u>proved</u>
--------------------------------	--

2. The defendant engaged or employed another person to commit the murder and the murder was committed under an agreement or contract for remuneration or the promise of remuneration.

<u>proven</u> <u>proved</u>	<u>not</u> <u>proven</u> <u>proved</u>
--------------------------------	--

3. The victim was a law enforcement officer who, while in the performance of the officer's duties, was murdered by one or more persons, and the defendant was a principal in the second degree who: (A) willfully, deliberately, and with premeditation intended the death of the law enforcement officer; (B) was a major participant in the murder; and (C) was actually present at the time and place of the murder.

<u>proven</u> <u>proved</u>	<u>not</u> <u>proven</u> <u>proved</u>
--------------------------------	--

(If one or more of the above are marked "proven proved," proceed to Section II. If all are marked "not proven proved," proceed to Section VI and enter "Imprisonment for Life.")

Section II

Based upon the evidence, we unanimously find that the following statement, if marked "proven proved," has been proven BY A PREPONDERANCE OF THE EVIDENCE or that, if marked "not proven proved," it has not been proven proved BY A PREPONDERANCE OF THE EVIDENCE.

At the time the murder was committed, the defendant was mentally retarded.

<u>proven</u>	<u>not</u>
<u>proved</u>	<u>proven</u>
	<u>proved</u>

(If the above statement is marked "proven proved," proceed to Section VI and enter "Imprisonment for Life." If it is marked "not proven proved," complete Section III.)

Section III

Based upon the evidence, we unanimously find that each of the following aggravating circumstances that is marked "proven proved" has been proven proved BEYOND A REASONABLE DOUBT and we unanimously find that each of the aggravating circumstances marked "not proven proved" has not been proven proved BEYOND A REASONABLE DOUBT.

1. The victim was a law enforcement officer who, while in the performance of the officer's duties, was murdered by one or more persons.

<u>proven</u>	<u>not</u>
<u>proved</u>	<u>proven</u>
	<u>proved</u>

2. The defendant committed the murder at a time when confined in a correctional facility.

<u>proven</u>	<u>not</u>
<u>proved</u>	<u>proven</u>
	<u>proved</u>

3. The defendant committed the murder in furtherance of an escape from or an attempt to escape from or evade the lawful

custody, arrest, or detention of or by an officer or guard of a correctional facility or by a law enforcement officer.

proven
proved

not
proven
proved

4. The victim was taken or attempted to be taken in the course of a kidnapping or abduction or an attempt to kidnap or abduct.

proven
proved

not
proven
proved

5. The victim was a child abducted in violation of Code, Criminal Law Article, §3-503 (a)(1).

proven
proved

not
proven
proved

6. The defendant committed the murder under an agreement or contract for remuneration or the promise of remuneration to commit the murder.

proven
proved

not
proven
proved

7. The defendant engaged or employed another person to commit the murder and the murder was committed under an agreement or contract for remuneration or the promise of remuneration.

proven
proved

not
proven
proved

8. At the time of the murder, the defendant was under the sentence of death or imprisonment for life.

proven
proved

not
proven
proved

9. The defendant committed more than one offense of murder in the first degree arising out of the same incident.

proven
proved

not
proven
proved

10. The defendant committed the murder while committing or attempting to commit a carjacking, armed carjacking, robbery, under Code, Criminal Law Article, §3-402 or §3-403, arson in the first degree, rape in the first degree, or sexual offense in the first degree.

proven
proved

not
proven
proved

(If one or more of the above are marked "proven proved," complete Section IV. If all of the above are marked "not proven proved," do not complete Sections IV and V and proceed to Section VI and enter "Imprisonment for Life.")

Section IV

~~Based upon the evidence~~ From our consideration of the facts and circumstances of this case, we make the following determinations as to mitigating circumstances:

1. The defendant has not previously (i) been found guilty of a crime of violence; (ii) entered a plea of guilty or nolo

contendere to a charge of a crime of violence; or (iii) been granted probation before judgment for a crime of violence.

(As used in the preceding paragraph, "crime of violence" means abduction, arson in the first degree, carjacking, armed carjacking, escape in the first degree, kidnapping, mayhem, murder, robbery under Code, Criminal Law Article, §3-402 or §3-403, rape in the first or second degree, sexual offense in the first or second degree, manslaughter other than involuntary manslaughter, an attempt to commit any of these offenses, or the use of a handgun in the commission of a felony or another crime of violence.)

(Mark only one.)

(a) We unanimously find ~~by a preponderance of the evidence~~ that it is more likely than not that the above circumstance exists.

(b) We unanimously find ~~by a preponderance of the evidence~~ that it is more likely than not that the above circumstance does not exist.

(c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find ~~by a preponderance of the evidence~~ that it is more likely than not that the above circumstance exists.

2. The victim was a participant in the defendant's conduct or consented to the act which caused the victim's death.

(Mark only one.)

[] (a) We unanimously find ~~by a preponderance of the evidence~~ that it is more likely than not that the above circumstance exists.

[] (b) We unanimously find ~~by a preponderance of the evidence~~ that it is more likely than not that the above circumstance does not exist.

[] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find ~~by a preponderance of the evidence~~ that it is more likely than not that the above circumstance exists.

3. The defendant acted under substantial duress, domination, or provocation of another person, even though not so substantial as to constitute a complete defense to the prosecution.

(Mark only one.)

[] (a) We unanimously find ~~by a preponderance of the evidence~~ that it is more likely than not that the above circumstance exists.

[] (b) We unanimously find ~~by a preponderance of the evidence~~ that it is more likely than not that the above circumstance does not exist.

[] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find ~~by a preponderance of the evidence~~ that it is more likely than not that the above circumstance exists.

4. The murder was committed while the capacity of the defendant to appreciate the criminality of his or her conduct or

to conform his or her conduct to the requirements of law was substantially impaired as a result of mental incapacity, mental disorder, or emotional disturbance.

(Mark only one.)

- (a) We unanimously find ~~by a preponderance of the evidence~~ that it is more likely than not that the above circumstance exists.
- (b) We unanimously find ~~by a preponderance of the evidence~~ that it is more likely than not that the above circumstance does not exist.
- (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find ~~by a preponderance of the evidence~~ that it is more likely than not that the above circumstance exists.

5. The defendant was of a youthful age at the time of the murder.

(Mark only one.)

- (a) We unanimously find ~~by a preponderance of the evidence~~ that it is more likely than not that the above circumstance exists.
- (b) We unanimously find ~~by a preponderance of the evidence~~ that it is more likely than not that the above circumstance does not exist.
- (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find ~~by a preponderance~~

~~of the evidence that it is more likely than not~~ that
the above circumstance exists.

6. The act of the defendant was not the sole proximate cause
of the victim's death.

(Mark only one.)

[] (a) We unanimously find ~~by a preponderance of the evidence~~
that it is more likely than not that the above
circumstance exists.

[] (b) We unanimously find ~~by a preponderance of the evidence~~
that it is more likely than not that the above
circumstance does not exist.

[] (c) After a reasonable period of deliberation, one or more
of us, but fewer than all 12, find ~~by a preponderance~~
~~of the evidence~~ that it is more likely than not that
the above circumstance exists.

7. It is unlikely that the defendant will engage in further
criminal activity that would constitute a continuing threat to
society.

(Mark only one.)

[] (a) We unanimously find ~~by a preponderance of the evidence~~
that it is more likely than not that the above
circumstance exists.

[] (b) We unanimously find ~~by a preponderance of the evidence~~
that it is more likely than not that the above
circumstance does not exist.

[] (c) After a reasonable period of deliberation, one or more

of us, but fewer than all 12, find ~~by a preponderance of the evidence~~ that it is more likely than not that the above circumstance exists.

8. (a) We unanimously find ~~by a preponderance of the evidence~~ that it is more likely than not that the following additional mitigating circumstances exist:

(Use reverse side if necessary)

(b) One or more of us, but fewer than all 12, find ~~by a preponderance of the evidence~~ that it is more likely than not that the following additional mitigating circumstances exist:

(Use reverse side if necessary)

(If the jury unanimously determines in Section IV that no mitigating circumstances exist, do not complete Section V. Proceed to Section VI and enter "Death." If the jury or any juror determines that one or more mitigating circumstances exist, complete Section V.)

"Death."

We unanimously determine the sentence to be _____.

Section VII

If "Imprisonment for Life" is entered in Section VI, answer the following question:

Based upon the evidence, does the jury unanimously determine that the sentence of imprisonment for life previously entered shall be without the possibility of parole?

_____ _____
yes no

~~Foreman~~ Foreperson

Juror 7

Juror 2

Juror 8

Juror 3

Juror 9

Juror 4

Juror 10

Juror 5

Juror 11

Juror 6

Juror 12

or,

JUDGE

• • •

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

AMEND Rule 4-345 to add a Committee note after subsection (e)(2), as follows:

Rule 4-345. SENTENCING -- REVISORY POWER OF COURT

. . .

(e) Modification Upon Motion

(1) Generally

Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

Cross reference: Rule 7-112 (b).

(2) Notice to Victims

The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, §11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided

under Code, Criminal Procedure Article, §11-503 that states (A) that a motion to modify or reduce a sentence has been filed; (B) that the motion has been denied without a hearing or the date, time, and location of the hearing; and (C) if a hearing is to be held, that each victim or victim's representative may attend and testify.

Committee note: The court may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Department of Health and Mental Hygiene at any time if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification, or if the defendant timely filed a motion for modification that was denied. See Code, Health General Article, §8-507.

. . .

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

AMEND Rule 4-347 to add a cross reference after subsection (e)(1), as follows:

Rule 4-347. PROCEEDINGS FOR REVOCATION OF PROBATION

. . .

(e) Hearing

(1) Generally

The court shall hold a hearing to determine whether a violation has occurred and, if so, whether the probation should be revoked. The hearing shall be scheduled so as to afford the defendant a reasonable opportunity to prepare a defense to the charges. Whenever practicable, the hearing shall be held before the sentencing judge or, if the sentence was imposed by a Review Panel pursuant to Rule 4-344, before one of the judges who was on the panel. With the consent of the parties and the sentencing judge, the hearing may be held before any other judge. The provisions of Rule 4-242 do not apply to an admission of violation of conditions of probation.

Cross reference: See *State v. Peterson*, 315 Md. 73 (1989), construing the third sentence of this subsection. For procedures to be followed by the court when a defendant may be incompetent to stand trial in a violation of probation proceeding, see Code, Criminal Procedure Article, §3-104.

(2) Conduct of Hearing

The court may conduct the revocation hearing in an informal manner and, in the interest of justice, may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses. The defendant shall be given the opportunity to admit or deny the alleged violations, to testify, to present witnesses, and to cross-examine the witnesses testifying against the defendant. If the defendant is found to be in violation of any condition of probation, the court shall (A) specify the condition violated and (B) afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment.

Cross reference: See *Hersch and Cleary v. State*, 317 Md. 200 (1989), setting forth certain requirements with respect to admissions of probation violations, and *State v. Fuller*, 308 Md. 547 (1987), regarding the application of the right to confrontation in probation revocation proceedings. For factors related to drug and alcohol abuse treatment to be considered by the court in determining an appropriate sentence, see Code, Criminal Procedure Article, §6-231.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 600 - CRIMINAL INVESTIGATIONS AND
MISCELLANEOUS PROVISIONS

AMEND Rule 4-642 to state who may be present during grand jury proceedings and to add provisions concerning the appointment, oath, and compensation of an interpreter in a grand jury proceeding, as follows:

Rule 4-642. SECRECY

(a) Court Records

Files and records of the court pertaining to criminal investigations shall be sealed and shall be open to inspection only by order of the court.

(b) Hearings

Hearings before the court relating to the conduct of criminal investigations shall be on the record and shall be conducted out of the presence of all persons except those whose presence is necessary.

(c) Grand Jury - Who May be Present

(1) While the Grand Jury is in Session

The following persons may be present while the grand jury is in session: one or more attorneys for the State; the witness being questioned; any stenographer appointed pursuant to Code, Courts Article, §2-503; and, when needed, interpreters, so

long as an audio recording is made if the interpreter is present for a witness.

(2) During Deliberations and Voting

No person other than the jurors, and any interpreter needed to assist a hearing-impaired or speech-impaired juror, may be present while the grand jury is deliberating or voting.

(3) Appointment, Oath, and Compensation of Interpreter

If the State's Attorney requests that an interpreter be appointed for a witness or juror in a grand jury proceeding, the court shall appoint an interpreter. Before acting as an interpreter in a grand jury proceeding, the interpreter shall make oath as provided in Rule 16-819 (d)(3). Compensation for the interpreter shall be in accordance with Code, Courts Article, §9-114.

~~(c)~~ (d) Motion for Disclosure

Unless disclosure of matters occurring before the grand jury is permitted by law without court authorization, a motion for disclosure of such matters shall be filed in the circuit court where the grand jury convened. If the moving party is a State's Attorney who is seeking disclosure for enforcement of the criminal law of a state or the criminal law of the United States, the hearing shall be ex parte. In all other cases, the moving party shall serve a copy of the motion upon the State's Attorney, the parties to the judicial proceeding if disclosure is sought in connection with such a proceeding, and such other persons as the court may direct. The court shall conduct a hearing if requested

within 15 days after service of the motion.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 600 - WITNESSES

AMEND Rule 5-615 to make subsection (b)(5) applicable to all crimes and delinquent acts to the extent required by statute and to add to the cross reference following subsection (b)(5), as follows:

Rule 5-615. EXCLUSION OF WITNESSES

. . .

(b) Witnesses not to be Excluded

A court shall not exclude pursuant to this Rule

- (1) a party who is a natural person,
- (2) an officer or employee of a party that is not a natural person designated as its representative by its attorney,
- (3) an expert who is to render an opinion based on testimony given at the trial,
- (4) a person whose presence is shown by a party to be essential to the presentation of the party's cause, such as an expert necessary to advise and assist counsel, or
- (5) a victim of a crime ~~of violence or the~~ or a delinquent act, including any representative of such a deceased or disabled victim, to the extent required by statute.

Cross reference: Code, Courts Article, §3-8A-13; Criminal Procedure Article, §11-102 and §11-302; Rule 4-231.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 - APPEALS FROM THE DISTRICT COURT TO

THE CIRCUIT COURT

AMEND Rule 7-112 to provide that an appellant may dismiss an appeal at any time before the commencement of trial, as follows:

Rule 7-112. APPEALS HEARD DE NOVO

. . .

(f) ~~Withdrawal~~ Dismissal of Appeal; Entry of Judgment

(1) An appellant may dismiss an appeal at any time before the commencement of trial. The court shall dismiss ~~An an~~ appeal ~~shall be considered withdrawn if the appellant files a notice withdrawing the appeal or~~ if the appellant fails to appear as required for trial or any other proceeding on the appeal.

(2) Upon ~~a withdrawal of the~~ dismissal of an appeal, ~~the circuit court shall dismiss the appeal, and the clerk shall promptly return the file to the District Court. Any statement of satisfaction shall be docketed in the District Court.~~

(3) On motion filed in the circuit court within 30 days after entry of a judgment dismissing an appeal, the circuit court, for good cause shown, may reinstate the appeal upon the terms it finds proper. On motion of any party filed more than 30 days after entry of a judgment dismissing an appeal, the court may reinstate the appeal only upon a finding of fraud, mistake, or

irregularity. If the appeal is reinstated, the circuit court shall notify the District Court of the reinstatement and request the District Court to return the file.

(4) If the appeal of a defendant in a criminal case who was sentenced to a term of confinement and released pending appeal pursuant to Rule 4-349 ~~withdraws the appeal~~ is dismissed, the circuit court shall (A) issue a warrant directing that the defendant be taken into custody and brought before a judge or commissioner of the District Court or (B) enter an order that requires the defendant to appear before a judge or commissioner. The warrant or order shall identify the District Court case by name and number and shall provide that the purpose of the appearance is the entry of a commitment that conforms to the judgment of the District Court.

. . .

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

AMEND Rule 8-423 to delete the word "ordinary" from section (b) and to provide that the court may reduce the amount of a supersedeas bond under certain circumstances, as follows:

Rule 8-423. SUPERSEDEAS BOND

(a) Condition of Bond

~~A~~ Subject to section (b) of this Rule, a supersedeas bond shall be conditioned upon the satisfaction in full of (1) the judgment from which the appeal is taken, together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, or (2) any modified judgment and costs, interest, and damages entered or awarded on appeal.

(b) Amount of Bond

Unless the parties otherwise agree, the amount of the bond shall be as follows:

(1) Money Judgment Not Otherwise Secured

When the judgment is for the recovery of money not otherwise secured, the amount of the bond ~~ordinarily~~ shall be the sum that will cover the whole amount of the judgment remaining unsatisfied plus interest and costs, except that the court, after

taking into consideration all relevant factors, may reduce the amount of the bond upon making specific findings justifying the amount.

Cross reference: Rule 1-402 (d); *O'Donnell v. McGann*, 310 Md. 342, ~~529 A.2d 372~~ (1987).

(2) Disposition of Property

When the judgment determines the disposition of the property in controversy (as in real actions, replevin, and actions to foreclose mortgages,) or when the property, or the proceeds of its sale, is in the custody of the lower court or the sheriff, the amount of the bond shall be the sum that will secure the amount recovered for the use and detention of the property, interest, costs, and damages for delay.

(3) Other Cases

In any other case, the amount of the bond shall be fixed by the lower court.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 1018 a.

Section (b) is derived from former Rule 1018 b and 1020 a.

MARYLAND RULES OF PROCEDURE
TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS
AND COURT OF SPECIAL APPEALS
CHAPTER 600 - DISPOSITION

AMEND Rule 8-605.1 to add a cross reference to Rule 1-104 and to delete an incorrect cross reference, as follows:

Rule 8-605.1. REPORTING OF OPINIONS OF THE COURT OF SPECIAL APPEALS

(a) Reporting of Opinions

The Court of Special Appeals shall designate for reporting only those opinions that are of substantial interest as precedents.

(b) Request for Reporting of Unreported Opinion

At any time before the mandate issues, the Court of Special Appeals, on its own initiative or at the request of a party or nonparty filed before the date on which the mandate is due to be issued, may designate for reporting an opinion previously designated as unreported. An unreported opinion may not be designated for reporting after the mandate has issued.

Cross reference: See Rule 1-104 ~~Rule 8-606 (f)~~.

Source: This Rule is derived as follows:
Section (a) is derived from Rule 8-113 (a).
Section (b) is new.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 200 - DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT,
AND CHILD CUSTODY

AMEND Rule 9-203 to provide that a financial statement becomes open to public inspection under certain circumstances, to allow a party at any time to make a motion to seal a financial statement, and to add a cross reference, as follows:

Rule 9-203. FINANCIAL STATEMENTS

. . .

(d) Inspection of Financial Statements

Except as provided in this section, inspection of a financial statement filed pursuant to the Rules in this Chapter is governed by Code, State Government Article, §10-617 (a) and (f). A financial statement is open to inspection if it is an exhibit (1) attached to a motion that has been ruled upon by the court or (2) marked for identification at trial, whether or not offered in evidence, and if offered, whether or not admitted. A party who does not want the financial statement open to public inspection pursuant to this section may make a motion at any time to have it sealed.

Cross reference: See Rule 16-1002 (c) and Rule 16-1009.

. . .

MARYLAND RULES OF PROCEDURE
TITLE 9 - FAMILY LAW ACTIONS
CHAPTER 200 - DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT,
AND CHILD CUSTODY

ADD new Rule 9-205.1, as follows:

Rule 9-205.1. APPOINTMENT OF CHILD'S COUNSEL

(a) Applicability

This Rule applies to the appointment of child's counsel in actions involving child custody or child access.

Cross reference: See Code, Family Law Article, §1-202 and the *Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access*.

(b) Factors

In determining whether to appoint child's counsel, the court should consider the nature of the potential evidence to be presented, other available methods of obtaining information, including social service investigations and evaluations by mental health professionals, and available resources for payment. Appointment may be most appropriate in cases involving the following factors, allegations, or concerns:

- (1) request of one or both parties;
- (2) high level of conflict;
- (3) inappropriate adult influence or manipulation;
- (4) past or current child abuse or neglect;

(5) past or current mental health problems of the child or party;

(6) special physical, educational, or mental health needs of the child that require investigation or advocacy;

(7) actual or threatened family violence;

(8) alcohol or other substance abuse;

(9) consideration of terminating or suspending parenting time or awarding custody or visitation to a non-parent;

(10) relocation that substantially reduces the child's time with a parent, sibling, or both; or

(11) any other factor that the court considers relevant.

Committee note: A court should provide for adequate and effective child's counsel in all cases in which an appointment is warranted, regardless of the economic status of the parties. The court should make the appointment as soon as practicable after it determines that the appointment is warranted. A court should appoint only lawyers who have agreed to serve in child custody and child access cases in the assigned role and have been trained in accordance with Guideline 4 of the *Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access*. In making appointments, the court should fairly and equitably distribute cases among all qualified attorneys, taking into account the attorney's availability and caseload. Before asking an attorney to provide representation *pro bono publico* to a child, the court should consider the number of other similar cases the attorney has recently accepted on a *pro bono* basis from the court.

(c) Appointment Order

(1) Content

An order appointing child's counsel shall:

(A) specify whether the attorney is to serve as a Child's Best Interest Attorney, Child's Advocate Attorney, or Child's Privilege Attorney;

(B) authorize the appointed attorney to have reasonable access to the child and to all otherwise privileged or confidential information about the child, without the necessity of any further order of court or the execution of a release;

(C) permit the attorney to participate in discovery under Title 2 of these Rules as though the child were a party;

(D) provide that the service and notice provisions in Title 1 of these Rules apply as though the child were a party;

(E) state any other duties or responsibilities required by the court;

(F) state when the appointment terminates; and

(G) unless the attorney has agreed to serve *pro bono publico*, include provisions concerning compensation for the attorney.

Committee note: The court should write an appointment order in plain language, understandable to non-lawyers.

(2) Copies to Parties and Counsel

The court shall send a copy of the order appointing counsel to each attorney of record and to each party, whether or not represented by an attorney.

Cross reference: As to the attorney's compensation, see Guideline 6 of the *Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access*.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-206 (a) to fix the initially required bond amount at \$25,000 if the sale is to the lienholder or the lienholder's designee, to fix the initially required bond amount at the amount of the sale price if the sale is to someone other than the lienholder or the lienholder's designee, and to allow the lienholder to designate in a writing filed in the proceeding a person to take title on the lienholder's behalf, as follows:

Rule 14-206. PROCEDURE PRIOR TO SALE

(a) Bond

Before making a sale of property to foreclose a lien, the person authorized to make the sale shall file a bond to the State of Maryland conditioned upon compliance with any court order that may be entered in relation to the sale of the property or distribution of the proceeds of the sale. Unless the court orders otherwise, the amount of the bond shall be ~~the amount of the debt plus the estimated expenses of the proceeding~~ \$25,000. If the property is sold to a person other than the holder of the indebtedness or a person designated by the holder in a writing filed in the proceeding to take title on the holder's behalf, the person authorized to make the sale shall increase the amount of the bond, before the sale is ratified, to the amount of the sale

price as set forth in the report of sale. On application by a person having an interest in the property or by the person authorized to make the sale, the court may increase or decrease the amount of the bond pursuant to Rule 1-402 (d).

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MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE,
JUDICIAL DUTIES, ETC.

AMEND Rule 16-109 to restate subsection b 1, to add a Committee note following subsection b 1, to add language to subsection b 3 concerning camera-equipped cellular phones and other similar devices, to add jury rooms to the list of locations to which subsection b 3 is applicable, to add a new subsection b 7 (iii) pertaining to the testimony of child victims, to add a cross reference following subsection c 1, to add a new section d pertaining to certain actions by the presiding judge and the local administrative judge, to revise section f concerning restrictions on extended coverage, to reorganize and renumber the provisions in section g, and to add a Committee note following section g, as follows:

Rule 16-109. PHOTOGRAPHING, RECORDING, BROADCASTING OR
TELEVISIONING IN COURTHOUSES

a. Definitions.

1. "Extended coverage" means any recording or broadcasting of proceedings by the use of television, radio, photographic, or recording equipment by:

(i) the news media, or

(ii) by persons engaged in the preparation of educational films or recordings with the written approval of the presiding judge.

2. "Local administrative judge" means the county administrative judge in the Circuit Court and the district administrative judge in the District Court.

3. "Party" means a named litigant of record who has appeared in the proceeding.

4. "Proceeding" means any trial, hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

5. "Presiding judge" means a trial judge designated to preside over a proceeding which is, or is intended to be, the subject of extended coverage. Where action of a presiding judge is required by this rule, and no trial judge has been designated to preside over the proceeding, "presiding judge" means the local administrative judge. "Presiding judge" in an appellate court means the Chief Judge of that Court, or the senior judge of a panel of which the Chief Judge is not a member.

b. General Provisions.

1. Unless prohibited by law or this Rule, extended coverage of proceedings in the trial and appellate courts of this State is permitted ~~unless prohibited or limited~~ in accordance with this Rule.

Committee note: Code, Criminal Procedure Article, §1-201 prohibits extended coverage of criminal proceedings in a trial court or before a grand jury.

2. Outside a courtroom but within a courthouse or other facility extended coverage is prohibited of persons present for a judicial or grand jury proceeding, or where extended coverage is so close to a judicial or grand jury proceeding that it is likely

to interfere with the proceeding or its dignity and decorum.

3. Possession of cameras and recording[s] or transmitting equipment, including camera-equipped cellular phones or similar handheld devices capable of capturing images, is prohibited in all courtrooms, jury rooms, and adjacent hallways except when required for extended coverage permitted by this rule or for media coverage not prohibited by this rule.

4. Nothing in this rule is intended to restrict in any way the present rights of the media to report proceedings.

5. Extended coverage shall be conducted so as not to interfere with the right of any person to a fair and impartial trial, and so as not to interfere with the dignity and decorum which must attend the proceedings.

6. No proceeding shall be delayed or continued to allow for extended coverage, nor shall the requirements of extended coverage in any way affect legitimate motions for continuance or challenges to the judge.

7. This rule does not apply to:

(i) The use of electronic or photographic equipment approved by the court for the perpetuation of a court record;

(ii) Investiture or ceremonial proceedings, provided, however, that the local administrative judge of a trial court and the Chief Judge of an appellate court shall have complete discretion to regulate the presence and use of cameras, recorders, and broadcasting equipment at the proceedings; or

(iii) The use of electronic or photographic equipment approved by the court to take the testimony of a child victim

under Code, Criminal Procedure Article, §11-303.

c. Request for Extended Coverage.

1. All requests for extended coverage shall be made in writing to the clerk of the court at which the proceeding is to be held at least five days before the proceeding is scheduled to begin and shall specifically identify the proceeding to be covered. For good cause a court may honor a request which does not comply with the requirements of this subsection. The clerk shall promptly give notice of a request to all parties to the proceeding.

Cross reference: For the computation of time before a day, act, or event, see Rule 1-203 (b).

2. Where proceedings are continued other than for normal or routine recesses, weekends, or holidays, it is the responsibility of the media to make a separate request for later extended coverage.

Cross reference: For the definition of "holiday," see Rule 1-202.

d. Action on Request.

The presiding judge shall grant or deny a request for extended coverage before the commencement of the proceeding. If the request is granted, the presiding judge shall promptly notify the local administrative judge who shall make whatever arrangements are necessary to accommodate the entry into and presence in the courthouse of the persons conducting the extended coverage and their equipment.

~~d.~~ e. Consent to Extended Coverage.

1. Extended coverage shall not be permitted in any proceeding

in a trial court unless all parties to the proceeding have filed their written consent in the record, except that consent need not be obtained from a party which is a federal, state, or local government, or an agency or subdivision thereof or an individual sued or suing in his official governmental capacity.

2. Consent once given may not be withdrawn, but any party may at any time move for termination or limitation of extended coverage in accordance with this rule.

3. Consent of the parties is not required for extended coverage in appellate courts, but any party may at any time move for termination or limitation of extended coverage in accordance with this rule.

~~e. f.~~ f. Restrictions on Extended Coverage.

~~1. Extended coverage of the testimony of a witness who is a victim in a criminal case shall be terminated or limited in accordance with the request or objection of the witness.~~

~~2. 1. Extended coverage of all or any portion of a proceeding may be prohibited, terminated or limited, on the presiding judge's own motion initiative or on the request of a party, witness, or juror in the proceedings, where the judge finds a reasonable probability of unfairness, danger to a person, undue embarrassment, or hindrance of proper law enforcement would result if such action were not taken. In cases involving police informants, undercover agents, relocated witnesses, and minors, and in evidentiary suppression hearings, divorce and custody proceedings, and cases involving trade secrets, a presumption of validity attends the request. This list of requests which enjoy~~

~~the presumption is not exclusive, and the judge may in the exercise of his discretion find cause in comparable situations. Within the guidelines set forth in this subsection, the judge is granted broad discretion in determining whether that there is good cause for termination, prohibition, or limitation of extended coverage. There is a presumption that good cause exists in cases involving custody, divorce, minors, relocated witnesses, and trade secrets.~~

Committee note: Examples of good cause include unfairness, danger to a person, undue embarrassment, or hindrance of proper law enforcement.

~~3. 2. Extended coverage is not permitted of any proceeding which is by law closed to the public, or which may be closed to the public and has been closed by the judge.~~

~~4. 3. Extended coverage in the judicial area of a courthouse or other facility is limited to proceedings in the courtroom in the presence of the presiding judge.~~

~~5. 4. There shall be no audio coverage of private conferences, bench conferences, and conferences at counsel tables.~~

~~f. g. Standards of Conduct and Technology.~~

~~8. 1. Television or movie camera equipment shall be positioned outside the rail of the courtroom, or if there is no rail, in the area reserved for spectators, at a location approved in advance by the presiding judge. Wherever possible, recording and broadcasting equipment which is not a component part of a television camera shall be located outside the courtroom in an area approved in advance by the presiding judge.~~

~~9.~~ 2. A still camera photographer shall be positioned outside the rail of the courtroom or if there is no rail, in the area reserved for spectators, at a location approved in advance by the presiding judge. The still camera photographer shall not photograph from any other place, and shall not engage in any movement or assume any body position that would be likely to attract attention or be distracting. Unless positioned in or beyond the last row of spectators' seats, or in an aisle to the outside of the spectators' seating area, the still photographer shall remain seated while photographing.

~~10.~~ 3. Broadcast media representatives shall not move about the courtroom while proceedings are in session, and microphones and recording equipment once positioned shall not be moved during the pendency of the proceeding.

~~1.~~ 4. Not more than one ~~portable~~ television camera, operated by not more than one person, shall be permitted in any trial court proceeding. Not more than two stationary television cameras, operated by not more than one person each, shall be permitted in any appellate court proceeding.

~~2.~~ 5. Not more than one still photographer, utilizing not more than two still cameras with not more than two lenses for each camera and related equipment approved by the presiding judge shall be permitted in any proceeding in a trial or appellate court.

~~3.~~ 6. Not more than one audio system for broadcast purposes shall be permitted in any proceeding in a trial or appellate court. Audio pickup shall be accomplished from existing audio

systems, except that if no technically suitable audio system exists, unobtrusive microphones and related wiring shall be located in places designated in advance by the presiding judge. Microphones located at the judge's bench and at counsel tables shall be equipped with temporary cutoff switches. A directional microphone may be mounted on the television or film camera, but no parabolic or similar microphones shall be used.

~~4.~~ 7. Any "pooling" arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the presiding judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge shall exclude all contesting media personnel from extended coverage.

~~5.~~ 8. Only television, movie, and audio equipment that does not produce light or distracting sound shall be employed. No artificial lighting device of any kind shall be employed in connection with the television and movie cameras.

~~6.~~ 9. Only still camera equipment that does not produce distracting sound shall be employed to cover judicial proceedings. No artificial lighting device of any kind shall be employed in connection with a still camera.

~~7.~~ 10. It shall be the affirmative duty of media personnel to demonstrate to the presiding judge adequately in advance of any proceeding that the equipment sought to be utilized meets the sound and light criteria enunciated herein. A failure to obtain

advance judicial approval for equipment shall preclude its use in any proceedings.

11. Photographic or audio equipment shall not be placed in or removed from the courtroom except prior to commencement or after adjournment of proceedings each day, or during a recess. Neither film magazines nor still camera film or lenses shall be changed within a courtroom except during a recess in the proceeding.

12. With the concurrence of the presiding judge, and before the commencement of a proceeding or during a recess, modifications and additions may be made in light sources existing in the courtroom provided such modifications or additions are installed and maintained without public expense.

Committee note: Nothing in this Rule prohibits a judge from granting a reasonable request to use court-owned or court-controlled electronic or photographic equipment or materials.

Source: This Rule is derived from former Rule 1209.

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

AMEND Rule 16-803 to add a definition of "Board," as follows:

Rule 16-803. COMMISSION ON JUDICIAL DISABILITIES - DEFINITIONS

The following definitions apply in Rules 16-804 through 16-810 except as expressly otherwise provided or as necessary implication requires:

(a) Address of Record

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

Cross reference: See Rule 16-810 (a)(1) concerning confidentiality of a judge's home address.

(b) Board

"Board" means the Judicial Inquiry Board appointed pursuant to Rule 16-804.1.

~~(b)~~ (c) Charges

"Charges" means the charges filed with the Commission by Investigative Counsel pursuant to Rule 16-808.

~~(c)~~ (d) Commission

"Commission" means the Commission on Judicial Disabilities.

~~(d)~~ (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.

~~(e)~~ (f) Complainant

"Complainant" means a person who has filed a complaint.

~~(f)~~ (g) Complaint

"Complaint" means a communication alleging that a judge has a disability or has committed sanctionable conduct.

~~(g)~~ (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.

~~(h)~~ (i) Formal Complaint

"Formal Complaint" means a written communication under affidavit signed by the complainant, alleging facts indicating that a judge has a disability or has committed sanctionable conduct.

Committee note: The complainant may comply with the affidavit requirement of this section by signing a statement in the following form: "I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief." It is not required that the complainant appear before a notary public.

~~(i)~~ (j) Judge

"Judge" means a judge of the Court of Appeals, the Court of Special Appeals, a circuit court, the District Court, or an orphans' court, and a retired judge during any period that the retired judge has been approved to sit.

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

~~(j)~~ (k) 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 Rule 16-813 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 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 to 13-403.

Source: This Rule is in part derived from former Rule 1227 (adopted 1995) and is in part new.

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

AMEND Rule 16-804 to allow telephone and video conferencing under certain circumstances, as follows:

Rule 16-804. 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 lawyer, and one public member are present. At a hearing on charges held pursuant to Rule 16-808 (i), a Commission member is present only if the member is physically present in person. Under all other circumstances, a member may be present in person or by telephone or video 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.

. . .

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

ADD new Rule 16-804.1, as follows:

Rule 16-804.1. 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

The Chair of the Commission shall designate a member of the Board who is a lawyer or judge to serve as Chair of the Board.

(d) Removal

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 lawyer, and one public member are present. A member of the Board may be present in person or by telephone or video 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) Powers and Duties

The powers and duties of the Board are set forth in Rules 16-805 and 16-806.

(g) Record

The Executive Secretary of the Commission shall attend the Board meetings and keep a record in the form that the Commission requires.

Source: This Rule is new.

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

AMEND Rule 16-805 to transfer to section (d) the substance of the Committee note that follows section (d); to allow an inquiry to include obtaining additional information from potential witnesses; to allow the Chair of the Commission to authorize Investigative Counsel to issue a subpoena during a preliminary investigation; to allow a complaint to be dismissed during a preliminary investigation under certain circumstances without notifying the judge that a preliminary investigation had been undertaken; to specify duties, powers, and procedures of the Judicial Inquiry Board; to provide for procedures by the Commission concerning the report and recommendation of the Board; to allow the Commission to consider the report and recommendation of Investigative Counsel under certain circumstances; to correct internal references; and to make stylistic changes; as follows:

Rule 16-805. COMPLAINTS; PRELIMINARY INVESTIGATIONS

(a) Complaints

All complaints against a judge shall be sent to Investigative Counsel. Upon receiving a complaint that does not qualify as a formal complaint but indicates that a judge may have a disability or have committed sanctionable conduct, Investigative Counsel shall, if possible: (1) inform the

complainant of the right to file a formal complaint; (2) inform the complainant that a formal complaint must be supported by affidavit and provide the complainant with the appropriate form of affidavit; and (3) inform the complainant that unless a formal complaint is filed within 30 days after the date of the notice, Investigative Counsel is not required to take action, and the complaint may be dismissed.

(b) Formal Complaints

Investigative Counsel shall number and open a file on each formal complaint received 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) Dismissal by Investigative Counsel

If Investigative Counsel concludes that the complaint does not allege facts that, if true, would constitute a disability or sanctionable conduct and that there are no reasonable grounds for a preliminary investigation, Investigative Counsel shall dismiss the complaint. If a complainant does not file a formal complaint within the time stated in section (a) of this Rule, Investigative Counsel may dismiss the complaint. Upon dismissing a complaint, Investigative Counsel shall notify the complainant and the Commission that the complaint has been dismissed. If the judge has learned of the complaint and has requested notification, Investigative Counsel shall also notify the judge that the complaint has been dismissed.

(d) 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 the 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 section ~~(b)~~ (c) of this Rule or (2) proceed as if a formal complaint had been filed and undertake a preliminary investigation in accordance with section ~~(d)~~ (e) of this Rule.

~~Committee note: An inquiry may include obtaining additional information from the complainant, reviewing public records, obtaining transcripts of court proceedings, and communicating informally with the judge.~~

(e) Preliminary Investigation

(1) If a complaint is not dismissed in accordance with section (c) or (d) of this Rule, Investigative Counsel shall conduct a preliminary 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 or Commission that the preliminary investigation is being undertaken.

(2) Upon application by Investigative Counsel and for good cause, the Chair of the Commission may authorize Investigative

Counsel to issue a subpoena to obtain evidence during a preliminary investigation.

(3) During a preliminary investigation, Investigative Counsel may recommend to the Board or Commission that the complaint be dismissed without notifying the judge that a preliminary investigation has been undertaken.

~~(3)~~ (4) Unless directed otherwise by the Board or Commission for good cause, Investigative Counsel shall notify the judge before the conclusion of the preliminary investigation (A) that Investigative Counsel has undertaken a preliminary investigation into whether the judge has a disability or has committed sanctionable conduct; (B) whether the preliminary investigation was undertaken on Investigative Counsel's initiative or on a complaint; (C) if the investigation was undertaken on a complaint, of the name of the person who filed the complaint and the contents of the complaint; (D) of the nature of the disability or sanctionable conduct under investigation; and (E) of the judge's rights under subsection ~~(e)(4)~~ (e)(5) of this Rule. The notice shall be given by first class mail or by certified mail requesting "Restricted Delivery - show to whom, date, address of delivery" addressed to the judge at the judge's address of record.

~~(4)~~ (5) Except when Investigative Counsel has recommended that the complaint be dismissed without notifying the judge and the Board or Commission has accepted the recommendation, Before before the conclusion of the preliminary investigation,

Investigative Counsel shall afford the judge a reasonable opportunity to present, in person or in writing, such information as the judge chooses.

~~(5)~~ (6) Investigative Counsel shall complete a preliminary investigation within 90 days after the investigation is commenced. Upon application by Investigative Counsel within the 90-day period and for good cause, the ~~Commission~~ Board shall extend the time for completing the preliminary investigation for an additional 30-day period. For failure to comply with the time requirements of this section, the Commission may dismiss any complaint and terminate the investigation.

(f) Recommendation by Investigative Counsel

~~Within the time for completing~~ Upon completion of a preliminary investigation, Investigative Counsel shall report to the Board the results of the investigation in the form that the Commission requires. The report shall include one of the following recommendations: (1) dismissal of any complaint and termination of the investigation, with or without a warning, (2) ~~the offer of~~ entering into a private reprimand or a deferred discipline agreement, (3) authorization of a further investigation, or (4) the filing of charges.

(g) Monitoring and Review by Board

The Board shall monitor investigations by, and review the reports and recommendations of, Investigative Counsel.

(h) Authorization of Further Investigation

The Board may authorize a further investigation to be

conducted pursuant to Rule 16-806.

(i) Informal Meeting with Judge

The Board may meet informally with the judge for the purpose of discussing an appropriate disposition.

(j) Board's Report to Commission

(1) Contents

Upon receiving Investigative Counsel's final report and recommendation concerning a further investigation or a preliminary investigation if no further investigation was conducted and subject to subsection (j)(2) of this Rule, the Board shall submit to the Commission a report that includes one of the following recommendations: (A) dismissal of any complaint and termination of the investigation with or without a warning; (B) entering into a private reprimand or deferred discipline agreement; or (C) upon a determination of probable cause, the filing of charges, unless the Board determines that there is a basis for private disposition under the standards of Rule 16-807. The Board may not recommend a dismissal with a warning, a private reprimand, or a deferred discipline agreement unless the respondent judge has consented to this remedy.

(2) Limitation on Contents of Report

The information transmitted by the Board to the Commission shall be limited to a proffer of evidence that the Board has determined would be likely to be admitted at a plenary hearing. The Chair of the Board may consult with the Chair of the Commission in making the determination as to what information

is transmitted to the Commission.

(3) Time for Submission of Report

Unless the time is extended by the Chair of the Commission, the Board shall transmit the report to the Commission within 45 days after the date the Board receives Investigative Counsel's report and recommendation. Upon written request by the Chair of the Board, the Chair of the Commission may grant one 30-day extension of time for transmission of the report. If the Board does not 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 subsection (j)(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 to the judge.

(k) Filing of Objections

Investigative Counsel and the judge shall file with the Commission any objections to the report and recommendation within 15 days of the date the Commission transmitted the report and recommendation unless Investigative Counsel, the judge, and the Chair of the Commission agree to an extension of the time for filing an objection.

(l) Action by Commission

The Commission shall review the report and recommendation and any timely filed objections. Upon written request by the judge, with a copy provided to Investigative Counsel, the Commission may permit the judge to appear before the Commission on terms and conditions established by the Commission. Unless the Commission authorizes further investigation in accordance with Rule 16-806, disposition by the Commission shall be in accordance with Rule 16-807 or 16-808 (a), as appropriate.

Source: This Rule is derived from former Rule 1227B.

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

AMEND Rule 16-806 to make certain functions of the Commission coextensive with the Board and to allow the Chair of the Commission to authorize Investigative Counsel to issue subpoenas under certain circumstances, as follows:

Rule 16-806. FURTHER INVESTIGATION

(a) Notice to Judge

Upon approval of a further investigation by the Board or Commission, Investigative Counsel promptly shall notify the judge (1) that the Board or Commission has authorized the further investigation, (2) of the specific nature of the disability or sanctionable conduct under investigation, and (3) that the judge may file a written response within 30 days of the date on the notice. The notice shall be given (1) by first class mail to the judge's address of record, or (2) if previously authorized by the judge, by first class mail to an attorney designated by the judge. The Board or Commission, for good cause, may defer the giving of notice, but notice must be given not less than 30 days before Investigative Counsel makes a recommendation as to disposition.

(b) Subpoenas

(1) Upon application by Investigative Counsel and for good

cause, the Chair of the Commission may authorize Investigative Counsel to issue a subpoena to compel the attendance of witnesses and the production of documents or other tangible things at a time and place specified in the subpoena. Promptly after service of the subpoena and in addition to any other notice required by law, Investigative Counsel shall provide to the judge under investigation 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 first class mail to an attorney designated by the judge.

(2) The judge or the person served with 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 is a judge serving on that circuit court, another circuit court designated by the Commission. The court may enter any order permitted by Rule 2-510 (e). 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.

(3) To the extent practicable, a subpoena shall not divulge the name of the judge under investigation. 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. Hearings before the circuit court on any motion shall be on the record and shall be conducted

out of the presence of all persons except those whose presence is necessary.

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

(c) Completion

Investigative Counsel shall complete a further investigation within 60 days after it is authorized by the Board or Commission. Upon application by Investigative Counsel made within the 60-day period and served by first class mail upon the judge or counsel of record, 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 comply with the time requirements of this section.

(d) Recommendation by Investigative Counsel

Within the time for completing a further investigation, Investigative Counsel shall report the results of the investigation to the Board or the Commission in the form that the Commission requires. The report shall include one of the following recommendations: (1) dismissal of any complaint and termination of the investigation, with or without a warning, (2) ~~the offer of~~ entering into a private reprimand or a deferred discipline agreement, or (3) the filing of charges.

Source: This Rule is derived from former Rule 1227C.

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

AMEND Rule 16-808 to conform it to the proposed amendments to Rule 16-805, as follows:

Rule 16-808. PROCEEDINGS BEFORE COMMISSION

(a) Charges

After considering the report and recommendation of the Board or Investigative Counsel submitted pursuant to Rule 16-805 (j), 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. The charges shall (1) state the nature of the alleged disability or sanctionable conduct, including each Canon of Judicial Conduct allegedly violated by the judge, (2) allege the specific facts upon which the charges are based, and (3) state that the judge has the right to file a written response to the charges within 30 days after service of the charges.

. . .

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

AMEND Rule 16-811 to delete provisions pertaining to decertification and add provisions pertaining to temporary suspension, as follows:

Rule 16-811. CLIENT PROTECTION FUND OF THE BAR OF MARYLAND

. . .

f. Enforcement.

1. List by Trustees of Unpaid Assessments.

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

- (i) the name and account number, as it appears on their records, of each lawyer who, to the best of their information, is engaged in the practice of law and without valid reason or justification has failed or refused to pay (a) one or more annual assessments, (b) penalties for late payment, (c) any charge for a dishonored check, or (d) reimbursement of publication charges; and
- (ii) the amount due from that lawyer to the Fund.

2. Notice of Default by Trustees.

(i) The trustees shall give notice of delinquency promptly to each lawyer on the list by first class mail addressed to the lawyer at the lawyer's last address appearing on the records of

the trustees. The notice shall state the amount of the obligation to the Fund, that payment is overdue, and that failure to pay the amount to the Fund within 30 days following the date of the notice will result in the entry of an order by the Court of Appeals prohibiting the lawyer from practicing law in the State.

(ii) The mailing by the trustees of the notice of default shall constitute service.

3. Additional Discretionary Notice.

In addition to the mailed notice, the trustees may give any additional notice to the lawyers on the delinquency list as the trustees in their discretion deem desirable. Additional notice may include publication in one or more newspapers selected by the trustees; telephone, facsimile, or other transmission to the named lawyers; dissemination to local bar associations or other professional associations; posting in State court houses; or any other means deemed appropriate by the trustees. Additional notice may be statewide, regional, local, or personal to a named lawyer as the trustees may direct.

4. Certification of Default by Trustees; Order of ~~Decertification~~ Temporary Suspension by the Court of Appeals.

(i) Promptly after expiration of the deadline date stated in the mailed notice, the trustees shall submit to the Court of Appeals a proposed ~~Decertification~~ Temporary Suspension Order stating the names and account numbers of those lawyers whose accounts remain unpaid. The trustees also shall furnish

additional information from their records or give further notice as the Court of Appeals may direct. The Court of Appeals, on being satisfied that the trustees have given the required notice to the lawyers remaining in default, shall enter a ~~Decertification~~ Temporary Suspension Order prohibiting each of them from practicing law in the State. The trustees shall mail by first class mail a copy of the ~~Decertification~~ Temporary Suspension Order to each lawyer named in the order at the lawyer's last address as it appears on the records of the trustees. The mailing of the copy shall constitute service of the order.

(ii) A lawyer who ~~practices law after having been served~~ has been served with a copy of ~~the Decertification~~ a Temporary Suspension Order ~~may~~ and has not been restored to good standing ~~may not practice law and shall comply with the requirements of Rule 16-760 (c).~~ be proceeded against for contempt of court in ~~In~~ accordance with the provisions of Title 15, Chapter 200 (Contempt) and any other applicable provision of law or as the Court of Appeals shall direct, an action for contempt of court may be brought against a lawyer who practices law in violation of a Temporary Suspension Order.

(iii) Upon written request from any Maryland lawyer, judge, or litigant to confirm whether a Maryland lawyer named in the request has been ~~decertified~~ temporarily suspended and has not been ~~reinstated~~ restored to good standing, the trustees shall furnish confirmation promptly by informal means and, if

requested, by written confirmation. On receiving confirmation by the trustees that a Maryland lawyer attempting to practice law has been and remains ~~decertified~~ temporarily suspended, a Maryland judge shall not permit the lawyer to practice law in the State until the ~~lawyer's default has been cured~~ Court of Appeals enters an order that terminates the Temporary Suspension Order and restores the lawyer to good standing.

5. Payment.

Upon payment in cash or by certified or bank official's check to the Fund by a lawyer of all amounts due by the lawyer, including all related costs that the Court of Appeals or the trustees may prescribe from time to time, the trustees shall remove the lawyer's name from their list of delinquent lawyers and, if a ~~Decertification~~ Temporary Suspension Order has been entered, request the Court of Appeals to ~~rescind its Decertification Order as to that lawyer~~ enter an order that terminates the temporary suspension and restores the lawyer to good standing. If requested by a lawyer affected by the action, the trustees shall furnish confirmation promptly.

6. Bad Check; Interim ~~Decertification~~ Temporary Suspension Order.

(i) If a check payable to the Fund is dishonored, the treasurer of the Fund shall notify the lawyer immediately by the quickest available means. Within 7 business days following the date of the notice, the lawyer shall pay to the treasurer of the Fund, in cash or by certified or bank official's check, the full

amount of the dishonored check plus any additional charge that the trustees in their discretion shall prescribe from time to time.

(ii) The treasurer of the Fund promptly (but not more often than once each calendar quarter) shall prepare and submit to the Court of Appeals a proposed interim ~~Decertification~~ Temporary Suspension Order stating the name and account number of each lawyer who remains in default of payment for a dishonored check and related charges. The Court of Appeals shall enter an interim ~~Decertification~~ Temporary Suspension Order prohibiting the practice of law in the State by each lawyer as to whom it is satisfied that the treasurer has made reasonable and good faith efforts to give notice concerning the dishonored check. The treasurer shall mail by first class mail a copy of the interim ~~Decertification~~ Temporary Suspension Order to each lawyer named in the order at the lawyer's last address as it appears on the records of the trustees, and the mailing of the copy shall constitute service of the order.

7. Notices to Clerks.

The Clerk of the Court of Appeals shall send a copy of a ~~each~~ each ~~Decertification~~ Temporary Suspension Order and ~~rescission~~ order that terminates a temporary suspension and restores the lawyer to good standing entered pursuant to this Rule to the Clerk of the Court of Special Appeals, the clerk of each circuit court, the Chief Clerk of the District Court, and the Register of Wills for each county.

...

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

AMEND Rule 16-819 (d)(3) to require that an interpreter who serves in a grand jury proceeding take an oath of secrecy, as follows:

Rule 16-819. COURT INTERPRETERS

. . .

(d) Selection and Appointment of Interpreters

. . .

(3) Oath

Upon appointment by the court and before acting as an interpreter in the proceeding, the interpreter shall solemnly swear or affirm under the penalties of perjury to interpret accurately, completely, and impartially and to refrain from knowingly disclosing confidential or privileged information obtained while serving in the proceeding. If the interpreter is to serve in a grand jury proceeding, the interpreter also shall take and subscribe an oath that the interpreter will keep secret all matters and things occurring before the grand jury.

. . .

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

AMEND Rule 16-819 (e) to delete language pertaining to good cause and to require a judge or judicial appointee who removes an interpreter from a proceeding to notify the Administrative Office of the Courts, as follows:

Rule 16-819. COURT INTERPRETERS

. . .

(e) Removal from Proceeding

A court interpreter may be removed from a proceeding ~~for good cause. Good cause for removal includes:~~

- ~~(1) failing to interpret adequately;~~
- ~~(2) knowingly interpreting falsely;~~
- ~~(3) knowingly disclosing confidential or privileged information obtained while serving in a proceeding; or~~
- ~~(4) failing to follow applicable laws, rules of court, or the Maryland Code of Conduct for Court Interpreters in the Appendix to these Rules.~~ by a judge or judicial appointee within the meaning of Rule 16-814 (e)(1), who shall then notify the Administrative Office of the Courts that the action was taken.

. . .

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 900 - PRO BONO LEGAL SERVICE

AMEND Rule 16-903 to change certain terminology, as follows:

Rule 16-903. REPORTING PRO BONO LEGAL SERVICE

. . .

(e) Enforcement

(1) Notice of Default

As soon as practicable after May 1 of each year, the Administrative Office of the Courts shall give notice of the failure to file a report to each defaulting lawyer. The notice shall (A) state that the lawyer has not filed the Pro Bono Legal Service Report for the previous calendar year, (B) state that continued failure to file the Report may result in the entry of an order by the Court of Appeals prohibiting the lawyer from practicing law in the State, and (C) be sent by first class mail. The mailing of the notice of default shall constitute service.

(2) Additional Discretionary Notice of Default

In addition to the mailed notice, the Administrative Office of the Courts may give additional notice to defaulting lawyers by any of the means enumerated in Rule 16-811 g 3.

(3) List of Defaulting Lawyers

As soon as practicable after July 1 of each year but no later than August 1, the Administrative Office of the Courts

shall prepare, certify, and file with the Court of Appeals a list that includes the name and address of each lawyer engaged in the practice of law who has failed to file the Pro Bono Legal Service Report for the previous year.

(4) Certification of Default; Order of Decertification

The Administrative Office of the Courts shall submit with the list a proposed Decertification Order stating the names and addresses of those lawyers who have failed to file their Pro Bono Legal Service Reports for the specified calendar year. At the request of the Court of Appeals, the Administrative Office of the Courts also shall furnish additional information from its records or give further notice to the defaulting lawyers. If satisfied that the Administrative Office of the Courts has given the required notice to each lawyer named on the proposed Decertification Order, the Court of Appeals shall enter a Decertification Order prohibiting each of them from practicing law in the State.

(5) Mailing of Decertification Order

The Administrative Office of the Courts shall mail by first class mail a copy of the Decertification Order to each lawyer named in the Order. The mailing of the copy of the Decertification Order shall constitute service.

(6) ~~Rescission~~ Recertification; Restoration to Good Standing

If a lawyer files the outstanding Pro Bono Legal Service Report, the Administrative Office of the Courts shall request the Court of Appeals to enter an order ~~rescinding its Decertification~~

~~Order as to that~~ recertifies the lawyer and restores the lawyer to good standing. Upon entry of ~~a Rescission Order~~ an order that recertifies the lawyer and restores the lawyer to good standing, the Administrative Office of the Courts promptly shall furnish confirmation to the lawyer.

(7) Notices to Clerks

The Clerk of the Court of Appeals shall send a copy of each Decertification Order and ~~Rescission Order~~ order that recertifies a lawyer and restores the lawyer to good standing entered pursuant to this Rule to the Clerk of the Court of Special Appeals, the Clerk of each circuit court, the Chief Clerk of the District Court, and the Register of Wills for each county.

. . .

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGE, AND ATTORNEYS
CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1002 to clarify that section (c) applies to certain court exhibits, as follows:

Rule 16-1002. GENERAL POLICY

. . .

(c) ~~Records Admitted or Considered as Evidence~~ Exhibit Attached to Motion or Marked for Identification

Unless a judicial action is not open to the public or the court expressly orders otherwise, a court record that ~~has been admitted into evidence in a judicial action or that a court has considered as evidence or relied upon for purposes of deciding a motion is~~ consists of an exhibit (1) attached to a motion that has been ruled upon by the court or (2) marked for identification at trial, whether or not offered in evidence, and if offered, whether or not admitted, is subject to inspection, notwithstanding that the record otherwise would not have been subject to inspection under the Rules in this Chapter.

Cross reference: Rule 2-516.

. . .

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1006 to add a new section (k) concerning certain financial statements, as follows:

Rule 16-1006. 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:

. . .

(k) As provided in Rule 9-203 (d), a case record that consists of a financial statement filed pursuant to Rule 9-202.

. . .

MARYLAND RULES OF PROCEDURE

APPENDIX: THE MARYLAND LAWYERS' RULES OF PROFESSIONAL CONDUCT

AMEND the Maryland Lawyers' Rules of Professional Conduct to substitute the word "does" for the word "should" twice in the first sentence of Paragraph 20 of the Preamble and Scope, to add to the Comment to Rule 1.7 a new Paragraph 29.1 concerning the representation of minor siblings by a court-appointed Child's Best Interest Attorney, and to add to the Comment to Rule 1.14 a reference to the *Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access*, as follows:

THE MARYLAND LAWYERS' RULES OF PROFESSIONAL CONDUCT

Preamble: A Lawyer's Responsibilities.

. . .

Scope.

. . .

[20] Violation of a Rule ~~should~~ does not itself give rise to a cause of action against a lawyer nor ~~should~~ does it create any presumption ~~in such a case~~ that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other non-disciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies.

They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, in some circumstances, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct. Nothing in this Preamble and Scope is intended to detract from the holdings of the Court of Appeals in *Post v. Bregman*, 349 Md. 142 (1998) and *Son v. Margolius, Mallios, Davis, Rider & Tomar*, 349 Md. 441 (1998).

. . .

Rule 1.7. CONFLICT OF INTEREST: GENERAL RULE

. . .

COMMENT

. . .

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly

impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[29.1] Rule 1.7 may not apply to an attorney appointed by a court to serve as a Child's Best Interest Attorney in the same way that it applies to other attorneys. For example, because the Child's Best Interest Attorney is not bound to advocate a client's objective, siblings with conflicting views may not pose a conflict of interest for a Child's Best Interest Attorney, provided that the attorney determines the siblings' best interests to be consistent. A Child's Best Interest Attorney should advocate for the children's best interests and ensure that each child's position is made a part of the record, even if that position is different from the position that the attorney advocates. See Md. Rule 9-205.1 and Appendix to the Maryland Rules: Maryland Guidelines for Practice for Court-appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

. . .

Rule 1.14. CLIENT WITH DIMINISHED CAPACITY

- (a) When a client's capacity to make adequately considered

decisions in connection with a representation is diminished whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6 (a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

COMMENT

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, to an increasing extent the law recognizes intermediate degrees of competence. Indeed, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, it is recognized that some persons of advanced age can be quite capable of handling

routine financial matters while needing special legal protection concerning major transactions. In addition, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. Consideration of and, when appropriate, deference to these opinions are especially important in cases involving children in Child In Need of Assistance (CINA) and related Termination of Parental Rights (TPR) and adoption proceedings. With respect to these categories of cases, the Maryland Foster Care Court Improvement Project has prepared *Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings*. The Guidelines are included in an Appendix to the Maryland Rules. Also included in an Appendix to the Maryland Rules are *Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access*, developed by the Maryland Judicial Conference Committee on Family Law.

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MARYLAND RULES OF PROCEDURE
APPENDIX: THE MARYLAND LAWYERS' RULES
OF PROFESSIONAL CONDUCT
COUNSELOR

AMEND Comment 5 to Rule 2.1 of the Maryland Lawyers' Rules of Professional Conduct by deleting language from the third sentence and by adding language concerning advising the client about one or more forms of alternative dispute resolution, as follows:

. . .

Rule 2.1. ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

COMMENT

. . .

Offering Advice. - [5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, ~~it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation and, in the~~ opinion of the lawyer, one or more forms of alternative dispute

resolution are reasonable alternatives to litigation, the lawyer should advise the client about those reasonable alternatives. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

. . .

MARYLAND RULES OF PROCEDURE

APPENDIX: MARYLAND GUIDELINES FOR PRACTICE FOR COURT-APPOINTED
LAWYERS REPRESENTING CHILDREN IN CASES INVOLVING
CHILD CUSTODY OR CHILD ACCESS

ADD new Appendix: Maryland Guidelines for Practice for
Court-Appointed Lawyers Representing Children in Cases Involving
Child Custody or Child Access, as follows:

**APPENDIX: MARYLAND GUIDELINES FOR PRACTICE FOR COURT-APPOINTED
LAWYERS REPRESENTING CHILDREN IN CASES INVOLVING
CHILD CUSTODY OR CHILD ACCESS**

INTRODUCTION AND SCOPE

These Guidelines are intended to promote good practice and consistency in the appointment and performance of lawyers for children in cases involving child custody and child access decisions. However, the failure to follow a Guideline does not itself give rise to a cause of action against a lawyer nor does it create any presumption that a legal duty has been breached. These Guidelines apply to divorce, custody, visitation, domestic violence, and other civil cases where the court may be called upon to decide issues relating to child custody or access. Nothing contained in the Guidelines is intended to modify, amend, or alter the fiduciary duty that an attorney owes to a client pursuant to the Maryland Lawyers' Rules of Professional Conduct.

These Guidelines do not apply to Child In Need of Assistance ("CINA"), Termination of Parental Rights ("TPR"), or adoption cases. The appointment and performance of attorneys appointed to represent children in those cases is addressed by the *Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings*.

1. DEFINITIONS

A court that appoints counsel for a minor child in a case involving child custody or child access issues should clearly indicate in the appointment order, and in all communications with the attorney, the parties, and other counsel, the role expected

of child's counsel. The terminology and roles used should be in accordance with the definitions in Guidelines 1.1 - 1.3.

1.1. CHILD'S BEST INTEREST ATTORNEY

"Child's Best Interest Attorney" means a lawyer appointed by a court for the purpose of protecting a child's best interests, without being bound by the child's directives or objectives. This term replaces the term "*guardian ad litem*." The Child's Best Interest Attorney makes an independent assessment of what is in the child's best interest and advocates for that before the court, even if it requires the disclosure of confidential information. The best interest attorney should ensure that the child's position is made a part of the record whether or not different from the position that the attorney advocates.

1.2. CHILD'S ADVOCATE ATTORNEY

"Child's Advocate Attorney" means a lawyer appointed by a court to provide independent legal counsel for a child. This term replaces the less specific phrase, "child's attorney." A Child's Advocate Attorney owes the child the same duties of undivided loyalty, confidentiality, and competent representation as are due an adult client. A Child's Advocate Attorney should be appointed when the child is need of a voice in court, such as in relocation cases, when there are allegations of child abuse, or where the child is sufficiently mature and sees his or her interests as distinct from the interests of the child's parents.

1.3. CHILD'S PRIVILEGE ATTORNEY

"Child's Privilege Attorney" means a lawyer appointed by a court in a case involving child custody or child access to decide whether to assert or waive, on behalf of a minor child, any privilege that the child if an adult would be entitled to assert or waive. This term replaces the term "*Nagle v. Hooks Attorney*." (*Nagle v. Hooks*, 296 Md. 123 (1983)). The court may combine the roles of Child's Privilege Attorney with either of the other two roles.

2. RESPONSIBILITIES

2.1. DETERMINING CONSIDERED JUDGMENT

The attorney should determine whether the child has considered judgment. To determine whether the child has

considered judgment, the attorney should focus on the child's decision-making process, rather than the child's decision. The attorney should determine whether the child can understand the risks and benefits of the child's legal position and whether the child can reasonably communicate the child's wishes. The attorney should consider the following factors when determining whether the child has considered judgment:

- (1) the child's developmental stage:
 - (a) cognitive ability,
 - (b) socialization, and
 - (c) emotional and mental development;
- (2) the child's expression of a relevant position:
 - (a) ability to communicate with the attorney, and
 - (b) ability to articulate reasons for the legal position; and
- (3) relevant and available reports, such as reports from social workers, psychiatrists, psychologists, and schools.

A child may be capable of considered judgment even though the child has a significant cognitive or emotional disability.

In determining considered judgment, the attorney may seek guidance from professionals, family members, school officials, and other concerned persons. The attorney also should determine whether any evaluations are needed and request them when appropriate.

An attorney should be sensitive to cultural, racial, ethnic, or economic differences between the attorney and the child.

2.2. CHILD'S BEST INTEREST ATTORNEY

A Child's Best Interest Attorney advances a position that the attorney believes is in the child's best interest. Even if the attorney advocates a position different from the child's wishes, the attorney should ensure that the child's position is made a part of the record. A Child's Best Interest Attorney may perform the following duties in exercising the attorney's obligation to the client and the court, as appropriate:

- (a) Meet with and interview the child, and advise the child of the scope of the representation.

- (b) Investigate the relative abilities of the parties in their roles as parents or custodians.
- (c) Visit the child in each home.
- (d) Conduct individual interviews with parents, other parties, and collateral witnesses.
- (e) Observe the child's interactions with each parent and each other party, individually.
- (f) Review educational, medical, dental, psychiatric, psychological, or other records.
- (g) Interview school personnel, childcare providers, healthcare providers, and mental health professionals involved with the child or family.
- (h) File and respond to pleadings and motions.
- (i) Participate in discovery.
- (j) Participate in settlement negotiations.
- (k) Participate in the trial, including calling witnesses and presenting evidence and argument, as appropriate.
- (l) If the child is to meet with the judge or testify, prepare the child, familiarizing the child with the places, people, procedures, and questioning that the child will be exposed to, and seek to minimize any harm to the child from the process.
- (m) Inform the child in a developmentally appropriate manner when the representation is ending.

A Child's Best Interest Attorney shall not testify at trial or file a report with the court.

2.3. CHILD'S ADVOCATE ATTORNEY

If a Child's Advocate Attorney determines that the child has considered judgment, the attorney advances the child's wishes and desires in the pending matter. If a Child's Advocate Attorney determines that the child does not have considered judgment, the Child's Advocate Attorney should petition the court to (1) alter the attorney's role to permit the attorney to serve as a Child's Best Interest Attorney or (2) appoint a separate Child's Best Interest Attorney. A Child's Advocate Attorney may

perform the following duties in exercising the attorney's obligation to the child and the court, as appropriate:

(a) Meet with and interview the child, and advise the child of the scope of the representation.

(b) Investigate the relative abilities of the parties in their role as parents or custodians.

(c) Visit the child in each home.

(d) Conduct individual interviews with parents, other parties, and collateral witnesses.

(e) Observe the child's interactions with each parent and each other party, individually.

(f) Review educational, medical, dental, psychiatric, psychological, or other records.

(g) Interview school personnel, childcare providers, healthcare providers, and mental health professionals involved with the child or family.

(h) File and respond to pleadings and motions.

(i) Participate in discovery.

(j) Participate in settlement negotiations.

(k) Participate in the trial, including calling witnesses and presenting evidence and argument, as appropriate.

(l) If the child is to meet with the judge or testify, prepare the child, familiarizing the child with the places, people, procedures, and questioning that the child will be exposed to, and seek to minimize any harm to the child from the process.

(m) Inform the child in a developmentally appropriate manner when the representation ends.

A Child's Advocate Attorney shall not testify at trial or file a report with the court.

2.4. CHILD'S PRIVILEGE ATTORNEY

A Child's Privilege Attorney notifies the court and the

parties of the attorney's decision to waive or assert the child's privilege by (1) filing a document with the court prior to the hearing or trial at which the privilege is to be asserted or waived or (2) placing the waiver or assertion of privilege on the record at a pretrial proceeding or the trial.

A Child's Privilege Attorney may perform the following duties in exercising the attorney's obligation to the child and the court, as appropriate:

(a) Meet with and interview the child, and advise the child of the scope of the representation.

(b) Interview any witnesses necessary to assist the attorney in determining whether to assert or waive the privilege.

(c) Review educational, medical, dental, psychiatric, psychological, or other records.

3. CONFLICTS OF INTEREST

An attorney who has been appointed to represent two or more children should remain alert to the possibility of a conflict that could require the attorney to decline representation or withdraw from representing all of the children.

If a conflict of interest develops, the attorney should bring the conflict to the attention of the court as soon as possible, in a manner that does not compromise either client's interests.

4. TRAINING AND CONTINUING EDUCATION

Unless waived by the court, an attorney appointed as a Child's Best Interest Attorney, Child's Advocate Attorney, or Child's Privilege Attorney should have completed at least six hours of training that includes the following topics:

(a) applicable representation guidelines and standards;

(b) children's development, needs, and abilities at different stages;

(c) effectively communicating with children;

(d) preparing and presenting a child's viewpoint, including child testimony and alternatives to direct testimony;

(e) recognizing, evaluating, and understanding evidence of child abuse and neglect;

(f) family dynamics and dysfunction, domestic violence, and substance abuse;

(g) recognizing the limitations of attorney expertise and the need for other professional expertise, which may include professionals who can provide information on evaluation, consultation, and testimony on mental health, substance abuse, education, special needs, or other issues; and

(h) available resources for children and families in child custody and child access disputes.

Each court should require attorneys seeking appointments as child counsel to maintain their knowledge of current law and complete a specific amount of additional training over a defined interval.

5. QUALIFICATIONS

An attorney appointed to serve as a Child's Best Interest Attorney, Child's Advocate Attorney, or Child's Privilege Attorney should, as a minimum:

(a) be a member of the Maryland Bar in good standing, with experience in family law, or have been approved to represent children through a *pro bono* program approved by the bench; and

(b) unless waived by the court, have successfully completed the six hours of training specified in Guideline 4.

In addition, courts should seek to appoint attorneys who:

(a) are willing to take at least one *pro bono* appointment as child counsel per year, and

(b) have at least three years of family law experience or other relevant experience. In evaluating relevant experience, the court may consider the attorney's experience in social work, education, child development, mental health, healthcare, or other related fields.

6. COMPENSATION

6.1. COMPENSATION STRUCTURE

Each court should develop a compensation structure for the three roles of child counsel: Child's Best Interest Attorneys, Child's Advocate Attorneys, and Child's Privilege Attorneys.

6.2. COMPENSATION MECHANISM

Each court should take steps to ensure that child counsel are compensated adequately and in a timely fashion, unless the attorney has been asked to serve *pro bono publico*. Courts may use the following mechanisms to ensure attorney compensation:

(a) Require one or more of the parties to deposit a significant retainer amount or a fixed fee determined by the court into an attorney escrow account or the court's registry.

(b) If a party qualifies for a fee waiver, compensate child counsel out of available funds. See Guideline 6.3.

(c) Enter a judgment for any unpaid fees.

6.3. FEE WAIVERS

Each court should prepare its budget to ensure that it has sufficient funds to cover the expense of counsel fees for children when the parties are not able to pay the full fees, or the court should develop a *pro bono publico* component to its program to provide counsel for children.

Each court should apply the same fee waiver procedure, forms, and standard for the appointment of child counsel that are set forth in the *Guidelines for Grant Recipients* for all family services funded by the Family Division/Family Services Program Grants. If a fee waiver is granted, the court should apply a cap on compensation that is appropriate to the role for which child counsel is appointed.

MARYLAND RULES OF PROCEDURE
APPENDIX: MARYLAND CODE OF CONDUCT
FOR COURT INTERPRETERS

AMEND Canon 11 of the Maryland Code of Conduct for Court Interpreters to delete language pertaining to a hearing, to allow an interpreter a reasonable opportunity to respond following a notification that the Administrative Office of the Courts intends to remove the interpreter from the list of court interpreters, to delete language pertaining to good cause, to delete references to disciplinary action other than removal from the list, and to delete the Commentary to the Canon, as follows:

APPENDIX: MARYLAND CODE OF CONDUCT FOR COURT INTERPRETERS

. . .

Canon 11

Compliance

After notice and ~~an~~ a reasonable opportunity ~~for a hearing to respond~~, the Administrative Office of the Courts may discipline remove an interpreter, ~~by actions such as public or private reprimand or suspension or removal from a list of court interpreters, for inadequate performance or other good cause from~~ the list of court interpreters.

Commentary

~~The following are examples of good cause for disciplining an interpreter:~~

~~Knowingly making false interpretation while serving in an official capacity;~~

~~Knowingly disclosing confidential or privileged information obtained while serving in an official capacity;~~

~~Failing to follow the standards prescribed by law and the ethics of the interpreter profession.~~