STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Fifty-Eighth Report to the Court of Appeals, transmitting thereby proposed new Title 7, Chapter 500 (Appeals from the Orphans' Court to the Circuit Court) and Rule 6.1 (Appeal of Denial of ADA Test Accommodation) of the Rules Governing Admission to the Bar of Maryland and proposed amendments to Rules 1-101, 1-312, 1-326, 2-341, 2-402, 2-421, 2-422, 2-424, 2-432, 2-433, 2-504, 2-504.1, 2-509, 2-510, 2-511, 2-512, 2-521, 2-522, 3-510, 4-215, 4-217, 4-242, 4-246, 4-262, 4-263, 4-264, 4-265, 4-301, 4-312, 4-313, 4-314, 4-326, 4-327, 4-341, 4-502, 4-503, 4-643, 5-101, 5-606, 5-609, 5-803, 5-902, 6-122, 6-413, 6-451, 6-455, 6-463, 6-464, 8-111, 8-204, 10-202, 10-203, 10-205, 10-213, 10-301, 10-302, 10-304, 13-102, 15-207, 16-107, 16-307, 16-308, 16-602, 16-608, 16-610, 16-701, 16-731, 16-735, 16-737, 16-743, 16-751, 16-771, 16-808, 16-813, 16-815, 16-1004, and 16-1006; Forms 4-503.1 and 4-503.2; Appendix: Form Interrogatories, Form 3 and Form 7; Appendix: The Maryland Lawyers' Rules of Professional Conduct, Rules 3.5 and 8.1; Appendix: Maryland Code of Conduct for Court Interpreters, Canon 3; and Rules 1, 6, 9, 13, and 22 of the Rules Governing Admission to the Bar of Maryland.

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

Interested persons are asked to consider the Committee's Report and proposed rules changes and to forward on or before November 13, 2007 any written comments they may wish to make to:

Sandra F. Haines, Esq.
Reporter, Rules Committee
2011-D Commerce Park Drive
Annapolis, Maryland 21401

ALEXANDER L. CUMMINGS
Clerk
Court of Appeals of Maryland

September 26, 2007

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

The Honorable Robert M. Bell,
Chief Judge
The Honorable Irma S. Raker
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.,
Judges
The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

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

In **Category One** are proposed amendments to Rules 2-402, 2-421, 2-422, 2-424, 2-433, 2-504, 2-504.1, and 2-510 that relate to discovery of electronically stored information ("E.S.I."). The primary sources reviewed by the Committee in drafting the Rules include the 2006 amendments to the Federal Rules of Civil Procedure[1] and proposed amendments to Federal Rule of Evidence 502; the Sedona Conference, *The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production* (2d ed. 2007); Conference of Chief Justices,

Guidelines for State Trial Courts Regarding Discovery of Electronically Stored Information; and Maryland Business and Technology Case Management Program, *Electronic Data Discovery Guidelines*. After the Committee approved its recommendations, the Discovery and Style Subcommittees also reviewed the Uniform Rules Relating to Discovery of E.S.I., which were adopted by the National Conference of Commissioners on Uniform State Laws at its July-August 2007 meeting. In the Committee's opinion, the amendments transmitted with this Report represent the best of the sources reviewed.

Also in this Category are conforming amendments to Rules 2-432 and 16-808, Forms 3 and 7 of the Form Interrogatories, and Rule 22 of the Rules Governing Admission to the Bar of Maryland. Included in the proposed changes to Rule 2-510 is an amendment to section (i), unrelated to E.S.I., that expands upon a procedure currently applicable solely to custodians of records of health care providers to allow *all* custodians of records to respond to a subpoena to produce records at trial by providing the records to the clerk of the court in lieu of the custodian appearing in person, unless expressly commanded to do so by the subpoena.

Category Two consists of amendments to Rules 2-509, 2-511, 2-512, 2-521, 2-522, 4-312, 4-313, 4-314, 4-326, 4-327, 4-643, 5-606, 16-107, and 16-1004; Rule 3.5 of the Maryland Lawyers' Rules of Professional Conduct; and Canon 3 of the Maryland Code of Conduct for Court Interpreters. The proposed amendments implement and supplement statutory changes concerning jury selection and service made by Chapter 372, Acts of 2006 (HB 1024), and are more fully described in a Reporter's Note following each Rule.

The three Rules in **Category Three** pertain to discovery in criminal cases. Under a proposed amendment to Rule 4-301, discovery in an action transferred to a circuit court upon a jury trial demand made in accordance with subsection (b)(1)(A) of the Rule is governed by Rule 4-263; in all other actions transferred to a circuit court upon a jury trial demand, discovery is governed by Rule 4-262. Amendments to Rule 4-263 are proposed to clarify the State's discovery obligations under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny and make other changes to discovery in a criminal action in a circuit court, as explained in the Reporter's note that follows the Rule. Proposed amendments to Rule 4-262 track the amendments to Rule 4-263 to the extent the Committee believes desirable in the District Court.

Category Four comprises proposed amendments to seven other Rules in Title 4. A reference to a new statute, Code, Criminal Procedure Article, §5-214, concerning posting bond, is added to

Rule 4-217 (g). An amendment to Rule 4-246 (b) requires that a circuit court, in accepting a defendant's waiver of the right to a trial by jury, determine and announce on the record that the waiver is made knowingly and voluntarily. A Committee note and cross reference following the section provide guidance to the trial court in making the determination. The requirement of a determination by the court and announcement on the record also is added to Rule 4-215, as to a defendant's waiver of counsel, and Rule 4-242, as to the entry of a plea of guilty or *nolo contendere*. Additionally, Rule 4-242 is amended by the addition of an advisement concerning the collateral consequence of registration as a sexual offender after entry of a plea of guilty or *nolo contendere* to a sexual offense. Proposed amendments to Rules 4-265, 4-264, and 4-341 also are included in this category.

Amendments to conform Rules 1-101, 4-502, and 4-503 and Forms 4-503.1 and 4-503.2 to recent statutory changes pertaining to expungements are in **Category Five**. The proposed Rules changes address expungement of certain records of civil offenses or infractions, as authorized by Chapter 388, Acts of 2007 (HB 278), and the automatic expungement of records of arrests, detentions, or confinements occurring after October 1, 2007 where no charges were filed, as required by Chapter 63, Acts of 2007 (HB 10).

Category Six consists of amendments to four Rules in Title 6, suggested by the Maryland Register of Wills Association. The Committee recommends adoption of the Association's suggested changes to Rules 6-122, 6-413, 6-451, and 6-455.

Category Seven comprises new Title 7, Chapter 500, Appeals from the Orphans' Court to the Circuit Court, and related amendments to Rules 6-463 and 6-464. The new Chapter is proposed so that these appeals will be handled more uniformly throughout the State.

Category Eight contains proposed amendments to Rules 8-204, 8-111, and 1-326 that conform the Rules to Chapter 260, Acts of 2006 (SB 508), which amended Code, Criminal Procedure Article, §11-103 by extending the right to file an application for leave to appeal to a victim of a delinquent act that would be a violent crime if committed by an adult.

In **Category Nine** are proposed amendments to Rules 10-202, 10-203, 10-205, 10-301, 10-302, and 10-304. The Rules changes reflect the addition, by Chapter 250, Acts of 2007 (HB 672), of licensed certified clinical social workers to the list of health care professionals who may evaluate the competency of alleged disabled persons of whom a guardianship is sought.

Category Ten contains Rules changes to implement Chapter 256, Acts of 2007 (HB 792), which amended Code, Family Law Article, §10-119.3 to include the Court of Appeals as one of the licensing authorities that can issue a sanction against an obligor who is in arrears in paying child support. The statute provides that if the person in arrears is an attorney, the Child Support Enforcement Administration may refer the matter to the Attorney Grievance Commission for disciplinary action. To make the Rules consistent with the statutory change, amendments to Rules 15-207, 16-701, 16-731, and 16-751 and conforming amendments to Rule 16-771 and Rule 8.1 of the Maryland Lawyers' Rules of Professional Conduct are proposed.

In **Category Eleven** are proposed amendments to Rules 16-610, 16-602, and 16-608, pertaining to Interest on Lawyer Trust Accounts ("IOLTA"). The amendments require a financial institution that wishes to be an "approved financial institution," as defined in Rule 16-602 a, to enter into an agreement to pay on IOLTA accounts interest computed in accordance with Rule 16-610 b 1 (D). The amendments are intended to provide to the Maryland Legal Services Fund a rate of interest on IOLTA accounts that is comparable to the rate offered on similar non-IOLTA accounts.

Proposed amendments to Rules 16-743, 16-735, and 16-737 that clarify provisions concerning recommendations by a Peer Review Panel are contained in **Category Twelve**. The amendments require the Panel to transmit to the Attorney Grievance Commission any recommended disposition that is agreed upon by Bar Counsel and the attorney who is the subject of the Panel proceeding. If there is no agreement, the Panel transmits to the Commission the Panel's independent recommendation, which must be one of the four dispositions listed in new subsection (e)(2) of Rule 16-643.

In **Category Thirteen** are proposed Rules changes concerning retired judges approved for recall for temporary service under Maryland Constitution, Article IV, §3A. Amendments to Rule 16-813 permit a former judge approved for recall to conduct alternative dispute proceedings in a private capacity, subject to certain restrictions, many of which are based upon Florida's Canon 5F 2. The amendments also make the entire Maryland Code of Judicial Conduct, other than Canon 4C, applicable to former judges approved for recall and clarify the recusal obligations of a former judge. Rule 16-815 is amended to require the filing of a financial disclosure statement by a former judge approved for recall.

Category Fourteen consists of proposed new Rule 6.1 and amendments to Rules 1, 6, 9, and 13 of the Rules Governing Admission to the Bar ("RGAB"). The Rules changes add to the RGAB

a procedure by which an applicant for admission to the bar may appeal a decision of the Board of Law Examiners denying the applicant's request for a testing accommodation under the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.* New Rule 6.1 creates a nine-member Accommodation Review Committee. A panel of three members (two lawyers and one non-lawyer) conducts an evidentiary hearing and makes its recommendation, to which the applicant or the Board may file exceptions. The Court of Appeals hears the exceptions on the record made before the panel. If no exceptions are filed, the Board provides the accommodation, if any, recommended by the panel.

The final category, **Category Fifteen**, contains miscellaneous Rules changes, mostly "housekeeping" amendments, that do not fall into any of the other categories. Included in this category are proposed amendments to Rules 1-312, 2-341, 3-510, 5-101, 5-609, 5-803, 5-902, 10-213, 13-102, 16-307, 16-308, and 16-1006.

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

Respectfully submitted,

Joseph F. Murphy, Jr.
Chairperson

Linda M. Schuett
Co-Chairperson

[1]/ Attached as an Appendix to this Report is a chart comparing the proposed changes to the Maryland Rules with recent changes to the Federal Rules.

JFM/LMS:cdc

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-402 to add a reference to "electronically stored information," to delete certain language from subsection (b)(1) and add the word "modify" to it, to add a new subsection (b)(2) pertaining to electronically stored information not reasonably accessible, to add a new section (e) pertaining to claims of privilege or protection, to change internal references, to add Committee notes, and to make stylistic changes, as follows:

Rule 2-402. SCOPE OF DISCOVERY

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

(a) Generally

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

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

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

(1) Generally

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

litigation, and the importance of the proposed discovery in resolving the issues.

(2) Electronically Stored Information Not Reasonably Accessible

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

Committee note: The term "electronically stored information" has the same broad meaning in this Rule that it has in Rule 2-422, encompassing, without exception, whatever is stored electronically. Subsection (b)(2) addresses the difficulties that may be associated with locating, retrieving, and providing

discovery of some electronically stored information. Ordinarily, the reasonable costs of retrieving and reviewing electronically stored information are borne by the responding party. At times, however, the information sought is not reasonably available to the responding party in the ordinary course of business. For example, restoring deleted data, disaster recovery tapes, residual data, or legacy systems may involve extraordinary effort or resources to restore the data to an accessible format. This subsection empowers the court, after considering the factors listed in subsection (b)(1), to shift or share costs if the demand is unduly burdensome because of the nature of the effort involved to comply and the requesting party has demonstrated substantial need or justification. *See, The Sedona Conference, The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production,* (2d ed. 2007), Principle 13 and related Comment.

(c) Insurance Agreement

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

(d) ~~Trial Preparation - Materials~~ Work Product

Subject to the provisions of sections ~~(e) and (f)~~ (f) and (g) of this Rule, a party may obtain discovery of documents, electronically stored information, ~~or other~~ and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer,

or agent) only upon a showing that the materials are discoverable under section (a) of this Rule and that the party seeking discovery has substantial need for the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of these materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(e) Claims of Privilege or Protection

(1) Information Withheld

A party who withholds information on the ground that it is privileged or subject to protection shall describe the nature of the documents, electronically stored information, communications, or things not produced or disclosed in a manner that, without revealing the privileged or protected information, will enable other parties to assess the applicability of the privilege or protection.

(2) Information Produced

Within a reasonable time after information is produced in discovery that is subject to a claim of privilege or of protection, the party who produced the information shall notify each party who received the information of the claim and the basis for it. Promptly after being notified, each receiving party shall return, sequester, or destroy the specified

information and any copies and may not use or disclose the information until the claim is resolved. A receiving party who wishes to determine the validity of a claim of privilege shall promptly file a motion under seal requesting that the court determine the validity of the claim. A receiving party who disclosed the information before being notified shall take reasonable steps to retrieve it. The producing party shall preserve the information until the claim is resolved.

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

(3) Effect of Inadvertent Disclosure

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

Committee note: Courts in other jurisdictions are in conflict over whether an inadvertent disclosure of privileged information or work product constitutes a waiver. A few courts find that a disclosure must be intentional to be a waiver. Most courts find a waiver only if the disclosing party acted carelessly in disclosing the communication or information and failed to request its return in a timely manner. A few other courts hold that any mistaken disclosure of protected information constitutes waiver without regard to the protections taken to avoid such a disclosure. *See generally Hopson v. City of Baltimore,* 232

F.R.D. 228 (D. Md. 2005) for a discussion of this case law.

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

(4) Controlling Effect of Court Orders and Agreements

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

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

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

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

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

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

statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

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

(1) Expected to be Called at Trial

(A) Generally

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

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

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

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

(2) Not Expected to be Called at Trial

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

(3) Fees and Expenses of Deposition

Unless the court orders otherwise on the ground of manifest injustice, the party seeking discovery: (A) shall pay each expert a reasonable fee, at a rate not exceeding the rate charged by the expert for time spent preparing for a deposition, for the time spent in attending a deposition and for the time and expenses reasonably incurred in travel to and from the deposition; and (B) when obtaining discovery under subsection ~~(f)(2)~~ (g)(2) of this Rule, shall pay each expert a reasonable fee for preparing for the deposition.

Source: This Rule is derived as follows:

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

Section (b) is new and is derived from the 2000 version of Fed. R. Civ. P. 26 (b) (2)<u>, except that subsection (b)(2) is derived from the 2006 Fed. R. Civ. P. 26 (b)(2)(B)</u>.

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

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

<u>Section (e) is new and is derived from the 2006 version of Fed. R. Civ. P. 26 (b)(5).</u>

Section ~~(e)~~ <u>(f)</u> is derived from former Rule 400 e.

Section ~~(f)~~ <u>(g)</u>

Subsection ~~(f)(1)~~ <u>(g)(1)</u> is derived in part from the 1980 version of Fed. R. Civ. P. 26 (b)(4) and former Rule 400 f and is in part new.

Subsection ~~(f)(2)~~ <u>(g)(2)</u> is derived from the 1980 version of Fed. R. Civ. P. 26 (b)(4) and former Rule U12 b.

Subsection ~~(f)(3)~~ <u>(g)(3)</u> is derived in part from the 1980 version of Fed. R. Civ. P. 26 (b)(4) and is in part new.

<u>REPORTER'S NOTE</u>

Several of the Rules of Procedure for Maryland are proposed for amendment to conform to changes in the federal rules pertaining to e-discovery. The primary sources reviewed by the Discovery Subcommittee when it drafted the Rules include the 2006 amendments to the Federal Rules of Procedure and proposed amendments to Federal Rule of Evidence 502; the Sedona Conference, *The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production* (2d ed. 2007); Conference of Chief Justices, *Guidelines for State Trial Courts Regarding Discovery of Electronically-Stored Information*; and Maryland Business and Technology Case Management Program, *Electronic Data Discovery Guidelines*.

Section (a) of Rule 2-402 is amended to parallel Rule 2-422 (a) by recognizing that the scope of discovery encompasses electronically stored information as well as documents and other tangible things relevant to the subject matter involved in the action. The language is taken from the 2006 amendments to Fed. R. Civ. P. 26 (a)(1)(B).

The Rules Committee changed the language in subsection (b)(1), which had been borrowed from Fed. R. Civ. P. 26 (b)(2)(A), for clarity. The language of subsection (b)(2) is derived from the language of Fed. R. Civ. P. 26 (b)(2)(B).

Consistent with parallel changes to other sections of this Rule and other Rules, section (d) has been amended to add

electronically stored information to the list of types of discovery a party may obtain.

Subsections (e)(1) and (e)(2) adopt the procedure established in Fed. R. Civ. P. 26 (b)(5) to allow the responding party to assert a claim of privilege or work product protection after production. It is a procedural device for addressing the increasing costly and time-consuming efforts to reduce the number of inevitable mistakes because of the amount and nature of electronically stored information available in the present age. Subsection (e)(3) was added by the Rules Committee to conform to the common law in Maryland as set out in *Elkton Case Center Associates v. Quality Case Management, Inc.*, 145 Md. App. 532 (2002). Subsection (e)(4) and the Committee note following it were added by the Rules Committee as a result of *Hopson v. City of Baltimore*, 232 F. R. D. 228 (D. Md. 2005), which pointed out that a confidentiality agreement between parties does not necessarily apply to third persons.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-421 to add language to section (c) referring to "electronically stored information", as follows:

Rule 2-421. INTERROGATORIES TO PARTIES

. . .

(c) Option to Produce Business Records

When (1) the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of those business records or a compilation, abstract, or summary of them, and (2) the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, and (3) the party upon whom the interrogatory has been served has not already derived or ascertained the information requested, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as

readily as can the party served, the records from which the answer may be ascertained.

. . .

REPORTER'S NOTE

The amendment to Rule 2-421 clarifies how the option to produce business records to respond to an interrogatory operates in the information age. The amendment makes clear that the option to produce business records includes electronically stored information.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-422 to add to section (a) a reference to "electronically stored information," other language broadening the scope of discovery, and the word "designated" modifying the language "tangible things"; to add a sentence to section (b) allowing a discovery request to specify the form of electronically stored information; to delete certain language from section (c) and to add to it language pertaining to refusal of the requested form; to add a cross reference to Rule 2-402 at the end of section (c); to add to subsection (d)(1) a reference to "electronically stored information" and to add language pertaining to the form of production of that information; to add a new subsection (d)(2) stating that production of electronically stored information is only required in one form and to add a Committee note after it, as follows:

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

(a) Scope

Any party may serve one or more requests to any other party (1) as to items that are in the possession, custody, or control of the party upon whom the request is served, to produce and permit the party making the request, or someone acting on the

party's behalf, to inspect ~~and~~, copy, test, or sample ~~any~~ designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) or to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 2-402 (a); or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the property, within the scope of Rule 2-402 (a).

(b) Request

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

(c) Response

The party to whom a request is directed shall serve a written response within 30 days after service of the request or within 15 days after the date on which that party's initial

pleading or motion is required, whichever is later. The response shall state, with respect to each item or category, that (1) inspection and related activities will be permitted as requested, ~~unless~~ (2) the request is refused, ~~in which event the reasons for refusal shall be stated~~ or (3) the request for production in a particular form is refused. The grounds for each refusal shall be fully stated. If the refusal relates to part of an item or category, the part shall be specified. If a refusal relates to the form in which electronically stored information is requested to be produced (or if no form was specified in the request) the responding party shall state the form in which it would produce the information.

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

(d) Production

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

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

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

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

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

REPORTER'S NOTE

The amendment to Rule 2-422 (a) adds "electronically stored information" as a category subject to production, in addition to documents and other tangible things. The amendments make clear that parties may request an opportunity to test or sample materials sought under the rule in addition to inspecting and copying them.

Section (b) is amended to permit the requesting party to designate the form in which it wants electronically stored information produced. The form of production typically is more important to the exchange of electronically stored information than of hard-copy materials. Specifying the form should facilitate the orderly, efficient, and cost-effective discovery of electronically stored information. Different forms of production may be appropriate for different types of electronically stored information, so the requesting party may ask for this.

Section (c) requires that if the responding party objects to responding or objects to the form stated by the requesting party, the responding party shall state fully the reasons for refusing

to respond to the request. Section (c) also requires that if the responding party objects to the form of production, or if no form was specified in the request, the responding party shall state the form in which it would produce the information. Stating the responding party's intended form before the production occurs may permit the parties to identify and seek to resolve disputes before the cost and work of the production occurs.

A new cross reference after section (c) points out that Rule 2-402 (b)(1) contains a list of factors used by the court in determining the reasonableness of discovery requests and that Rule 2-402 (b)(2) concerns the assessment of the costs of discovery.

Subsection (d)(1) is amended to require that, just as with paper documents, if electronically stored information is organized for production in a manner different from which it is kept in the ordinary course of business, it must be organized and labeled to correspond with the categories of the request for production. This subsection also provides that if the form of production is not specified by the parties, agreement, or court order, the responding party shall produce electronically stored information in a form that is reasonably usable. Under some circumstances, the responding party may need to provide some reasonable amount of technical support, information on application software, or other reasonable assistance to enable the requesting party to use the information. The Committee note after section (d) provides that to justify onsite inspection of a computer system and the programs used, a party should demonstrate a substantial need to discover the information and a lack of a reasonable alternative.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-424 to add a reference to "electronically stored information", as follows:

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

(a) Request for Admission

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

. . .

REPORTER'S NOTE

The amendment to Rule 2-424 (a) adds a reference to "electronically stored information" to clarify that parties may request the admission of the genuineness of this type of information as well as relevant documents. Corollary Fed. R. Civ. P. 36 (a) does not expressly address electronically stored information. The Committee believes this to be an inadvertent omission in the federal drafting process.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-433 to add a new section (b) pertaining to loss of electronically stored information, as follows:

Rule 2-433. SANCTIONS

(a) For Certain Failures of Discovery

Upon a motion filed under Rule 2-432 (a), the court, if it finds a failure of discovery, may enter such orders in regard to the failure as are just, including one or more of the following:

(1) An order that the matters sought to be discovered, or any other designated facts shall be taken to be established for the purpose of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or

(3) An order striking out pleadings or parts thereof, or staying further proceeding until the discovery is provided, or dismissing the action or any part thereof, or entering a judgment by default that includes a determination as to liability and all relief sought by the moving party against the failing party if the court is satisfied that it has personal jurisdiction over that party. If, in order to enable the court to enter default

judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the court may rely on affidavits, conduct hearings or order references as appropriate, and, if requested, shall preserve to the plaintiff the right of trial by jury.

Instead of any order or in addition thereto, the court, after opportunity for hearing, shall require the failing party or the attorney advising the failure to act or both of them to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(b) For Loss of Electronically Stored Information

Absent exceptional circumstances, a court may not impose sanctions under these Rules on a party for failing to provide electronically stored information that is no longer available as a result of the routine, good-faith operations of an electronic information system.

~~(b)~~ (c) For Failure to Comply with Order Compelling Discovery

If a person fails to obey an order compelling discovery, the court, upon motion of a party and reasonable notice to other parties and all persons affected, may enter such orders in regard to the failure as are just, including one or more of the orders set forth in section (a) of this Rule. If justice cannot otherwise be achieved, the court may enter an order in compliance

with Rule 15-206 treating the failure to obey the order as a contempt.

~~(c)~~ (d) Award of Expenses

If a motion filed under Rule 2-432 or under Rule 2-403 is granted, the court, after opportunity for hearing, shall require the party or deponent whose conduct necessitated the motion or the party or the attorney advising the conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court, after opportunity for hearing, shall require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 422 c 1 and 2.
Section (b) is new and is derived from the 2006 version of Fed. R. Civ. P. 37 (f).
Section ~~(b)~~ (c) is derived from former Rule 422 b.

Section ~~(c)~~ (d) is derived from the 1980 version of Fed. R. Civ. P. 37 (a) (4) and former Rule 422 a 5, 6 and 7.

REPORTER'S NOTE

The addition of section (b) focuses on a distinctive feature of computer operations, the routine alteration and deletion of information that goes along with ordinary use. Many steps essential to computer operation may alter or destroy information for reasons that have nothing to do with how that information might relate to litigation. The new language applies only to information lost due to the routine operation of an electronic information system, and only if the operation was in good faith. This means that a party is not permitted to exploit the routine operation of an information system to thwart discovery obligations by allowing that operation to continue in order to destroy specific stored information that it is required to preserve. Whether good faith would call for steps to prevent the loss of information on sources that the party believes are not reasonably accessible under Rule 2-402 (b)(2) depends on the circumstances of each case. The Rule restricts the imposition of sanctions, but it does not prevent a court from making the kinds of adjustments frequently used in managing discovery if a party is unable to provide relevant responsive information.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-504 to add a new subsection (b)(2)(G) referring to discovery of electronically stored information, to add a new subsection (b)(2)(H) referring to a process for asserting claims of privilege or of protection after production, and to reletter subsection (b)(2), 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)~~ (g)(1);

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

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

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

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

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

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

(G) provisions for discovery of electronically stored information;

(H) a process by which the parties may assert claims of privilege or of protection after production; and

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

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

Source: This Rule is in part new and in part derived as follows:
Subsection (b)(2)(G) is new and is derived from the 2006 version of Fed. R. Civ. P. 16 (b)(5).
Subsection (b)(2)(H) is new and is derived from the 2006 version of Fed. R. Civ. P. 16 (b)(6).

REPORTER'S NOTE

The amendment to Rule 2-504 (b)(2) is designed to alert the court to the possible need to address the handling of discovery of electronically stored information early in the litigation if this discovery is expected to occur. It also adds to the list of topics that may be addressed in the scheduling order a process by which the parties may assert claims of privilege or of protection after production. The federal rule uses the language "any agreements the parties reach for asserting claims of privilege ...," but Rule 2-504 (b)(2)(H) broadens this concept to include any process for asserting claims of privilege or of protection after production.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-504.1 to add language to section (b) expanding a scheduling order to include issues relating to preserving discoverable information, issues relating to discovery of electronically stored information, and issues relating to claims of privilege or of protection; and to add a Committee note at the end of that section pertaining to how discovery of electronically stored information is handled at a scheduling conference, as follows:

Rule 2-504.1. SCHEDULING CONFERENCE

(a) When Required

In any of the following circumstances, the court shall issue an order requiring the parties to attend a scheduling conference:

(1) in an action placed or likely to be placed in a scheduling category for which the case management plan adopted pursuant to Rule 16-202 b. requires a scheduling conference;

(2) in an action in which an objection to computer-generated evidence is filed under Rule 2-504.3 (d); or

(3) in an action, in which a party requests a scheduling conference and represents that, despite a good faith effort, the parties have been unable to reach an agreement (i) on a plan for

the scheduling and completion of discovery, (ii) on the proposal of any party to pursue an available and appropriate form of alternative dispute resolution, or (iii) on any other matter eligible for inclusion in a scheduling order under Rule 2-504.

(b) When Permitted

The court may issue an order in any action requiring the parties to attend a scheduling conference.

(c) Order for Scheduling Conference

An order setting a scheduling conference may require that the parties, at least ten days before the conference:

(1) complete sufficient initial discovery to enable them to participate in the conference meaningfully and in good faith and to make decisions regarding (A) settlement, (B) consideration of available and appropriate forms of alternative dispute resolution, (C) limitation of issues, (D) stipulations, (E) any issues relating to preserving discoverable information, (F) any issues relating to discovery of electronically stored information, including the form in which it is to be produced, (G) any issues relating to claims of privilege or of protection, and ~~(E)~~ (H) other matters that may be considered at the conference; and

(2) confer in person or by telephone and attempt to reach agreement or narrow the areas of disagreement regarding the matters that may be considered at the conference and determine whether the action or any issues in the action are suitable for

referral to an alternative dispute resolution process in accordance with Title 17, Chapter 100 of these rules.

Committee note: Examples of matters that may be considered at a scheduling conference when discovery of electronically stored information is expected, include:

(1) its identification and retention;

(2) the form of production, such as PDF, TIFF, or JPEG files, or native form, for example, Microsoft Word, Excel, etc.;

(3) the manner of production, such as CD-ROM;

(4) any production of indices;

(5) any electronic numbering of documents and information;

(6) apportionment of costs for production of electronically stored information not reasonably accessible because of undue burden or cost;

(7) a process by which the parties may assert claims of privilege or of protection after production; and

(8) whether the parties agree to refer discovery disputes to a master or Special Master.

The parties may also need to address any request for metadata, for example, information embedded in an electronic data file that describes how, when, and by whom it was created, received, accessed, or modified or how it is formatted. For a discussion of metadata and factors to consider in determining the extent to which metadata should be preserved and produced in a particular case, *see,* The Sedona Conference, *The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production*, (2d ed. 2007), Principle 12 and related Comment.

(d) Time and Method of Holding Conference

Except (1) upon agreement of the parties, (2) upon a finding of good cause by the court, or (3) in an action assigned to a family division under Rule 16-204 (a)(2), a scheduling conference shall not be held earlier than 30 days after the date of the order. If the court requires the completion of any discovery pursuant to section (c) of this Rule, it shall afford the parties a reasonable opportunity to complete the discovery. The court may hold a scheduling conference in chambers, in open court, or by telephone or other electronic means.

(e) Scheduling Order

Case management decisions made by the court at or as a result of a scheduling conference shall be included in a scheduling order entered pursuant to Rule 2-504. A court may not order a party or counsel for a party to participate in an alternative dispute resolution process under Rule 2-504 except in accordance with Rule 9-205 or Rule 17-103.

Source: This Rule is new.

REPORTER'S NOTE

The amendments to Rule 2-504.1 (c) allow a scheduling order to direct the parties to discuss discovery of electronically stored information during their scheduling conference. When parties anticipate such discovery, discussion at the outset may avoid later difficulties or ease their resolution. When a case involves discovery of electronically stored information, the issues to be addressed during the scheduling conference depend on the nature and extent of the contemplated discovery and of the parties' information systems. The requirement that the parties discuss any issues regarding preservation of discoverable information is particularly important with regard to electronically stored information, the volume and dynamic nature of which may complicate preservation obligations. New language has been added providing that the parties should discuss any issues relating to assertions of privilege or of protection. See the Committee note after Rule 2-402 (e) for a discussion of certain protocols to minimize the risk of waiver of privilege or of protection.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE –- CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-510 to add a reference to "electronically stored information" to sections (a), (c), (e), and (f); to add language to section (a) requiring a subpoenaed party to permit testing or sampling of electronically stored information; to add to the contents of a subpoena in section (c) a description of electronically stored information, a description of any testing or sampling proposed, and a statement allowing the subpoena to specify the form of the information; to add two Code references to the cross reference after section (d); to add a sentence to section (e) referring to filing a motion objecting to a subpoena for certain information; to add a sentence to section (f) requiring support for a claim of privilege or protection as work product materials; to add a new section (g) pertaining to duties relating to the production of documents, electronically stored information, and tangible things; to change subsection (i)(1) by substituting the term "custodian of records" for the term "health care provider," by deleting language relating to x-ray films, and by deleting language referring to "the patient;" to add a cross reference after subsection (i)(1); to add a tagline to subsection (i)(2) and to change the term "health care provider" to the word "custodian;" to add a tagline to subsection (i)(3), to delete a word, and to add language requiring that a subpoena state with

specificity the reason for the presence of the custodian; to delete a Code reference in the cross reference following subsection (i)(3); to add a new section (k) pertaining to information produced subject to a claim of privilege or protection as work product; to add a cross reference at the end of the Rule; and to reletter the Rule, as follows:

Rule 2-510. SUBPOENAS

(a) Use

A subpoena is required to compel the person to whom it is directed to attend, give testimony, and produce designated documents, electronically stored information, or ~~other~~ tangible things at a court proceeding, including proceedings before a master, auditor, or examiner. A subpoena is also required to compel a nonparty and may be used to compel a party over whom the court has acquired jurisdiction to attend, give testimony, and produce and permit inspection, ~~and~~ copying, testing, or sampling of designated documents, electronically stored information, or ~~other~~ tangible things at a deposition. A subpoena shall not be used for any other purpose. If the court, on motion of a party alleging a violation of this section or on its own initiative, after affording the alleged violator a hearing, finds that a party or attorney used or attempted to use a subpoena for a purpose other than a purpose allowed under this section, the court may impose an appropriate sanction upon the party or attorney, including an award of a reasonable attorney's fee and

costs, the exclusion of evidence obtained by the subpoena, and reimbursement of any person inconvenienced for time and expenses incurred.

(b) Issuance

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

(c) Form

Every subpoena shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, (5) a description of any documents, electronically stored information, or ~~other~~ tangible things to be produced and if testing or sampling is to occur, a description of the proposed testing or sampling procedure, and (6) when required by Rule 2-412 (d), a notice to designate the person to testify. A subpoena may specify the form in which electronically stored information is to be produced.

(d) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. Unless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing.

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

(e) Objection to Subpoena for Court Proceedings

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

(1) that the subpoena be quashed or modified;

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

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

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

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

(f) Objection to Subpoena for Deposition

A person served with a subpoena to attend a deposition may seek a protective order pursuant to Rule 2-403. If the subpoena also commands the production of documents, electronically stored information, or ~~other~~ tangible things at the deposition, the person served may seek a protective order pursuant to Rule 2-403 or may file, within ten days after service of the subpoena, an objection to production of any or all of the designated materials. The objection shall be in writing and shall state the reasons for the objection. If an objection is filed, the party serving the subpoena is not entitled to production of the materials except pursuant to an order of the court from which the

subpoena was issued. At any time before or within 15 days after completion of the deposition and upon notice to the deponent, the party serving the subpoena may move pursuant to Rule 2-432 for an order to compel the production.

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

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

(1) Generally

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

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

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

(2) Electronically Stored Information

A person responding to a subpoena to produce electronically stored information at a court proceeding or deposition need not produce the same electronically stored

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

~~(g)~~ (h) Protection of Persons Subject to Subpoenas

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

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

~~(h)~~ (i) Records ~~of Health Care Providers~~ Produced by Custodians

(1) Generally

A ~~health care provider, as defined by Code, Courts Article, §3-2A-01 (e),~~ custodian of records served with a subpoena to produce ~~at trial~~ records~~, including x-ray films,~~

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

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

(2) During Trial

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

(3) Presence of Custodian

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

Cross reference: Code, Courts Article, §10-104 includes an alternative method of authenticating medical records in certain cases transferred from the District Court upon a demand for a jury trial. ~~Code, Health-General Article, §4-306 requires that a subpoena to produce medical records without the authorization of a person in interest be accompanied by a certification that a copy of the subpoena has been served on the person whose records are being sought or that the court has waived service for good cause.~~

~~(i)~~ (j) Attachment

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

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

Within a reasonable time after information is produced in response to a subpoena that is subject to a claim of privilege or of protection as work product material, the person who produced the information shall notify each party who received the

information of the claim and the basis for it. Promptly after being notified, each receiving party shall return, sequester, or destroy the specified information and any copies and may not use or disclose the information until the claim is resolved. A receiving party who wishes to determine the validity of a claim of privilege shall promptly file a motion under seal requesting that the court determine the validity of the claim. A receiving party who disclosed the information before being notified shall take reasonable steps to retrieve it. The person who produced the information shall preserve it until the claim is resolved.

Cross reference: For issuing and enforcing legislative subpoenas, see Code, State Government Article, §§2-1802 and 2-1803.

Source: This Rule is derived as follows:

Section (a) is new but the first and second sentences are derived in part from the 2006 version of Fed. R. Civ. P. 45(a)(1)(C); the second sentence also is derived in part from former Rule 407 a.

Section (b) is new.

Section (c) is derived from former Rules 114 a and b, 115 a and 405 a 2 (b), and from the 2006 version of Fed. R. Civ. P. 45(a)(1)(D).

Section (d) is derived from former Rules 104 a and b and 116 b.

Section (e) is derived from former Rule 115 b and the 2006 version of Fed. R. Civ. P. 45 (d)(2)(A).

Section (f) is derived from the 1980 version of Fed. R. Civ. P. 45 (d) (1), and the 2006 version of Fed. R. Civ. P. 45 (d)(2)(A).

Section (g) is new and is derived from the 2006 version of Fed. R. Civ. P. 45 (d)(1).

Section ~~(g)~~ (h) is derived from the 1991 version of Fed. R. Civ. P. 45 (c) (1).

Section ~~(h)~~ (i) is new.

Section ~~(i)~~ (j) is derived from former Rules 114 d and 742 e.

Section (k) is new and is derived from the 2006 version of Fed. R. Civ. P. 45 (d)(2)(B).

REPORTER'S NOTE

Section (a) is amended to recognize that electronically stored information as defined in Rule 2-422 (a) can also be sought by subpoena. Section (a) of Rule 2-510 is also amended,

as in Rule 2-422 (a), to provide that a subpoena is available to permit testing and sampling as well as inspection and copying. As in Rule 2-422, this change recognizes that in some circumstances the opportunity to perform testing or sampling may be important, both for documents and for electronically stored information. In light of this, section (c) is changed to include a description of electronically stored information and a description of a proposed testing or sampling procedure as items to add to the subpoena itself. As in Rule 2-422 (b), language has been added to provide that a subpoena may specify the form in which electronically stored information is to be produced. Because testing and sampling may present particular issues of burden or intrusion for the person served with the subpoena, the protective provisions of section (h) must be enforced when these demands are made. Inspection or testing of certain types of electronically stored information or of a person's electronic information system may raise issues of confidentiality or privacy. "Inspection" should be the exception and not the rule for the subpoenaing of electronically stored information, just as it is with respect to discovery of electronically stored information under Rule 2-422. See the Committee note after subsection (d)(2) of Rule 2-422.

Following section (d) and subsection (i)(1), cross references to Code, Health-General Article, §4-306 (b)(6) and Code, Financial Institutions Article, §1-304 are added to highlight additional statutory requirements for certain subpoenas.

Section (g) is amended, as in Rule 2-422 (d), to provide that if the subpoena does not specify the form for electronically stored information, the person served with the subpoena must produce electronically stored information in a form in which it is usually maintained or in a form that is reasonably usable.

As with discovery of electronically stored information from parties, complying with a subpoena for such information may impose burdens on the responding person. Sections (e) through (g) provide protection against undue impositions on persons responding to subpoenas, and section (f) incorporates by reference the protections of Rules 2-403 and 2-432 with respect to motions for protective orders and motions to compel production, respectively.

The amendments to subsection (g)(2) largely parallel the amendments to Rule 2-402 (b) in addressing issues raised by difficulties in providing discovery of electronically stored information because of undue burden or cost. However, as already provided in section (h), a person responsible for issuance of a subpoena must take reasonable steps to avoid imposing undue burden or cost on a person subject to the subpoena. Indeed, a

witness's nonparty status is an important factor to be considered in determining whether to allocate costs on the demanding or producing party. *See, United States v. Columbia Broad. Sys., Inc.*, 666 F.2d 364, 371 (9th Cir.), *cert. denied*, 457 U.S. 1118 (1982). Whether a subpoena imposes an undue burden on a third party should be determined on a case-by-case analysis of factors such as: relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described, the extent to which the producing party must separate responsive from privileged or irrelevant matter, the burden imposed, the possibility of decreasing the burden through an appropriate protective order, the financial resources of the nonparty, the interest of the nonparty in the final outcome of the litigation, and the reasonableness of the costs involved in making the production. *See,* The Sedona Conference, *The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production*, (2d ed. 2007), Comment 13 c.

Section (i) is amended to provide a procedure for *all* custodians of records, not merely those for records of health care providers, to respond to a subpoena for records by providing the records to the clerk in lieu of the custodian appearing in person, unless expressly commanded to do so by the subpoena. Representatives of the banking industry had asked the Committee to amend section (i), so as to permit financial institutions to respond to records subpoenas in a manner similar to that provided for custodians of records of health care providers under current section (i). After studying the request, the Committee recommends expanding the benefits of such a procedure to all custodians of records, rather than limit it to custodians of only certain industries.

Section (k) is new and, like Rule 2-402 (e)(1), adds a procedure for assertion of privilege or of protection as work product materials after production. The responding party may submit the information to the court for resolution of the privilege claim, as under Rule 2-402 (e)(2). If information is produced in response to a subpoena that is subject to a claim of privilege or protection as work product material, the person making the claim shall notify a party that received the information within a reasonable time after the information was produced. *See Elkton Care Center Associates v. Quality Care Management, Inc.*, 145 Md. App. 532 (2002).

At the end of the Rule is a new cross reference to Code, State Government Article, §§2-1802 and 2-1803, added to draw attention to procedures for issuing and enforcing legislative subpoenas. The new statutory provisions were added by Chapter 546, Acts of 2007 (SB 384).

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE –- CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-432 (c) to conform to the relettering of Rule 2-402, as follows:

Rule 2-432. MOTIONS UPON FAILURE TO PROVIDE DISCOVERY

. . .

(c) By Nonparty to Compel Production of Statement

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

. . .

REPORTER'S NOTE

Section (c) of Rule 2-432 contains a "housekeeping" amendment to change the reference from "Rule 2-402 (e)" to "Rule 2-402 (f)," because of proposed changes to the latter Rule.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-808 to conform to the relettering of Rule 2-402, as follows:

Rule 16-808. PROCEEDINGS BEFORE COMMISSION

. . .

(g) Exchange of Information

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

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

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

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

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

. . .

REPORTER'S NOTE

Section (g) of Rule 16-808 contains a "housekeeping" amendment to change the reference from "Rule 2-402 (e)" to "Rule 2-402 (f)," because of proposed changes to the latter Rule.

MARYLAND RULES OF PROCEDURE

APPENDIX: FORM INTERROGATORIES

AMEND Form 3 to conform to terminology used in amendments to certain Rules in Title 2, Chapters 400 and 500, as follows:

Form 3. General Interrogatories.

Interrogatories

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

2. **Identify** each **person** whom you expect to call as an expert witness at trial, state the subject matter on which the expert is expected to testify, state the substance of the findings and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and, with respect to an expert whose findings and opinions were acquired in anticipation of litigation or for trial, summarize the qualifications of the expert, state the terms of the expert's compensation, and attach to your answers any available list of publications written by the expert and any written report made by the expert concerning the expert's findings and opinions. (Standard General Interrogatory No. 2.)

3. If you intend to rely upon any **documents**, electronically stored information, or ~~other~~ tangible things to support a position that you have taken or intend to take in the action, including any claim for damages, provide a brief description, by category and location, of all such **documents**, electronically stored information, and ~~other~~ tangible things, and **identify** all **persons** having possession, custody, or control of them. (Standard General Interrogatory No. 3.)

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

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

REPORTER'S NOTE

The proposed amendments to Form 3, General Interrogatories, conform the Form to terminology used in the proposed amendments to the Rules in Title 2, Chapters 400 and 500, recommended by the Rules Committee.

MARYLAND RULES OF PROCEDURE

FORM INTERROGATORIES

AMEND Form 7 to conform to the relettering of Rule 2-402, as follows:

Form 7. Motor Vehicle Tort Interrogatories.

Interrogatories

. . .

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

. . .

REPORTER'S NOTE

Section 12 of Form 7 contains a "housekeeping" amendment to change the reference from "Rule 2-402 (e)" to "Rule 2-402 (f)," because of proposed changes to the Rule.

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND

AMEND Rule 22 of the Rules Governing Admission to Bar of Maryland to conform to the relettering of Rule 2-510, as follows:

Rule 22. SUBPOENA POWER OF BOARD AND CHARACTER COMMITTEES

. . .

(b) Sanctions

If a person is subpoenaed to appear and give testimony or to produce books, documents, or other tangible things and fails to do so, the party who requested the subpoena, by motion that does not divulge the name of the applicant (except to the extent that this requirement is impracticable), may request the court to issue an attachment pursuant to Rule 2-510 ~~(h)~~ (j), or to cite the person for contempt pursuant to Title 15, Chapter 200 of the Maryland Rules, or both.

. . .

REPORTER'S NOTE

Section (b) of Rule 22 contains a "housekeeping" amendment to change the reference from "Rule 2-510 (h)" to "Rule 2-510 (j)," because of proposed changes to the latter Rule.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-509 (b) to delete the word "compensation," to add the words "reimbursement" and "qualified," and to make stylistic changes, as follows:

Rule 2-509. JURY TRIAL -- SPECIAL COSTS IN FIRST, SECOND, AND FOURTH JUDICIAL CIRCUITS

. . .

(b) Special Costs Imposed

When a jury trial is removed from the assignment at the initiative of a party for any reason within the 48 hour period, not including Saturdays, Sundays, and holidays, prior to 10:00 a.m. on the date scheduled, the court in its discretion may assess as costs against a party or parties an amount equal to the total ~~compensation~~ reimbursement paid to qualified jurors who reported and were not otherwise ~~utilized may be assessed as costs in the action against a party or parties in the discretion of the court and remitted by the~~ used. The clerk shall remit to the county the costs received pursuant to this section. The County Administrative Judge may waive assessment of these costs for good cause shown.

. . .

REPORTER'S NOTE

In section (b), the word “reimbursement” is substituted for the former reference to “compensation,” to reflect the practice of treating payments as expense reimbursement.

Also in section (b), the word “qualified” is added to modify “jurors” to reflect the addition of a defined term “qualified juror” in Code, Courts Article, §8-101, to distinguish among prospective, qualified, and sworn jurors.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-511 to add a cross reference after section (d), as follows:

Rule 2-511. TRIAL BY JURY

(a) Right Preserved

The right of trial by jury as guaranteed by the Maryland Constitution and the Maryland Declaration of Rights or as provided by law shall be preserved to the parties inviolate.

(b) Number of Jurors

The jury shall consist of six persons. With the approval of the court, the parties may agree to accept a verdict from fewer than six jurors if during the trial one or more of the six jurors becomes or is found to be unable or disqualified to perform a juror's duty.

(c) Separation of Jury

The court, either before or after submission of the case to the jury, may permit the jurors to separate or require that they be sequestered.

(d) Advisory Verdicts Disallowed

Issues of fact not triable of right by a jury shall be decided by the court and may not be submitted to a jury for an advisory verdict.

Cross reference: Md. Declaration of Rights, Article 5; Rule 2-325; and Code, Courts Article, §§8-421 (a) and 8-422.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 2-511 adds to the cross reference a reference to Article 5 of the Maryland Declaration of Rights and §§8-421 (a) and 8-422 of Code, Courts Article.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE –- CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-512 by adding a new subsection (a)(1) and a new cross reference after subsection (a)(1), by adding a new subsection (a)(2), by adding to and deleting language from section (b), by adding to and deleting language from subsection (c)(1), by adding new subsections (c)(2) and (c)(3), by adding to and deleting language from subsection (d)(1), by renumbering section (e) as subsection (d)(2) with an additional word added to it, by deleting section (f), by renumbering section (g) as section (e), by adding to and deleting language from subsection (e)(1), by adding to and deleting language from subsection (e)(2), by relettering section (i) as section (f), by adding to and deleting language from subsection (f)(1), by adding new subsections (f)(2)and (f)(3), and by making stylistic changes, as follows:

Rule 2-512. JURY SELECTION

(a) Jury Size and Challenge to the Array

(1) Size

Before a trial begins, the judge shall decide (A) the required number of sworn jurors, including any alternates, and (B) the size of the array of qualified jurors needed.

Cross reference: See Code, Courts Article, §8-421 (b).

(2) Insufficient Array

If the array is insufficient for jury selection, the trial judge may direct that additional qualified jurors be summoned at random from the qualified juror pool as provided by statute.

(3) Challenge to the Array

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

(b) ~~Alternate Jurors~~ General Requirements

~~The court may direct that one or more jurors be called and impanelled to sit as alternate jurors. Any juror who, before the time the jury retires to consider its verdict, becomes or is found to be unable or disqualified to perform a juror's duty shall be replaced by an alternate juror in the order of selection. An alternate juror~~ All individuals to be impanelled on the jury, including any alternates, shall be ~~drawn~~ selected in the same manner, have the same qualifications, and be subject to the same examination~~, take the same oath, and have the same functions, powers, facilities, and privileges as a juror. An~~

~~alternate juror who does not replace a juror shall be discharged when the jury retires to consider its verdict~~.

(c) Jury List

(1) Contents

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

(2) Dissemination

(A) Allowed

A party may provide the jury list to any person employed by the party to assist in jury selection. With permission of the trial judge, the list may be disseminated to other individuals such as the courtroom clerk or court reporter for use in carrying out official duties.

(B) Prohibited

Unless the trial judge orders otherwise, a party and any other person to whom the jury list is provided in accordance with subsection (c)(2)(A) of this Rule may not disseminate the list or the information contained on the list to any other person.

(3) Not Part of the Case Record; Exception

Unless the court orders otherwise, copies of jury lists shall be returned to the jury commissioner. Unless marked for identification and offered in evidence pursuant to Rule 2-516, a jury list is not part of the case record.

Cross reference: See Rule 16-1009 concerning motions to seal or limit inspection of a case record.

(d) Examination ~~of Jurors~~ and Challenges for Cause

(1) Examination

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

~~(e) Challenge for Cause~~ (2) Challenge for Cause

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

~~(f) Additional Jurors~~

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

~~(g)~~ (e) ~~Designation of List of Qualified Jurors~~ Peremptory Challenges

(1) Designation of Qualified Jurors; Order of Selection

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

~~(h)~~ (2) ~~Peremptory Challenges~~ Number; Exercise of Peremptory Challenges

Each party is permitted four peremptory challenges plus one peremptory challenge for each group of three or less ~~alternate jurors~~ alternates to be impanelled. For purposes of this section, ~~several~~ all plaintiffs ~~or several~~ shall be considered as a single party and all defendants shall be considered as a single party unless the ~~court~~ trial judge determines that adverse or hostile interests between plaintiffs

or between defendants justify allowing ~~to each~~ one or more of them the separate peremptory challenges ~~not exceeding the number~~ available to a single party. The parties shall simultaneously exercise their peremptory challenges by striking names from ~~the~~ a copy of the jury list.

~~(i)~~ (f) ~~Impanelling the~~ Impanelled Jury

(1) Impanelling

The ~~jurors and any alternates~~ individuals to be impanelled as sworn jurors, including any alternates, shall be called from the qualified jurors remaining on the jury list in the order previously designated by the ~~court~~ trial judge and shall be sworn.

(2) Oath; Functions, Powers, Facilities, and Privileges

All sworn jurors, including any alternates, shall take the same oath and, until discharged from jury service, have the same functions, powers, facilities, and privileges.

(3) Discharge of Jury Member

At any time before the jury retires to consider its verdict, the trial judge may replace any jury member whom the trial judge finds to be unable or disqualified to perform jury service with an alternate in the order of selection set under subsection (e)(1). When the jury retires to consider its verdict, the trial judge shall discharge any remaining alternates who did not replace another jury member.

(g) Foreperson

The ~~court~~ trial judge shall designate a sworn juror as ~~foreman~~ foreperson.

Source: This Rule is derived as follows:
Section (a) is in part derived from former Rules 754 a and ~~is consistent with former~~ Rule 543 c and in part new.
Section (b) is derived from former Rule 751 b and ~~is consistent with~~ former Rule 543 b 3.
Section (c) is new.
Section (d) is derived from former Rules 752, 754 b, and 543 d.
Section (e) is derived from former Rules ~~754 b~~ 753 and 543 a 3 and 4.
Section (f) is ~~consistent with former Rule 543 a 5 and 6~~ new.
Section (g) ~~is new with exception of the last sentence which is derived from former Rule 753 b 1~~ is derived from former Rule 751 d.
~~Section (h) is derived from former Rule 543 a 3 and 4.~~
~~Section (i) is derived from the last sentence of former Rule 753 b 3 and former Rule 751 d.~~

REPORTER'S NOTE

Subsection (a)(1) is added to state expressly that a trial judge sets the size of the jury to be impanelled (including alternates) and the size of the initial array before jury selection begins. Accordingly, the former first sentence of section (b) is deleted.

Subsection (a)(2) is derived from former section (f) with substitution of the term "trial judge" for the word "court" to avoid the inference that a majority of the bench must concur; substitution of the word "array" for the words "regular panel" for internal consistency and consistency with revised Code, Courts Article, Title 8; and substitution of "qualified juror pool" for "qualified jury wheel" for consistency with revised Code, Courts Article, Title 8, which reflects the use of computers for selection instead of the former practice of drawing numbers from a wheel.

Subsection (a)(3) is derived from former section (a), with deletion of the word "drawn" for consistency with revised Code, Courts Article, Title 8, which reflects the use of computers for selection as opposed to the former practice of drawing numbers from a wheel, and substitution of the word "array" for the word "panel," for internal consistency and consistency with revised Code, Courts Article, Title 8.

The former second sentence of section (b) is restated as an affirmative statement applicable to all impanelled jurors, including alternates. The word "selected" is substituted for the word "drawn," for consistency with revised Code, Courts Article, Title 8, which reflects the use of computers for selection, instead of the former practice of drawing numbers from a wheel.

Former section (c) is renumbered as subsection (c)(1), with the addition of "qualified" to modify "jurors" to reflect the addition of a defined term "qualified juror" in Code, Courts Article, §8-101 and to distinguish among prospective, qualified, and sworn jurors. Subsection (c)(1) is revised to require the jury list to include an address for a qualified juror but limited to a city or town and zip code to afford qualified jurors in a civil trial with the same protection for identifying information as that afforded to qualified jurors in a criminal trial. *See* Rule 4-312. Additionally, the requirement that additional information is to be set by rule rather than individual jury plan reflects Code, Courts Article, §8-105.

Subsection (c)(2) is added to set forth the manner in which jury lists are to be distributed and protected against unnecessary dissemination of juror information.

Subsection (c)(3) is added to clarify the circumstances under which the jury list becomes part of the case record.

Subsections (d)(1) and (2) are derived from former sections (d) and (e) with addition of the term "qualified" to modify "jurors" to reflect the addition of a defined term "qualified juror" in Code, Courts Article, §8-101 and to distinguish among prospective, qualified, and sworn jurors; and substitution of the word "array" for the word "panel" for internal consistency and consistency with revised Code, Courts Article, Title 8.

Subsection (e)(1) is derived from former section (g), with substitution of "individuals" for "jurors" and "alternate jurors," as these individuals are winnowed from among the "qualified jurors" – as categorized in Code, Courts Article, Title 8 – but may not be sworn as jurors. Accordingly, in subsection (e)(1), reference to "remain qualified" after examination is substituted for "have qualified".

Subsection (e)(2) is derived from former section (h).

Subsection (f)(1) is derived from the former first sentence of section (i), with substitution of "individuals" to be impanelled "as sworn jurors" for "jurors and any alternates," as these individuals are winnowed from among the "qualified jurors" – as categorized in Code, Courts Article, Title 8 – but are not

yet sworn as jurors; and with the addition of “jury” to modify the word “list” for internal consistency.

Subsection (f)(2) is derived from the former third sentence of section (b), as it related to being sworn and serving as a sworn juror.

Subsection (f)(3) is derived from the former second and fourth sentences of section (b), with substitution of “the trial judge ... finds” for “becomes or is found” and the substitution of “the trial judge shall discharge” for the passive “shall be discharged,” since the judge’s ruling is determinative. The substitution also avoids the inference that a majority of the bench must concur.

Section (g) is derived from the former second sentence of section (i), with substitution of “foreperson” for “foreman,” to reflect the Judiciary’s policy to use gender neutral words where practicable.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-521 by deleting language from section (a), by adding to section (a) the word "sworn" to modify the word "juror" and language to indicate that alternates are included during trial and deliberations, and by adding the word "sworn" to modify the word "juror" in section (b), as follows:

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

(a) Jurors' Notes

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

(b) Items Taken to Jury Room

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

instructions may be taken into the jury room only with the permission of the court.

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

. . .

REPORTER'S NOTE

In sections (a) and (b), the word "sworn" is added to modify "juror[s]" to distinguish among prospective, qualified, and sworn jurors.

In section (a), the phrase "including any alternates" is added to reflect that Rule 2-512 (f)(2) requires an alternate to "take the same oath" as other sworn jurors.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-522 by deleting language from section (b), by adding the words "jury or stated majority" in place of the phrase "required number of jurors," and by making stylistic changes, as follows:

Rule 2-522. COURT DECISION - JURY VERDICT

. . .

(b) Verdict

The verdict of a jury shall be unanimous unless the parties stipulate at any time that a verdict or a finding of a stated majority ~~of the jurors~~ shall be taken as the verdict or finding of the jury. The verdict shall be returned in open court. ~~Upon the~~ On request of a party or ~~upon~~ on the court's own initiative, the jury shall be polled before it is discharged. If the poll discloses that the ~~required number of jurors have~~ jury, or stated majority, has not concurred in the verdict, the court may direct the jury to retire for further deliberation or may discharge the jury.

. . .

REPORTER'S NOTE

In section (b), the phrase "required number of jurors," is replaced by the phrase, "jury, or stated majority," to avoid the awkwardness of the term "sworn juror" otherwise used throughout these rules. Other stylistic changes also are made.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-312 by adding a new subsection (a)(1) and a new cross reference after subsection (a)(1), by adding a new subsection (a)(2), by adding to and deleting language from section (b), by adding to and deleting language from subsection (c)(1), by adding new subsections (c)(2) and (c)(3), by adding to and deleting language from subsection (d)(1), by renumbering section (e) as subsection (d)(2) with an additional word added to it, by deleting section (f), by renumbering section (g) as section (e), by adding to and deleting language from section (e), by relettering section (h) as section (f), by adding to and deleting language from subsection (f)(1), by adding new subsections (f)(2)and (f)(3), by making the second sentence of section (h) into section (g) with language changes, and by making stylistic changes, as follows:

Rule 4-312. JURY SELECTION

(a) Jury Size and Challenge to the Array

(1) Size

Before a trial begins, the trial judge shall decide (A) the required number of sworn jurors, including any alternates and (B) the size of the array of qualified jurors needed.

Cross reference: See Code, Courts Article, §8-420 (b) and Code, Criminal Law Article, §2-303 (d).

(2) Insufficient Array

If the array is insufficient for jury selection, the trial judge may direct that additional qualified jurors be summoned at random from the qualified juror pool as provided by statute.

(3) Challenge to the Array

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

(b) ~~Alternate Jurors~~ General Requirements

~~(1) Generally~~

~~An alternate juror~~ All individuals to be impanelled on the jury, including any alternates, shall be ~~drawn~~ selected in the same manner, have the same qualifications, and be subject to the same examination~~, take the same oath, and have the same functions, powers, facilities, and privileges as a juror~~.

~~(2) Capital Cases~~

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

~~(3) Non-capital Cases~~

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

(c) Jury List

(1) Contents

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

(2) Dissemination

(A) Allowed

A party may provide the jury list to any person employed by the party to assist in jury selection. With permission of the trial judge, the list may be disseminated to

other individuals such as the courtroom clerk or court reporter for use in carrying out official duties.

(B) Prohibited

Unless the trial judge orders otherwise, a party and any other person to whom the jury list is provided in accordance with subsection (c)(2)(A) of this Rule may not disseminate the list or the information contained on the list to any other person.

(3) Not Part of the Case Record; Exception

Unless the court orders otherwise, copies of jury lists shall be returned to the jury commissioner. Unless marked for identification and offered in evidence pursuant to Rule 4-322, a jury list is not part of the case record.

Cross reference: See Rule 16-1009 concerning motions to seal or limit inspection of a case record.

(d) Examination ~~of Jurors~~ and Challenges for Cause

(1) Examination

The ~~court~~ trial judge may permit the parties to conduct an examination of ~~prospective~~ qualified jurors or may ~~itself~~ conduct the examination after considering questions proposed by the parties. If the ~~court~~ judge conducts the examination, ~~it~~ the judge may permit the parties to supplement the examination by further inquiry or may ~~itself~~ submit to the jurors additional questions proposed by the parties. The jurors' responses to any examination shall be under oath. ~~Upon~~ On request of any party, the ~~court~~ judge shall direct the clerk to call the roll of the

~~panel~~ array and to request each qualified juror to stand and be identified when called ~~by name~~.

~~(e)~~ (2) Challenges for Cause

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

~~(f) Additional Jurors~~

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

~~(g)~~ (e) ~~Designation of List of Qualified Jurors~~ Peremptory Challenges

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

~~(h)~~ (f) ~~Impanelling the~~ Impanelled Jury

(1) Impanelling

The ~~jurors and any alternates~~ individuals to be impanelled as sworn jurors, including any alternates, shall be called from the qualified jurors remaining on the jury list in the order previously designated by the ~~court~~ trial judge and shall be sworn.

(2) Oath; Functions, Powers, Facilities, and Privileges

All sworn jurors, including any alternates, shall take the same oath and, until discharged from jury service, have the same functions, powers, facilities, and privileges.

(3) Discharge of Jury Member

At any time before the jury retires to consider its verdict, the trial judge may replace any jury member whom the trial judge finds to be unable or disqualified to perform jury service with an alternate in the order of selection set under section (e). When the jury retires to consider its verdict, the trial judge shall discharge any remaining alternates who did not replace another jury member.

(g) Foreperson

The ~~court~~ trial judge shall designate a sworn juror as ~~foreman~~ foreperson.

Source: This Rule is derived as follows:
Section (a) is in part derived from former Rule 754 a and in part new.
Section (b) is derived from former Rule 751 b.
Section (c) is new.
Section (d) is derived from former Rules 752 and 754 b.
Section (e) is derived from former Rule ~~754 b~~ 753.
Section (f) is new.
~~Section (g) is derived from former Rule 753 b 1.~~
~~Section (h) is derived from former Rule 751 c and d.~~
Section (g) is derived from former Rule 751 d.

REPORTER'S NOTE

Subsection (a)(1) is added to state expressly that a trial judge sets the size of the jury to be impanelled (including alternates) and the size of the initial array before jury selection begins. Accordingly, former subsection (b)(2) and the first sentence of subsection (b)(3) is deleted, with the addition of the cross references.

Subsection (a)(2) is derived from former section (f), with substitution of the word "array" for the words "regular panel" for internal consistency and consistency with revised Code, Courts Article, Title 8; substitution of the term "trial judge" for the word "court" to avoid the inference that a majority of the bench must concur; and substitution of the reference to a "qualified juror pool" for "qualified jury wheel" for consistency with revised Code, Courts Article, Title 8, which reflects the use of computers for selection instead of the former practice of drawing numbers from a wheel.

Subsection (a)(3) is derived from former section (a), with deletion of the word "drawn" for consistency with revised Code, Courts Article, Title 8, which reflects the use of computers for selection as opposed to the former practice of drawing numbers from a wheel; substitution of the word "array" for the word "panel," for internal consistency and consistency with revised Code, Courts Article, Title 8; addition of the word "qualified" to modify "juror" to reflect the addition of a defined term "qualified juror" in Code, Courts Article, §8-101 and to distinguish among prospective, qualified, and sworn jurors; and substitution of the term "trial judge" for the word "court" to avoid the inference that a majority of the bench must concur.

Former subsection (b)(1), except as it related to the oath and powers, is renumbered as section (b) and is restated as an affirmative statement applicable to all impanelled jurors, including alternates. The word "selected" is substituted for the word "drawn," for consistency with revised Code, Courts Article, Title 8, which reflects the use of computers for selection, instead of the former practice of drawing numbers from a wheel.

Former section (c) is renumbered as subsection (c)(1), with the addition of "qualified" to modify "jurors" to reflect the addition of a defined term "qualified juror" in Code, Courts Article, §8-101 and to distinguish among prospective, qualified, and sworn jurors. Subsection (c)(1) is revised to require the jury list to include an address for a qualified juror with the current limitation as to a city or town and zip code. Additionally, the requirement that additional information is to be set by rule rather than individual jury plan reflects Code, Courts Article, §8-105.

Subsection (c)(2) is added to set forth the manner in which jury lists are to be distributed and protected against unnecessary dissemination of juror information.

Subsection (c)(3) is added to clarify the circumstances under which the jury list becomes part of the case record.

Subsections (d)(1) and (2) are derived from former sections (d) and (e), with substitution of the terms "trial judge" and "judge" for the words "court" and "it," and deletion of "itself," to avoid the inference that a majority of the bench must concur; addition of the term "qualified" to modify "jurors" to reflect the addition of a defined term "qualified juror" in Code, Courts Article, §8-101 and to distinguish among prospective, qualified, and sworn jurors; and substitution of the word "array" for the word "panel" for internal consistency and consistency with revised Code, Courts Article, Title 8.

Section (e) is derived from former section (g), with substitution of "trial judge" for "court" to avoid the inference that a majority of the bench must concur and substitution of references to "individuals" for the references to "jurors" and "alternate jurors," as these individuals are winnowed from among the "qualified jurors" – as categorized in Code, Courts Article, Title 8 – but are not yet sworn as jurors. Accordingly, in section (e), reference to "remain qualified" after examination is substituted for "have qualified."

Subsection (f)(1) is derived from the former first sentence of section (h), with substitution of "individuals" to be impanelled "as sworn jurors" for "jurors and any alternates," as these individuals are winnowed from among the "qualified jurors" – as categorized in Code, Courts Article, Title 8 – but are not yet sworn as jurors; and with the addition of "jury" to modify the word "list" for internal consistency.

Subsection (f)(2) is derived from the former subsection (b)(1), as it related to being sworn and serving as a sworn juror.

Subsection (f)(3) is derived from the former second and third sentences of subsection (b)(3), with substitution of "the trial judge ... finds" for "becomes or is found" and the substitution of "the trial judge shall discharge" for the passive "shall be discharged," since the judge's ruling is determinative. The substitution also avoids the inference that a majority of the bench must concur.

Section (g) is derived from the former second sentence of section (h), with substitution of "trial judge" for "court" to avoid the inference that a majority of the bench must concur;

addition of the word “sworn” to modify “juror” to distinguish among prospective, qualified, and sworn jurors in accordance with revised Code, Courts Article, Title 8; and substitution of “foreperson” for “foreman,” to reflect the Judiciary’s policy to use gender neutral words where practicable.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-313 by adding the word "qualified" to modify the word "juror" in subsections (b)(1) and (b)(3), as follows:

Rule 4-313. PEREMPTORY CHALLENGES

. . .

(b) Exercise of Challenges

(1) By Alternating Challenges

On request of any party for alternating challenges, the clerk shall call each qualified juror individually in the order previously designated by the court. When the first qualified juror is called, the State shall indicate first whether that qualified juror is challenged or accepted. When the second qualified juror is called, the defendant shall indicate first whether that qualified juror is challenged or accepted. When the third qualified juror is called, the State shall again indicate first whether that qualified juror is challenged or accepted, and the selection of a jury shall continue with challenges being exercised alternately in this fashion until the jury has been selected.

(2) By Simultaneous Striking from a List

If no request is made for alternating challenges, each party shall exercise its challenges simultaneously by striking names from a copy of the jury list.

(3) Remaining Challenges

After the required number of qualified jurors has been called, a party may exercise any remaining peremptory challenges to which the party is entitled at any time before the jury is sworn, except that no challenge to the first 12 qualified jurors shall be permitted after the first alternate juror is called.

. . .

REPORTER'S NOTE

In subsections (b)(1) and (3), the word "qualified" is added to modify "juror" to reflect the addition of a defined term "qualified juror" in Code, Courts Article, §8-101, to distinguish among prospective, qualified, and sworn jurors.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-314 by changing the word "prospective" to the word "qualified" in subsection (b)(3), as follows:

Rule 4-314. DEFENSE OF NOT CRIMINALLY RESPONSIBLE

. . .

(b) Procedure for Bifurcated Trial

(1) Generally

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

(2) Sequence

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

(3) Examination of Jurors

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

. . .

REPORTER'S NOTE

In subsection (b)(3), the word "qualified" is substituted for the former word "prospective", to reflect the addition of defined terms "prospective juror" and "qualified juror" in Code, Courts Article, §8-101.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-326 by deleting language from section (a), by adding the word “sworn” to modify the words “juror” and “jurors,” by adding language referring to alternates and by making stylistic changes in section (a), and by adding the word “sworn” to modify the word “jurors” and by making stylistic changes to section (b), as follows:

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

(a) Jurors' Notes

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

(b) Items Taken to Jury Room

~~Jurors~~ Sworn jurors may take their notes with them when they retire for deliberation. Unless the court for good cause orders otherwise, the jury may also take the charging document and

exhibits ~~which~~ that have been admitted ~~into~~ in evidence, except that a deposition may not be taken into the jury room without the agreement of all parties and the consent of the court. Electronically recorded instructions or oral instructions reduced to writing may be taken into the jury room only with the permission of the court. On request of a party or on the court's own initiative, the charging documents shall reflect only those charges on which the jury is to deliberate. The court may impose safeguards for the preservation of the exhibits and the safety of the ~~jurors~~ jury.

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

. . .

REPORTER'S NOTE

In sections (a) and (b), the word "sworn" is added to modify "juror" to distinguish among prospective, qualified, and sworn jurors. Accordingly, in section (b), the word "jury" is substituted for the former word "jurors" to avoid awkward repetition of "sworn jurors".

In section (a), the phrase "including any alternates" is added to reflect that Rule 4-312 (f)(2) requires an alternate to "take the same oath" as other sworn jurors.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-327 by changing the word “foreman” to the word “foreperson” in section (a) and by adding the word “sworn” to modify the word “jurors” in section (e), as follows:

Rule 4-327. VERDICT - JURY

(a) Return

The verdict of a jury shall be unanimous and shall be returned in open court.

(b) Sealed Verdict

With the consent of all parties, the court may authorize the rendition of a sealed verdict during a temporary adjournment of court. A sealed verdict shall be in writing and shall be signed by each member of the jury. It shall be sealed in an envelope by the ~~foreman~~ foreperson of the jury who shall write on the outside of the envelope "Verdict Case No. ....." "State of Maryland vs. ....." and deliver the envelope to the clerk. The jury shall not be discharged, but the clerk shall permit the jury to separate until the court is again in session at which time the jury shall be called and the verdict opened and received as other verdicts.

. . .

(e) Poll of Jury

On request of a party or on the court's own initiative, the jury shall be polled after it has returned a verdict and before it is discharged. If the sworn jurors do not unanimously concur in the verdict, the court may direct the jury to retire for further deliberation, or may discharge the jury if satisfied that a unanimous verdict cannot be reached.

. . .

REPORTER'S NOTE

In section (b), the word "foreperson" is substituted for "foreman," to reflect the Judiciary's policy to use gender neutral words where practicable.

In section (e), the word "sworn" is added to modify "jurors" to distinguish among prospective, qualified, and sworn jurors.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 600 - CRIMINAL INVESTIGATIONS AND MISCELLANEOUS PROVISIONS

AMEND Rule 4-643 to change the word "foreman" to the word "foreperson" in section (a), as follows:

Rule 4-643. SUBPOENA

(a) To Appear Before the Grand Jury

Any subpoena to appear before the grand jury shall be issued: (1) by the clerk of a circuit court on request of the State's Attorney or the grand jury; or (2) by the grand jury through its ~~foreman~~ foreperson or deputy ~~foreman~~ foreperson. The subpoena shall contain the information required by Rule 4-266 (a).

(b) Enforcement - Protective Order

A subpoena to appear before the grand jury or pursuant to Article 10, §39A is enforceable only in circuit court in the manner set forth in Rule 4-266 (d) and the witness or a person asserting a privilege to prevent disclosure by the witness may apply for a protective order pursuant to Rule 4-266 (c).

Source: This Rule is new.

REPORTER'S NOTE

In section (a), the word "foreperson" is substituted for "foreman," to reflect the Judiciary's policy to use gender neutral words where practicable.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 600 - WITNESSES

AMEND Rule 5-606 by adding the word “sworn” to modify the word “juror” in section (a) and subsections (b)(1) and (b)(2), by deleting language from subsection (b)(3) and making style changes, and by changing the word “petit” to the word “trial” and adding the word “trial” to modify the word “jury” in section (c), as follows:

Rule 5-606. COMPETENCY OF JUROR AS WITNESS

(a) At the Trial

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

(b) Inquiry into Validity of Verdict

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

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

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

(c) "Verdict" Defined

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

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

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

REPORTER'S NOTE

In sections (a) and (b), the word "sworn" is added to modify "jurors" to distinguish among prospective, qualified, and sworn jurors.

In subsection (b)(3), the word "under" is substituted for "in accordance with" to cover all notes whether made in accordance with or contravention of the referenced rules.

In section (c), "trial jury" is substituted for "petit jury," in accordance with the Council on Jury Use and Management's preference for language more understandable to the public.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE, JUDICIAL DUTIES, ETC.

AMEND Rule 16-107 to amend the title of the Rule and to delete section b., as follows:

Rule 16-107. SINGLE TERM OF COURT ~~AND JURY TERMS~~

~~a. Term of Court.~~

For accounting and statistical reporting purposes, each circuit court shall hold a single term each year beginning on July 1 and ending on the following June 30.

~~b. Term of Jury.~~

~~The County Administrative Judge shall set the terms of the petit and grand juries for that county in the juror selection plan authorized by Code, Courts Article, §8-201.~~

Source: This Rule is derived from former Rule 1206.

REPORTER'S NOTE

Former section b is deleted as inaccurate as the circuit court, rather than the County Administrative Judge, adopts, and modifies, the jury plan, and Code, Courts Article, §8-207 (a) provides for the plan to specify intervals for creation of juror pools – rather than "terms".

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1004 by expanding subsection (b)(2) to allow disclosure of certain information about jurors under certain circumstances, as follows:

Rule 16-1004. ACCESS TO NOTICE, ADMINISTRATIVE, AND BUSINESS LICENSE RECORDS

(a) Notice Records

A custodian may not deny inspection of a notice record that has been recorded and indexed by the clerk.

(b) Administrative and Business License Records

(1) Except as otherwise provided by the Rules in this Chapter, the right to inspect administrative and business license records is governed by Code, State Government Article, §§10-611 through 10-626.

(2) (A) ~~Except as provided by Code, Courts Article, §8-212 (b) or (c), a~~ A custodian shall deny inspection of an administrative record used by the jury commissioner ~~or clerk~~ in ~~connection with~~ the jury selection process~~. Except as otherwise provided by court order, a custodian may not deny inspection of a jury list sent to the court pursuant to Rules 2-512 or 4-312 after the jury has been empaneled and sworn.~~, except (i) as a

trial judge orders in connection with a challenge under Code, Courts Article, §§8-408 and 8-409; and (ii) as provided in (B) and (C) of this subsection.

(B) A custodian shall, upon request, disclose the names and zip codes of the sworn jurors contained on a jury list after the jury has been impaneled and sworn, unless otherwise ordered by the trial judge.

(C) After a source pool of qualified jurors has been emptied and re-created in accordance with Code, Courts Article, §8-207, and after every person selected to serve as a juror from that pool has completed the person's service, a trial judge shall, upon request, disclose the name, zip code, age, sex, education, occupation, and spouse's occupation of each person whose name was selected from that pool and placed on a jury list, unless, in the interest of justice, the trial judge determines that this information remain confidential in whole or in part.

(D) A jury commissioner may provide jury lists to the Health Care Alternative Dispute Resolution Office as required by that Office in carrying out its duties, subject to that Office adopting regulations to ensure against improper dissemination of juror data.

(E) At intervals acceptable to the jury commissioner, a jury commissioner shall provide the State Board of Elections and State Motor Vehicle Administration with data about prospective, qualified, or sworn jurors needed to correct erroneous or obsolete information, such as that related to a death or change

of address, subject to the Board's and Administration's adoption of regulations to ensure against improper dissemination of juror data.

. . .

REPORTER'S NOTE

To conform to recent statutory changes, several Rules pertaining to jury trials have been proposed for modification. Rules 2-512 and 4-312 have been proposed to be changed to require the jury list to include the addresses of qualified jurors and to state that any need for additional information regarding jurors is to be set by rule and not by individual jury plan. The proposed changes to Rule 16-1004 include language stating that the jury commissioner shall provide a jury list as required under Rules 2-512 and 4-312 and that a custodian may disclose only the names of sworn jurors. Eric Lieberman, Esq., counsel to the Washington Post, expressed a concern that access to juror information would be too limited by the changes to Rule 16-1004 that originally had been proposed. He has requested that language be added to section (b) of Rule 16-1004 providing that a judge may order inspection of an administrative record used by the jury commissioner and that after the pool of qualified jurors has been emptied and all jurors have completed their service, upon request, a trial judge shall disclose information about the jurors unless, in the interest of justice, the judge determines that this information should remain confidential. The requested new language also provides that a custodian shall disclose the names and zip codes of the sworn jurors, unless otherwise ordered by the trial judge.

MARYLAND RULES OF PROCEDURE

APPENDIX: THE MARYLAND LAWYERS' RULES OF PROFESSIONAL CONDUCT

ADVOCATE

AMEND Appendix: the Maryland Lawyers' Rules of Professional Conduct, Rule 3.5 to delete language from paragraph (a)(1), to add the words "qualified" and "sworn" to modify the word "juror" in paragraph (a)(1), to delete language from paragraph (a)(2), to delete language from paragraph (a)(5), to add the word "jury" to modify the word "member" and to change the word "juror" to the words "jury member" in paragraph (a)(5), and to add the words "qualified" and "sworn" to modify the word "juror" in paragraph (a)(6) and paragraph (b), as follows:

Rule 3.5. IMPARTIALITY AND DECORUM OF THE TRIBUNAL

(a) A lawyer shall not:

(1) seek to influence a judge, <u>prospective, qualified, or sworn</u> juror, ~~prospective juror,~~ or other official by means prohibited by law;

(2) before the trial of a case with which the lawyer is connected, communicate outside the course of official proceedings with anyone known to the lawyer to be on the <u>jury</u> list ~~from which the jurors will be selected~~ for ~~the~~ trial of the case;

(3) during the trial of a case with which the lawyer is connected, communicate outside the course of official proceedings with any member of the jury;

(4) during the trial of a case with which the lawyer is not connected, communicate outside the course of official proceedings with any member of the jury about the case;

(5) after discharge of a jury from further consideration of a case with which the lawyer is connected, ask questions of or make comments to a jury member ~~of that jury~~ that are calculated to harass or embarrass the ~~juror~~ jury member or to influence the ~~juror's~~ jury member's actions in future jury service;

(6) conduct a vexatious or harassing investigation of any prospective, qualified, or sworn juror ~~or prospective juror~~;

(7) communicate ex parte about an adversary proceeding with the judge or other official before whom the proceeding is pending, except as permitted by law;

(8) discuss with a judge potential employment of the judge if the lawyer or a firm with which the lawyer is associated has a matter that is pending before the judge; or

(9) engage in conduct intended to disrupt a tribunal.

(b) A lawyer who has knowledge of any violation of ~~section~~ paragraph (a) of this Rule, any improper conduct by a prospective, qualified, or sworn juror ~~or prospective juror,~~ or any improper conduct by another towards a ~~juror or~~ prospective, qualified, or sworn juror, shall report it promptly to the court or other appropriate authority.

COMMENT

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in Rule 16-813, Maryland Code of Judicial Conduct, with which an advocate should

be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

[2] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[3] With regard to the prohibition in ~~subsection~~ paragraph (a)(2) of this Rule against communications with anyone on "the jury list ~~from which the jurors will be selected~~," see Md. Rules 2-512 (c) and 4-312 (c).

Model Rules Comparison.-- Rule 3.5 retains the former Maryland Rule text and comments, except that paragraph (a)(8) is new and the reference in Comment [1] is to the Code of Judicial Conduct. Changes in ABA Model Rule 3.5 were not adopted.

REPORTERS NOTE

In paragraphs (a)(1) and (6) and (b), references to “prospective, qualified, or sworn juror” is substituted for the former references to “juror, prospective juror,” to conform to the terminology in Code, Courts Article, Title 8.

In paragraph (a)(2) and the Comment, references to the “jury list” are substituted for the former references to the “list from which the jurors will be selected,” for brevity and consistency with Rules 2-512 and 4-312.

In paragraph (a)(5), references to a “jury member” are substituted for the former references to a “member of that jury,” “juror,” and “juror’s,” for consistency.

MARYLAND RULES OF PROCEDURE

APPENDIX: MARYLAND CODE OF CONDUCT FOR COURT INTERPRETERS

AMEND Appendix: Maryland Code of Conduct for Court Interpreters, Canon 3 to add the words “prospective, qualified, or sworn” to modify the word “jurors” to the Commentary, as follows:

MARYLAND CODE OF CONDUCT FOR COURT INTERPRETERS

. . .

Canon 3

Impartiality and Avoidance of Conflict of Interest

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.

Commentary

The interpreter serves as an officer of the court, and the interpreter's duty in a court proceeding is to serve the court and the public to which the court is a servant. This is true regardless of whether the interpreter is retained publicly at government expense or privately at the expense of one of the parties.

Interpreters should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. Interpreters should maintain professional relationships with the participants and should not take an active part in any of the proceedings.

During the course of the proceedings, interpreters should not converse with parties, witnesses, prospective, qualified, or sworn jurors, attorneys, or law enforcement officers or with friends or relatives of any party, except in the discharge of official functions. It is especially important that interpreters who are familiar with courtroom personnel refrain from casual and personal conversations that may convey an appearance of a special relationship with or partiality to any of the court participants.

. . .

REPORTER'S NOTE

In the Comment, the words "prospective, qualified, and sworn" are added to modify "jurors," to emphasize that all three categories of jurors are covered by the statement.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-301 to provide for discovery under Rule 4-263 under certain circumstances and for discovery under Rule 4-262 in all other actions transferred to a circuit court upon a jury trial demand under this Rule, as follows:

Rule 4-301. BEGINNING OF TRIAL IN DISTRICT COURT

(a) Initial Procedures

Immediately before beginning a trial in District Court, the court shall (1) make certain the defendant has been furnished a copy of the charging document; (2) inform the defendant of each offense charged; (3) inform the defendant, when applicable, of the right to trial by jury; (4) comply with Rule 4-215, if necessary; and (5) thereafter, call upon the defendant to plead to each charge.

(b) Demand for Jury Trial

(1) Form and Time of Demand

A demand in the District Court for a jury trial shall be made either

(A) in writing and, unless otherwise ordered by the court or agreed by the parties, filed no later than 15 days before the scheduled trial date, or

(B) in open court on the trial date by the defendant and the defendant's counsel, if any.

(2) Procedure Following Demand

Upon a demand by the defendant for jury trial that deprives the District Court of jurisdiction pursuant to law, the clerk may serve a circuit court summons on the defendant requiring an appearance in the circuit court at a specified date and time. The clerk shall promptly transmit the case file to the clerk of the circuit court, who shall then file the charging document and, if the defendant was not served a circuit court summons by the clerk of the District Court, notify the defendant to appear before the circuit court. The circuit court shall proceed in accordance with Rule 4-213 (c) as if the appearance were by reason of execution of a warrant. Thereafter, except for the requirements of Code, Criminal Procedure Article, §6-103 and Rule 4-271 (a), or unless the circuit court orders otherwise, pretrial procedures shall be governed by the rules in this Title applicable in the District Court.

(c) Discovery

Discovery in an action transferred to a circuit court upon a jury trial demand made in accordance with subsection (b)(1)(A) of this Rule is governed by Rule 4-263. In all other actions transferred to a circuit court upon a jury trial demand, discovery is governed by Rule 4-262.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 751.
Section (b) is new.

Section (c) is new.

REPORTER'S NOTE

Rule 4-301 is proposed to be amended to provide that discovery under Rule 4-263 (Discovery in Circuit Court) is available in cases transferred to a circuit court upon a jury trial demand only when the demand is made in accordance with subsection (b)(1)(A) of Rule 4-301, i.e., only when a written demand is filed no later than 15 days before a scheduled trial date. In all other cases transferred pursuant to Rule 4-301, discovery is governed by Rule 4-262 (Discovery in District Court).

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-263 to require each party to exercise due diligence in identifying material and information to be disclosed, to extend the obligations of the parties under the Rule to staff members of the defendant and certain others, to reletter the sections, to add a cross reference following section (a), to add to section (b) a required disclosure of certain witness statements, to delete the requirement of a request by the defendant from the provision concerning the State's obligation to disclose the identity of certain witnesses, to add language to subsection (b)(1) referring to a certain statute and Rule, to clarify the disclosure obligation of the State's Attorney under subsections (b)(2) and (3), to add a Committee note and cross reference following section (b), to add to subsection (c)(1) a provision concerning the State's consultation with an expert, to add to subsection (c)(2)(B) requirements concerning an expert that the defendant expects to call as a witness at a hearing or trial, to add a new subsection (c)(2)(D) concerning disclosure of the defendant's character witnesses, to expand the definition of "work product" in subsection (d)(1), to change the time allowed in section (e) for the State's initial disclosure pursuant to section (b), to add the phrase "or required" to section (f), to provide generally that there is no requirement to

file discovery material with the court, to require the filing of a notice by the party generating discovery material and retention of the material for a period of time if the material is not filed with the court, to require the filing of a statement if the parties agree to provide discovery or disclosures in a manner different than set forth in the Rule, to clarify provisions pertaining to protective orders, to add a provision pertaining to disqualification of witnesses, and to make certain stylistic changes, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

Discovery and inspection in a circuit court shall be as follows:

~~(g)~~ (a) Obligations of ~~State's Attorney~~ the Parties

(1) Generally

Each party obligated to provide material or information under this Rule shall exercise due diligence to identify all of the material and information that must be disclosed.

(2) Obligations of the Parties Extend to Staff and Others

The obligations of the ~~State's Attorney~~ parties under this Rule extend to material and information in the possession or control of ~~the State's Attorney~~ a party and staff members and any others who have participated in the investigation or evaluation of the action and who either regularly report, or with reference to the particular action ~~have reported~~ have a duty to report, to the ~~office of the State's Attorney~~ party.

Cross reference: For the obligations of the State, see *State v. Williams*, 392 Md. 194 (2006).

~~(a)~~ (b) Disclosure Without Request

Except for the privileged work product of the State's Attorney as defined in subsection (d)(1) of this Rule, ~~Without~~ without the necessity of a request, the State's Attorney shall ~~furnish~~ provide to the defendant:

(1) The name and, except as provided under Code, Criminal Procedure Article, §11-205 or Rule 16-1009 (b), the address of each person whom the State intends to call as a witness at the hearing or trial to prove its case in chief or to rebut alibi testimony and, as to all statements about the action made by the witness to a State agent: (A) a copy of each written or recorded statement by the witness, regardless of when made, and (B) a copy of all reports of each oral statement by the witness, or, if not available, the substance of each oral statement made before charges were filed in the circuit court;

~~(1)~~ (2) Any material or information ~~tending to~~ in any form, whether or not admissible, in the possession or control of the State, including staff and others as described in subsection (a)(2) of this Rule, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment ~~of the defendant~~ as to the offense charged;

(3) Any material or information in any form, whether or not admissible, in the possession or control of the State, as

described in subsection (a)(2) of this Rule, that tends to impeach a witness by proving:

(A) the character of the witness for untruthfulness, by establishing prior conduct as permitted under Rule 5-608 (b) or a prior conviction as permitted under Rule 5-609,

(B) that the witness is biased, prejudiced, or interested in the outcome of the proceeding or has a motive to testify falsely, or

(C) that the facts differ from the witness's expected testimony; and

~~(2)~~ (4) Any relevant material or information regarding: (A) specific searches and seizures, wiretaps, or eavesdropping~~,~~; (B) the acquisition of statements made by the defendant to a State agent that the State intends to use at a hearing or trial~~,~~; and (C) pretrial identification of the defendant by a witness for the State.

Committee note: Examples of material and information that must be disclosed pursuant to subsections (b)(2) and (3) of this Rule if within the possession or control of the State, as described in subsection (a)(2) of this Rule, include: each statement made by a witness that is inconsistent with another statement made by the witness or with a statement made by another witness; the medical or psychiatric condition of a witness that may impair his or her ability to testify truthfully or accurately; pending charges against a witness for whom no deal is being offered at the time of trial; the fact that a witness has taken but did not pass a polygraph examination; the failure of a witness to make an identification; and evidence that might adversely impact the credibility of the State's evidence. The due diligence required by subsection (a)(1) does not require affirmative inquiry by the State with regard to the listed examples in all cases, but would require such inquiry into a particular area if information possessed by the State, as described in subsection (a)(2), would reasonably lead the State to believe that affirmative inquiry would result in discoverable information. Due diligence does not

require the State to obtain a copy of the criminal record of a State's witness unless the State is aware of the criminal record. If, upon inquiry by the State, a witness denies having a criminal record, the inquiry and denial generally satisfy due diligence unless the State has reason to question the denial.

Cross reference: See *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Giglio v. U.S.*, 405 U.S. 150 (1972); and *U.S. v. Agurs*, 427 U.S. 97 (1976).

~~(b)~~ (c) Disclosure Upon Request

(1) Disclosure By State

Upon request of the defendant, the State's Attorney shall provide to the defendant the information set forth in this section:

~~(1) Witnesses~~

~~Disclose to the defendant the name and address of each person then known whom the State intends to call as a witness at the hearing or trial to prove its case in chief or to rebut alibi testimony;~~

~~(2)~~ (A) Statements of the Defendant

As to all statements made by the defendant to a State agent that the State intends to use at a hearing or trial, the State shall ~~furnish~~ provide to the defendant~~, but not file unless the court so orders~~: ~~(A)~~ (i) a copy of each written or recorded statement, and ~~(B)~~ (ii) the substance of each oral statement and a copy of all reports of each oral statement;

~~(3)~~ (B) Statements of Codefendants

As to all statements made by a codefendant to a State agent ~~which~~ that the State intends to use at a joint hearing or trial, the State shall ~~furnish~~ provide to the defendant~~, but not~~

~~file unless the court so orders~~: ~~(A)~~ (i) a copy of each written or recorded statement, and ~~(B)~~ (ii) the substance of each oral statement and a copy of all reports of each oral statement;

~~(4)~~ (C) Reports or Statements of Experts

As to each expert consulted by the State in connection with the action the State shall: (i) provide to the defendant the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion, and (ii) ~~Produce~~ produce and permit the defendant to inspect and copy all written reports or statements made in connection with the action by ~~each~~ the expert~~,~~ ~~consulted by the State,~~ including the results of any physical or mental examination, scientific test, experiment, or comparison, and ~~furnish~~ provide the defendant with the substance of any such oral report and conclusion;

~~(5)~~ (D) Evidence for Use at Trial

Produce and permit the defendant to inspect, copy, and photograph any documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the State intends to use at the hearing or trial;

~~(6)~~ (E) Property of the Defendant

Produce and permit the defendant to inspect, copy, and photograph any item obtained from or belonging to the defendant, whether or not the State intends to use the item at the hearing or trial.

(2) Disclosure By Defendant

Upon the request of the State, the defendant shall:

(A) As to the Person of the Defendant

Appear in a lineup for identification; speak for identification; be fingerprinted; pose for photographs not involving reenactment of a scene; try on articles of clothing; permit the taking of specimens of material under fingernails; permit the taking of samples of blood, hair, and other material involving no unreasonable intrusion upon the defendant's person; provide handwriting specimens; and submit to reasonable physical or mental examination;

(B) Reports of Experts

As to each expert the defendant expects to call as a witness at a hearing or trial: (i) provide to the State the expert’s name and address, the subject matter on which the expert is expected to testify, the substance of the findings and the opinions to which the expert is expected to testify, and a summary of the grounds for each opinion, and (ii) produce and permit the State to inspect and copy all written reports made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison, and provide the State with the substance of any such oral report and conclusion.

(C) Alibi Witnesses

Upon designation by the State of the time, place, and date of the alleged occurrence, provide the name and address of each person other than the defendant whom the defendant intends

to call as a witness to show that the defendant was not present at the time, place, and date designated by the State in its request.

(D) Character Witnesses

As to each witness the defendant expects to call to testify as to the defendant's veracity or other relevant character trait, provide the name and address of that witness.

(E) Computer-generated Evidence

Produce and permit the State to inspect and copy any computer-generated evidence as defined in Rule 2-504.3 (a) that the defendant intends to use at the hearing or trial.

~~(c)~~ (d) Matters Not Subject to Discovery ~~by the Defendant~~

~~This Rule does not require the State to disclose:~~

~~(1) Any documents to the extent that they contain the opinions, theories, conclusions, or other work product of the State's Attorney, or~~

(1) By any Party

This Rule does not require the State or the defendant to disclose (A) the mental impressions, trial strategy, personal beliefs, or other privileged work product of counsel or (B) any other matter if the court finds that its disclosure would entail a substantial risk of harm to any person that outweighs the interest in disclosure.

(2) By Defendant

This Rule does not require the State to disclose

~~(2) The~~ the identity of a confidential informant~~, so long as~~ unless the State’s Attorney intends to call the informant as a witness or unless the failure to disclose the informant's identity ~~does not~~ would infringe a constitutional right of the defendant ~~and the State's Attorney does not intend to call the informant as a witness, or~~.

~~(3) Any other matter if the court finds that its disclosure would entail a substantial risk of harm to any person outweighing the interest in disclosure.~~

~~(d) Discovery by the State~~

~~Upon the request of the State, the defendant shall:~~

~~(1) As to the Person of the Defendant~~

~~Appear in a lineup for identification; speak for identification; be fingerprinted; pose for photographs not involving reenactment of a scene; try on articles of clothing; permit the taking of specimens of material under fingernails; permit the taking of samples of blood, hair, and other material involving no unreasonable intrusion upon the defendant's person; provide handwriting specimens; and submit to reasonable physical or mental examination;~~

~~(2) Reports of Experts~~

~~Produce and permit the State to inspect and copy all written reports made in connection with the action by each expert whom the defendant expects to call as a witness at the hearing or trial, including the results of any physical or mental examination, scientific test, experiment, or comparison, and~~

~~furnish the State with the substance of any such oral report and conclusion;~~

~~(3) Alibi Witnesses~~

~~Upon designation by the State of the time, place, and date of the alleged occurrence, furnish the name and address of each person other than the defendant whom the defendant intends to call as a witness to show that the defendant was not present at the time, place, and date designated by the State in its request.~~

~~(4) Computer-generated Evidence~~

~~Produce and permit the State to inspect and copy any computer-generated evidence as defined in Rule 2-504.3 (a) that the defendant intends to use at the hearing or trial.~~

(e) Time for Discovery

Unless the court orders otherwise, the time for discovery under this Rule shall be as set forth in this section. The State's Attorney shall make disclosure pursuant to section ~~(a)~~ (b) of this Rule within ~~25~~ 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213. Any request by the defendant for discovery pursuant to section ~~(b)~~ (c) of this Rule, and any request by the State for discovery pursuant to section ~~(d)~~ (e) of this Rule shall be made within 15 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213. The party

served with the request shall ~~furnish~~ provide the discovery within ten days after service.

(f) Motion to Compel Discovery

If discovery is not ~~furnished~~ provided as requested or required, a motion to compel discovery may be filed within ten days after receipt of inadequate discovery or after discovery should have been received, whichever is earlier. The motion shall specifically describe the requested matters that have not been ~~furnished~~ provided. A response to the motion may be filed within five days after service of the motion. The court need not consider any motion to compel discovery unless the moving party has filed a certificate describing good faith attempts to discuss with the opposing party the resolution of the dispute and certifying that they are unable to reach agreement on the disputed issues. The certificate shall include the date, time, and circumstances of each discussion or attempted discussion.

~~(h)~~ (g) Continuing Duty to Disclose

A party who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly.

(h) No Requirement to File with Court; Exceptions

Except as otherwise provided in these Rules or by order of court, discovery material need not be filed with the court. If the party generating the discovery material does not file the material with the court, that party shall (1) serve the discovery material on the other party and (2) promptly file with the court

a notice that (A) reasonably identifies the information provided and (B) states the date and manner of service. The party generating the discovery material shall make the original available for inspection and copying by the other party, and shall retain the original until the earlier of the expiration of (i) any sentence imposed on the defendant or (ii) the retention period that the material would have been retained under the applicable records retention and disposal schedule had the material been filed with the court. This section does not preclude the use of discovery material at trial or as an exhibit to support or oppose a motion. If the parties agree to provide discovery or disclosures in a manner different from the manner set forth in this Rule, the parties shall file with the court a statement of their agreement.

(i) Protective Orders

A party or a person from whom discovery is sought may petition the court for any protective order that justice requires. ~~On motion and for~~ For good cause shown, the court may order that specified disclosures be restricted.

(j) Sanctions

If at any time during the proceedings the court finds that a party has failed to comply with this Rule or an order issued pursuant to this Rule, the court may order that party to permit the discovery of the matters not previously disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in

evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances. The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

Source: This Rule is derived ~~as follows:~~
~~Section (a) is derived from former Rule 741 a 1 and 2.~~
~~Section (b) is derived from former Rule 741 b.~~
~~Section (c) is derived from former Rule 741 c.~~
~~Section (d) is derived in part from former Rule 741 d and is in part new.~~
~~Section (e) is derived from former Rule 741 e 1.~~
~~Section (f) is derived from former Rule 741 e 2.~~
~~Section (g) is derived from former Rule 741 a 3.~~
~~Section (h) is derived from former Rule 741 f.~~
~~Section (i) is derived from former Rule 741 g.~~
in part from former Rule 741 and is in part new.

REPORTER'S NOTE

Albert D. Brault, Esq. brought to the attention of the Rules Committee a report of the American College of Trial Lawyers, describing the problem that some federal prosecutors fail to provide information required to be furnished to a criminal defendant pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963). Mr. Brault spoke with local criminal defense lawyers in Montgomery County, who noted similar problems with some State prosecutors. To address this, the Honorable Albert J. Matricciani and the Honorable M. Brooke Murdock, Judges of the Circuit Court for Baltimore City, drafted proposed changes to Rule 4-263, the concept of which has been approved by the Rules Committee. The proposed amendments to Rule 4-263 blend language suggested by Judges Matricciani and Murdock with additional changes developed by the Committee.

Current section (g), Obligations of State's Attorney, is amended to require that each party who is obligated to provide material or information under the Rule exercise due diligence in identifying the material and information to be disclosed and to make subsection (2) applicable to all parties and not only to the State's Attorney. Because of the importance of this obligation, section (g) is moved to the beginning of the Rule and relettered

(a). A cross reference to *State v. Williams*, 392 Md. 194 (2006) is added following the section to highlight that the State's obligations under the Rule extend beyond the knowledge of the individual Assistant State's Attorney prosecuting the case.

Language is added to the beginning of section (b) to clarify that privileged work product of the State's Attorney is excluded from the materials the State's Attorney must disclose without request. Disclosure of the identity of the State's witnesses, which was in the "Disclosure Upon Request" section of the Rule, is moved to section (b), "Disclosure Without Request" with some changes. References to Code, Criminal Procedure Article, §11-205 and Rule 16-1009 (b), concerning withholding of a witness's address under certain circumstances, are added to the section. The State must disclose the address of each person whom the State intends to call as a witness at the hearing or trial to prove its case in chief or to rebut alibi testimony. Given the difficulty of analyzing each statement made by a State's witness as to anything that conceivably would be "Brady" material, coupled with the requirement of disclosure of prior written statements by witnesses as set forth in *Jencks v. U.S.*, 353 U.S. 657 (1957), the Committee recommends that (1) a copy of each written or recorded statement, regardless of when made, and (2) a copy of all reports of each oral statement, or, if not available, the substance of each oral statement made before charges were filed be disclosed without the necessity of a request by the defendant.

Subsections (b)(2) and (3) are amended to clarify the State's disclosure requirements under *Brady* and its progeny. Subsections (b)(3)(A), (B), and (C) are derived from the "impeachment by inquiry of witness" provisions of Rule 5-616 (a)(6)(i) and (ii), (4), and (2), respectively. A Committee note containing examples of *"Brady"* materials that must be disclosed follows section (b). The first sentence of the Committee note uses examples contained in correspondence dated October 25, 2005 from Nancy S. Forster, Public Defender, to Chief Judge Robert M. Bell. At the request of prosecutors, commentary concerning ascertainment of the criminal records of State's witnesses and when due diligence requires an affirmative inquiry into a particular area is included in the Committee note. After the Committee note is a cross reference to *Brady* and to three additional opinions of the U.S. Supreme Court.

Using language borrowed from Rule 2-402 (f)(1)(A), subsection (c)(1) is amended to require the State (upon request by the defendant) to disclose, as to each expert consulted by the State in connection with the action, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion. This requirement is intended to address the situation in which little or no information is received by the defendant because of the

absence of a meaningful written report. A comparable amendment is made to subsection (c)(2)(B), pertaining to disclosure of the defendant's expert's information upon request by the State, except that in subsection (c)(2)(B), the requirement to disclose extends only to information from an expert the defendant expects to call as a witness. New subsection (c)(2)(D) requires the defendant, upon request by the State, to disclose character witnesses the defendant intends to call.

Section (d) has expanded the explanation of what work product is, based upon the language set out in *Goldberg v. U.S.*, 425 U.S. 94 (1976).

In section (e), the time requirements for discovery under the Rule are made subject to the phrase "unless the court orders otherwise." Also, the time for the initial disclosure by the State is changed from 25 to 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213, for consistency with other time provisions used throughout the Rules.

The words "or required" are added to section (f) to clarify that a motion to compel discovery may be based on a failure to provide required discovery as well as a failure to provide requested discovery.

New section (h) provides that, with certain exceptions, discovery material is not required to be filed with the court. In light of the adoption of Title 16, Chapter 1000, Access to Court Records, new section (h) is intended to eliminate the inclusion of unnecessary materials in court files and reduce the amount of material in the files for which redaction, sealing, or other denial of inspection would be required. The non-filing of discovery information conforms the Rule to current practice in many jurisdictions. Much of the language of the section is borrowed from the first, third, and fourth sentences of Rule 2-401 (d)(2); however, the required contents of the notice that the party generating discovery material must file with the court, if the discovery materials are not filed with the court, have been modified by adding the requirement that the notice must "reasonably identif[y] the information provided" and by deleting the references to the "type of discovery material served" and "the party or person served." Additionally, the retention requirement as to original materials extends until the earlier of (i) the expiration of any sentence imposed on the defendant or (ii) the retention period that the material would have been retained under the applicable records retention and disposal schedule had the material been filed with the court. The last sentence of the section requires the parties to file with the court a statement of any agreement that they make as to providing discovery or disclosures different than set forth in the Rule.

Section (i) is amended to clarify that a person, such as a victim or witness, from whom discovery is sought, may petition the Court for a protective order.

The Committee recommends that the existing provisions in the Rule concerning sanctions be set out in a separate section (j), including new language pertaining to disqualification of witnesses.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-262 to reletter the sections, to require each party to exercise due diligence in identifying material and information to be disclosed, to extend the obligations of the parties under the Rule to staff members of the defendant and certain others, to add a cross reference following subsection (a)(2), to add a new subsection (a)(3) concerning protective orders, to add a provision pertaining to disqualification of witnesses, to add language to section (b) referring to a certain statute and Rule, to clarify the disclosure obligation of the State’s Attorney under subsection (b)(1), to add a Committee note following subsection (b)(1), to add new subsections (b)(2)(A), (D), and (E) concerning disclosure upon request of the defendant, to revise the Committee note following subsection (b)(3), to add new section (c) concerning matters not subject to discovery, to provide generally that there is no requirement to file discovery material with the court, to require retention of discovery material for a period of time if it is not filed with the court, and to make stylistic changes, as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

~~(c)~~ (a) Obligations of the ~~State's Attorney~~ Parties

(1) Generally

Each party obligated to provide material or information under this Rule shall exercise due diligence to identify all of the material and information that must be disclosed.

(2) Obligations of the Parties Extend to Staff and Others

The obligations of ~~the State's Attorney~~ a party under this Rule extend to material and information in the possession or control of the ~~State's Attorney~~ party and staff members and any others who have participated in the investigation or evaluation of the action and who either regularly report, or with reference to the particular action ~~have reported~~ have a duty to report, to the ~~office of the State's Attorney~~ party.

Cross reference: For the obligations of the State, see *State v. Williams*, 329 Md. 194 (2006).

(3) Protective Orders

A party or person from whom discovery is sought may petition the court for any protective order that justice requires. For good cause shown, the court may order that specified disclosures be restricted.

(4) Failure to Comply with Discovery Obligation

The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

~~(a)~~ (b) Scope

Subject to section (c) of this Rule and except as provided under Code, Criminal Procedure Article, §11-205 or Rule 16-1009 (b), ~~Discovery~~ discovery and inspection pursuant to this Rule is available in the District Court in actions for offenses that are punishable by imprisonment, and shall be as follows:

(1) The State's Attorney shall ~~furnish~~ provide to the defendant any material or information ~~that tends to negate or mitigate the guilt or punishment of the defendant as to the offense charged~~ specified in Rule 4-263 (b)(1)(A), (b)(2), and (b)(3).

Committee note: Examples of material and information that must be disclosed pursuant to subsections (b)(2) and (3) of Rule 4-263 if within the possession or control of the State, as described in subsection (a)(2) of this Rule, include: each statement made by a witness that is inconsistent with another statement made by the witness or with a statement made by another witness; the medical or psychiatric condition of a witness that may impair his or her ability to testify truthfully or accurately; pending charges against a witness for whom no deal is being offered at the time of trial; the fact that a witness has taken but did not pass a polygraph examination; the failure of a witness to make an identification; and evidence that might adversely impact the credibility of the State's evidence. The due diligence required by subsection (a)(1) does not require affirmative inquiry by the State with regard to the listed examples in all cases, but would require such inquiry into a particular area if information possessed by the State, as described in subsection (a)(2), would reasonably lead the State to believe that affirmative inquiry would result in discoverable information. Due diligence does not require the State to obtain a copy of the criminal record of a State's witness unless the State is aware of the criminal record. If, upon inquiry by the State, a witness denies having a criminal record, the inquiry and denial generally satisfy due diligence unless the State has reason to question the denial.

(2) Upon request of the defendant, the State's Attorney shall produce and permit the defendant to inspect, ~~and~~ copy, and photograph: (A) any relevant material or information regarding

pretrial identification of the defendant by a witness for the State and specific searches and seizures, wiretaps, or eavesdropping, (B) ~~any portion of a document containing~~ a copy of each written or recorded statement, ~~or containing~~ and the substance of ~~a~~ each oral statement made by the defendant or a co-defendant to a State agent that the State intends to use at trial or at any hearing other than a preliminary hearing; ~~and~~ ~~(B)~~ (C) each written report or statement made by an expert whom the State expects to call as a witness at a hearing, other than a preliminary hearing, or trial; (D) any documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the State intends to use at the hearing or trial; and (E) any item obtained from or belonging to the defendant, whether or not the State intends to use the item at the hearing or trial.

(3) Upon request of the State, the defendant shall permit any discovery or inspection specified in subsections ~~(d)(1)~~ (c)(2)(A), (B), and (E) of Rule 4-263.

Committee note: This Rule is not intended to limit the constitutional requirement of disclosure by the State. ~~See *Brady v. State*, 226 Md. 422, 174 A.2d 167 (1961), aff'd, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).~~ See *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Giglio v. U.S.*, 405 U.S. 150 (1972); and *U.S. v. Agurs*, 427 U.S. 97 (1976).

(c) Matters Not Subject to Discovery

(1) By any Party

This Rule does not require the State or the defendant to disclose (A) the mental impressions, trial strategy, personal

beliefs, or other privileged work product of counsel or (B) any other matter if the court finds that its disclosure would entail a substantial risk of harm to any person outweighing the interest in disclosure.

(2) By Defendant

This Rule does not require the State to disclose the identity of a confidential informant unless the State's Attorney intends to call the informant as a witness or unless the failure to disclose the informant's identity would infringe a constitutional right of the defendant.

~~(b)~~ (d) Procedure

The discovery and inspection required or permitted by this Rule shall be completed before the hearing or trial. A request for discovery and inspection and response need not be in writing and need not be filed with the court. If a request was made before the date of the hearing or trial and the request was refused or denied, the court may grant a delay or continuance in the hearing or trial to permit the inspection or discovery.

(e) No Requirement to File With Court; Exceptions

Except as otherwise provided in these Rules or by order of court, discovery material need not be filed with the court. If the party generating the discovery material does not file the material with the court, that party shall (1) serve the discovery material on the other party, (2) make the original available for inspection and copying by the other party, and (3) retain the original until the expiration of any sentence imposed on the

defendant. This section does not preclude the use of discovery material at trial or as an exhibit to support or oppose a motion.

Source: This Rule is new.

REPORTER'S NOTE

The proposed amendments to Rule 4-262 track the proposed amendments to Rule 4-263 to the extent the Committee believes desirable in the District Court.

Section (c) of Rule 4-262 is moved to the beginning of the Rule and relettered (a)(1). The amended language of section (a) tracks the language of the comparable amendments to Rule 4-263, verbatim. A cross reference to *State v. Williams*, 392 Md. 194 (2006) is added following subsection (a)(2). New subsection (a)(3) adds to Rule 4-262 the protective order provisions of Rule 4-263 (i). New subsection (a)(4) adds to Rule 4-262 the last two sentences of Rule 4-263.

In section (b), as stated in the Reporter's note to Rule 4-263, references to Code, Criminal Procedure Article, §11-205 and Rule 16-1009 are added.

Subsection (b)(1) is amended to clarify that the disclosure obligations of *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny apply in the District Court, as well as in circuit court. The amendment requires the State's Attorney to provide to the defendant the material and information specified in Rule 4-263 (b)(1)(A), (b)(2), and (b)(3). As in the amendment to Rule 4-263, a Committee note containing examples of "*Brady*" materials that must be disclosed is added.

Subsection (b)(2), concerning disclosure by the State upon request of the defendant, is amended by the addition of the substance of Rule 4-263 (b)(4)(A) and (C), concerning searches and seizures, wiretaps, eavesdropping, and pretrial identification of the defendant. In addition, the amendment adds to Rule 4-262 (b)(2) the substance of Rule 4-263 (c)(1)(D), Evidence for Use at Trial, and Rule 4-263 (c)(1)(E), Property of the Defendant.

In addition to the reference to *Brady*, references to three additional opinions of the U.S. Supreme Court are proposed to be added to the Committee note following section (b).

Also added to the Rule is a new section (c), which is derived verbatim from Rule 4-263 (d), Matters Not Subject to Discovery, as amended.

New section (e) is added for the reasons stated in the Reporter's note to Rule 4-263 (h). Due to the volume of cases in the District Court, State's Attorneys believe that the requirement of filing a notice that "reasonably identifies the information provided" and "states the date and manner of service," which is included in new section (h) of Rule 4-263, would be burdensome in Rule 4-262. The Committee agrees, and has excluded this requirement from the provisions of Rule 4-262 (e). Also omitted from section (e) of Rule 4-262 is the last sentence of Rule 4-263 (h), which requires the parties to file a statement of their agreement with the Court if they agree to provide discovery or disclosures in a manner different from the manner set forth in the Rule. Additionally, in Rule 4-262, the time that a party must retain original discovery materials that are not filed with the court is "until the expiration of any sentence imposed on the defendant," rather than the time period stated in Rule 4-263 (h).

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-217 by adding a Code reference to section (g), as follows:

Rule 4-217. BAIL BONDS

. . .

(g) Form and Contents of Bond - Execution

Every pretrial bail bond taken shall be in the form of the bail bond set forth at the end of this Title as Form 4-217.2, and, except as provided in Code, Criminal Procedure Article, §5-214, shall be executed and acknowledged by the defendant and any surety before the person who takes the bond.

. . .

REPORTER'S NOTE

The General Assembly enacted Chapter 178, Acts of 2007 (SB 685), which allows a defendant who has already appeared before a commissioner or judge in a criminal case to post bond by means of electronic transmission or hand-delivery of the relevant documentation without appearing before the commissioner or judge, if authorized by the County Administrative Judge in the circuit court or the Chief Judge of the District Court in a District Court case. The Rules Committee recommends adding a reference to the new statute to section (g) of Rule 4-217.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-246 to make a stylistic change to section (a), to require that a court announce on the record a determination that a waiver is made knowingly and voluntarily, and to add a Committee note and a cross reference after section (b), as follows:

Rule 4-246. WAIVER OF JURY TRIAL – CIRCUIT COURT

(a) Generally

In the circuit court, a defendant having a right to trial by jury shall be tried by a jury unless the right is waived pursuant to section (b) of this Rule. ~~If the waiver is accepted by the court, the~~ The State ~~may~~ does not have the right to elect a trial by jury.

(b) Procedure for Acceptance of Waiver

A defendant may waive the right to a trial by jury at any time before the commencement of trial. The court may not accept the waiver until, ~~it determines,~~ after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that the waiver is made knowingly and voluntarily.

Committee note: Although the law does not require the court to use a specific form of inquiry in determining whether a

defendant's waiver of a jury trial is knowing and voluntary, the record must demonstrate an intentional relinquishment of a known right. What questions must be asked will depend upon the facts and circumstances of the particular case.

In determining whether a waiver is *knowing*, the court should seek to ensure that the defendant understands that: (1) the defendant has the right to a trial by jury; (2) unless the defendant waives a trial by jury, the case will be tried by a jury;

ALTERNATIVE 1

(3) a jury consists of 12 individuals selected from a list of individuals, who reside in the county where the court is sitting and who are selected at random;

ALTERNATIVE 2

(3) a jury consists of 12 individuals who reside in the county where the court is sitting, selected at random from a list that includes registered voters, licensed drivers, and holders of identification cards issued by the Motor Vehicle Administration, seated as jurors at the conclusion of a selection process in which the defendant, the defendant's attorney, and the State participate;

(4) all 12 jurors must agree on whether the defendant is guilty or not guilty and may only convict upon proof beyond a reasonable doubt; (5) if the jury is unable to reach a unanimous decision, a mistrial will be declared and the State will then have the option of retrying the defendant; and (6) if the defendant waives a jury trial, the court will not permit the defendant to change the election unless the court finds good cause to permit the change.

In determining whether a waiver is voluntary, the court should consider the defendant's responses to questions such as: (1) Are you making this decision of your own free will?; (2) Has anyone offered or promised you anything in exchange for giving up your right to a jury trial?; (3) Has anyone threatened or coerced you in any way regarding your decision?; and (4) Are you presently under the influence of any medications, drugs, or alcohol?.

Cross reference: See *Kang v. State*, 393 Md. 97 (2006) and *Abeokuto v. State*, 391 Md. 289 (2006).

(c) Withdrawal of a Waiver

After accepting a waiver of jury trial, the court may permit the defendant to withdraw the waiver only on motion made before trial and for good cause shown. In determining whether to allow a withdrawal of the waiver, the court may consider the extent, if any, to which trial would be delayed by the withdrawal.

Source: This Rule is derived from former Rule 735.

REPORTERS NOTE

In light of the consolidated opinion in *Powell v. State* and *Zylanz v. State*, 394 Md. 632 (2006), a proposed addition to Rule 4-246 (b) requires a circuit court, when it accepts a waiver of a jury trial, to announce on the record its determination that the waiver is made knowingly and voluntarily. The phrase, "announce on the record" is borrowed from language used in Rule 15-203 (a). Comparable amendments to section (b) of Rule 4-215 (Waiver of Counsel) and sections (c) and (d) of Rule 4-242 (Pleas) also are proposed.

In the cases of *Kang v. State*, 393 Md. 97 (2006) and *Abeokuto v. State*, 391 Md. 289 (2006), the Court of Appeals declined to require the trial court to use a particular form of inquiry to determine the voluntariness of a jury trial waiver, but expressed its preference that judges make a specific inquiry into voluntariness. A proposed Committee note following section (b) provides guidance to the trial court in determining whether a jury trial waiver is made both knowingly and voluntarily. A cross reference following the Committee note cites the two cases.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND 4-215 by adding to section (b) a requirement that the court announce on the record a certain determination by the court, as follows:

Rule 4-215. WAIVER OF COUNSEL

. . .

(b) Express Waiver of Counsel

If a defendant who is not represented by counsel indicates a desire to waive counsel, the court may not accept the waiver until ~~it determines,~~ after an examination of the defendant on the record conducted by the court, the State's Attorney, or both, the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to counsel. If the file or docket does not reflect compliance with section (a) of this Rule, the court shall comply with that section as part of the waiver inquiry. The court shall ensure that compliance with this section is noted in the file or on the docket. At any subsequent appearance of the defendant before the court, the docket or file notation of compliance shall be prima facie proof of the defendant's express waiver of counsel. After there has been an express waiver, no postponement of a scheduled trial or

hearing date will be granted to obtain counsel unless the court finds it is in the interest of justice to do so.

. . .

REPORTER'S NOTE

See the Reporter's note to the proposed amendments to Rule 4-246.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-242 by adding to sections (c) and (d) a requirement that the court announce on the record a certain determination by the court and by adding to section (e) a provision pertaining to the collateral consequences of pleading guilty to certain offenses, as follows:

Rule 4-242. PLEAS

. . .

(c) Plea of guilty

The court may not accept a plea of guilty ~~only after it determines, upon~~ until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section (e) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

(d) Plea of Nolo Contendere

A defendant may plead nolo contendere only with the consent of court. The court may require the defendant or counsel to provide information it deems necessary to enable it to determine whether or not it will consent. The court may not accept the plea ~~only after it determines, upon~~ until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that the defendant is pleading voluntarily with understanding of the nature of the charge and the consequences of the plea. In addition, before accepting the plea, the court shall comply with section (e) of this Rule. Following the acceptance of a plea of nolo contendere, the court shall proceed to disposition as on a plea of guilty, but without finding a verdict of guilty. If the court refuses to accept a plea of nolo contendere, it shall call upon the defendant to plead anew.

(e) Collateral Consequences of a Plea of Guilty or Nolo Contendere

Before the court accepts a plea of guilty or nolo contendere, the court, the State's Attorney, the attorney for the defendant, or any combination thereof shall advise the defendant (1) that by entering the plea, if the defendant is not a United States citizen, the defendant may face additional consequences of deportation, detention, or ineligibility for citizenship, ~~and~~ (2) that by entering a plea to the offenses set out in Code, Criminal

Procedure Article, §11-701, the defendant shall have to register with the defendant's supervising authority as defined in Code, Criminal Procedure Article, §11-701 (i), and ~~(2)~~ (3) that the defendant should consult with defense counsel if the defendant is represented and needs additional information concerning the potential consequences of the plea. The omission of advice concerning the collateral consequences of a plea does not itself mandate that the plea be declared invalid.

. . .

REPORTER'S NOTE

See the Reporter's note to the proposed amendments to Rule 4-246, concerning the proposed amendments to Rule 4-242 (c) and (d).

Dawson v. State, 172 Md. App. 633 (2007) involved a defendant who pleaded guilty to a sexual offense without realizing that a collateral consequence of the plea would be that he would be required to register as a sexual offender pursuant to Code, Criminal Procedure Article, §11-704 (a). After the defendant's plea was taken, he requested that the plea be withdrawn when he learned of the required registration. The Court of Special Appeals remanded the case to the circuit court pursuant to the discretion afforded by the court in Rule 4-242 (g). The Rules Committee believes that because of the severity of the collateral consequence of being found guilty of a sexual offense, a new provision should be added to section (e) of Rule 4-242 specifying that a defendant who intends to plead guilty or *nolo contendere* to this type of offense must be advised of the collateral consequence of registration as a sexual offender as defined in Code, Criminal Procedure Article, §11-701.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-265 to add definitions to a new section (a); to delete language from section (b); to change the tagline of and delete language from section (c); to add a new section (d) providing that a subpoena include a designation of the materials, not privileged, that are to be produced by the witness; to add a new section (e) pertaining to filing and service; to add a cross reference after section (e); and to make stylistic changes, as follows:

Rule 4-265. SUBPOENA FOR HEARING OR TRIAL

(a) Definitions

(1) Trial

For purposes of this Rule, "trial" includes hearing.

(2) Trial Subpoena

For purposes of this Rule, "trial subpoena" includes hearing subpoena.

~~(a)~~ (b) Preparation by Clerk

On request of a party, the clerk shall prepare and issue a subpoena commanding a witness to appear to testify at ~~a hearing or~~ trial. ~~Unless the court waives the time requirements of this section, the request shall be filed at least nine days before trial in circuit court, or seven days before trial in District~~

~~Court, not including the day of trial and intervening Saturdays, Sundays, and holidays.~~ The request for subpoena shall state the name, address, and county of the witness to be served, the date and hour when the attendance of the witness is required, and ~~the~~ which party ~~requesting~~ has requested the subpoena. If the request is for a subpoena duces tecum, the request also shall ~~contain a designation of~~ designate the relevant documents, recordings, photographs, or other tangible things, not privileged~~, which constitute or contain evidence relevant to the action,~~ that are to be produced by the witness. ~~At least five days before trial, not including the day of trial and intervening Saturdays, Sundays, or holidays, the clerk shall deliver the subpoena for service pursuant to Rule 4-266 (b).~~

~~(b)~~ (c) Preparation by Party or Officer of the Court

On request of a party entitled to the issuance of a subpoena, the clerk shall provide a blank form of subpoena which shall be filled in and returned to the clerk to be signed and sealed before service. On request of an attorney or other officer of the court entitled to the issuance of a subpoena, the clerk shall issue a subpoena signed and sealed but otherwise in blank, which shall be filled in before service. ~~Unless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing.~~

(d) Issuance of Subpoena Duces Tecum

A subpoena duces tecum shall include a designation of the documents, recordings, photographs, or other tangible things, not privileged, that are to be produced by the witness.

(e) Filing and Service

Unless the court waives the time requirements of this section, the request for subpoena shall be filed at least nine days before trial in the circuit court, or seven days before trial in the District Court, not including the date of trial and intervening Saturdays, Sundays, and holidays. At least five days before trial, not including the date of the trial and intervening Saturdays, Sundays, or holidays, the clerk shall deliver the subpoena for service pursuant to Rule 4-266 (b). Unless impracticable, there must be a good faith effort to cause a trial subpoena to be served at least five days before the trial.

Cross reference: As to additional requirements for certain subpoenas, see Code, Health-General Article, §4-306 (b)(6) and Code, Financial Institutions Article, §1-304.

Source: This Rule is in part derived from former Rule 742 b and M.D.R. 742 a and in part new.

REPORTER'S NOTE

Russell Butler, Esq. pointed out an inadvertent omission in Rule 4-265. Current section (a), pertaining to subpoenas prepared by the clerk, provides that privileged material should not be subpoenaed, but current section (b), pertaining to subpoenas prepared by a party, does not contain that prohibition. Mr. Butler suggests adding a new section (d) to Rule 4-265 that would contain language similar to that currently in section (a) providing that the subpoena include a designation of the documents, recordings, photographs, or other tangible things, not privileged, that are to be produced by the witness. The Rules Committee is in agreement with Mr. Butler's suggestion to add a new section (d).

In discussing the proposed changes to Rule 4-265, the Rules Committee observed that the Rule refers to both "hearing or trial" as well as only to "trial." To correct this ambiguity, a definitions section is proposed to be added as section (a). The Committee also expressed the view that the timing provisions of the Rule should be the same whether the subpoena is prepared by the clerk or by a party. The Committee proposes to add a new section (e) pertaining to filing and service that does not differentiate between subpoenas prepared by the clerk or subpoenas prepared by a party.

To address privacy issues related to medical records required by Public Law 104-191 (1996) (the Health Insurance Portability and Accounting Act) and financial records, the Committee recommends adding to the Rule a cross reference to Code, Health-General Article, §4-306 (b)(6) and Code, Financial Institutions Article, §1-304. The same cross reference is added to Rules 2-510 and 3-510.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-264 to add a cross reference at the end of the Rule, as follows:

Rule 4-264. SUBPOENA FOR TANGIBLE EVIDENCE BEFORE TRIAL IN CIRCUIT COURT

On motion of a party, the circuit court may order the issuance of a subpoena commanding a person to produce for inspection and copying at a specified time and place before trial designated documents, recordings, photographs, or other tangible things, not privileged, which may constitute or contain evidence relevant to the action. Any response to the motion shall be filed within five days.

Cross reference: As to additional requirements for certain subpoenas, see Code, Health-General Article, §4-306 (b)(6) and Code, Financial Institutions Article, §1-304.

Source: This Rule is derived from former Rule 742 a.

REPORTER'S NOTE

See the third paragraph of the Reporter's Note to Rule 4-265.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-341 to include statutes that require presentence investigation and report, as follows:

Rule 4-341. SENTENCING - PRESENTENCE INVESTIGATION AND REPORT

Before imposing a sentence, ~~if required by law~~ the court in accordance with Code, Correctional Services Article, §6-112 (c) and Code, Criminal Procedure Article, §11-727 shall, and in other cases may, order a presentence investigation and report. A copy of the report, including any recommendation to the court, shall be mailed or otherwise delivered to the defendant or counsel and to the State's Attorney in sufficient time before sentencing to afford a reasonable opportunity for the parties to investigate the information in the report. Except for any portion of a presentence report that is admitted into evidence, the report, including any recommendation to the court, is not a public record and shall be kept confidential as provided in Code, Correctional Services Article, §6-112.

Cross reference: ~~See, e.g.,~~ As to mandatory presentence investigations, see *Sucik v. State*, 344 Md. 611 (1997). As to ~~the handling of a presentence report~~ victim impact statements in presentence reports, see *Ware v. State*, 348 Md. 19 (1997)~~., and~~ As to the confidentiality and availability of presentence reports, see *Haynes v. State*, 19 Md. App. 428 (1973).

Source: This Rule is derived from former Rule 771 and M.D.R. 771.

REPORTER'S NOTE

The 2007 General Assembly enacted Chapter 601, Acts of 2007 (HB 390), which requires a court to order a presentence investigation for a defendant who violated Code, Criminal Law Article, §3-602, Sexual Abuse of a Minor, and is obligated to register as a child sexual offender. Code, Correctional Services Article, §6-112 (c) requires presentence investigation reports for first degree murder convictions resulting in the death penalty or imprisonment for life without possibility of parole. The Rules Committee recommends including a reference to these statutes in Rule 4-341. The Committee also recommends expanding the existing cross reference to cases to explain the reason for citing the cases.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 100 - APPLICABILITY AND CITATION

AMEND Rule 1-101 to provide that the Rules in Title 4 apply to expungement of certain records of civil offenses or infractions, as follows:

Rule 1-101. APPLICABILITY

. . .

(d) Title 4

Title 4 applies to criminal matters~~,~~; post conviction procedures~~,~~; and expungement of records in the District Court and the circuit courts, including records of civil offenses or infractions, except juvenile offenses, under a State or local law enacted as a substitute for a criminal charge.

. . .

REPORTER'S NOTE

Chapter 388, Acts of 2007 (HB 278) amended Code, Criminal Procedure Article, §10-101 to include the expungement of court records that pertain to any proceeding, except a juvenile proceeding, concerning a civil offense or infraction enacted under State or local law as a substitute for a criminal charge or police records concerning the arrest and detention of or further proceeding against a person for a civil offense or infraction, except a juvenile offense, enacted under State or local law as a substitute for a criminal charge. The Rules Committee recommends modifying Rule 1-101 (d), as well as Rule 4-502 (d), (h), and (i), to conform to the statutory change.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-502 to expand the definitions in sections (d), (h), and (i) to include a reference to certain civil offenses and infractions and to delete section (g), as follows:

Rule 4-502. EXPUNGEMENT DEFINITIONS

The following definitions apply in this Chapter and in Forms 4-503.1 through 4-508.3:

(a) Application

"Application" means the written request for expungement of police records filed pursuant to Code, Criminal Procedure Article, §10-103 and Rule 4-503.

(b) Central Repository

"Central Repository" means the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services.

(c) Court

"Court" means the Court of Appeals, Court of Special Appeals, any circuit court, and the District Court.

(d) Court Records

"Court records" means all official records maintained by the clerk or other personnel pertaining to (1) any criminal action, (2) any action, except a juvenile proceeding, concerning

a civil offense or infraction under a State or local law enacted as a substitute for a criminal charge, or (3) any proceeding for expungement. It includes indices, docket entries, charging documents, pleadings, memoranda, assignment schedules, disposition sheets, transcriptions of proceedings, electronic recordings, orders, judgments, and decrees. It does not include: records pertaining to violations of the vehicle laws of the State or of any other traffic law, ordinance, or regulation; written opinions of a court; cash receipt and disbursement records necessary for audit purposes; or a court reporter's transcript of proceedings involving multiple defendants.

(e) Expungement

"Expungement" means the effective removal of police and court records from public inspection:

(1) by obliteration; or

(2) by removal to a separate secure area to which the public and other persons having no legitimate reason for being there are denied access; or

(3) if effective access to a record can be obtained only by reference to other records, by the expungement of the other records or the part of them providing the access.

(f) Law Enforcement Agency

"Law enforcement agency" means any State, county, and municipal police department or agency, any sheriff's office, any State's Attorney's office, the Office of the State Prosecutor, and the Attorney General's office.

~~(g) Notice~~

~~"Notice" means a written request for expungement of police records given by a person pursuant to the Code, Criminal Procedure Article, §10-103, unless the context clearly requires a contrary meaning.~~

~~(h)~~ (g) Petition

"Petition" means a written request for expungement of court and police records filed by a person pursuant to Code, Criminal Procedure Article, §10-105 (a) and Rule 4-504.

~~(i)~~ (h) Police Records

"Police records" means all official records maintained by a law enforcement agency, a booking facility, or the Central Repository pertaining to the arrest and detention of or further proceeding against an individual for a criminal charge; ~~for~~ a suspected violation of a criminal law~~, or~~; a violation of Code, Transportation Article for which a term of imprisonment may be imposed; or a civil offense or infraction, except a juvenile offense, under a State or local law enacted as a substitute for a criminal charge. "Police records" does not include investigatory files, police work-product records used solely for police investigation purposes, or records pertaining to nonincarcerable violations of the vehicle laws of the State or of any other traffic law, ordinance, or regulation.

~~(j)~~ (i) Probation Before Judgment

"Probation before judgment" means disposition of a charge pursuant to Code, Criminal Procedure Article, §6-220 or a civil

offense or infraction, except a juvenile offense, under a State or local law enacted as a substitute for a criminal charge; it also means probation prior to judgment pursuant to former Code, Article 27, §641, a disposition pursuant to former Code, Article 27, §292 (b), probation without finding a verdict pursuant to former Code, Article 27, §641 prior to July 1, 1975, and a disposition pursuant to former Section 22-83 of the Code of Public Local Laws of Baltimore City (1969 Edition).

~~(k)~~ (j) Records

"Records" means "police records" and "court records."

~~(l)~~ (k) Service

"Service" with respect to the application or petition means mailing a copy by certified mail or delivering it to any person admitting service, and with respect to any answer, notice, or order of court required by this Rule or court order to be served means mailing by first class mail.

~~(m)~~ (l) Transfer

"Transfer" means the act, done pursuant to an order of court, of removing an action or proceeding from the court or docket in which it was originally filed or docketed to such other proper court or docket as the nature of the case may require.

Source: This Rule is derived from former Rule EX1.

REPORTER'S NOTE

Chapter 63, Acts of 2007 (HB 10) alters expungement procedures by eliminating the required notice to law enforcement units, leaving only a procedure to file a request for

expungement, and by eliminating the written waiver and release of tort claims that accompanied the notice of expungement of records pertaining to arrests, detentions, or confinements occurring before October 1, 2007 where no charge was filed. The statute also creates an automatic expungement of police and court records for arrests or confinements occurring on or after October 1, 2007. The Rules Committee recommends amending Rule 4-502 by deleting the definition of the word "notice." The Committee also recommends changing: (1) Rule 4-503 to apply to arrests, detentions, or confinements occurring before October 1, 2007 that do not result in a criminal charge and to add a Committee note referring to the automatic expungement procedure for arrests and confinements occurring on or after October 1, 2007; (2) Form 4-503.1 to indicate that it applies only to arrests, detentions, or confinements occurring before October 1, 2007 that do not result in a charge and to delete the provision referring to a "General Waiver and Release," and (3) Form 4-503.2 to eliminate the reference to "Code, Criminal Procedure Article, §10-103 (c), since the requirement to file a general waiver and release for arrests, detentions, and confinements not resulting in a charge has been eliminated.

The proposed changes to section (d) and to relettered sections (h) and (i) are explained in the Reporter's note to Rule 1-101.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-503 to add language to the title, to delete language from and add language to section (a) complying with statutory changes, and to add a Committee note after section (d) referencing a new statute, as follows:

Rule 4-503. APPLICATION FOR EXPUNGEMENT <u>OF RECORD FOR AN ARREST, DETENTION, OR CONFINEMENT OCCURRING BEFORE OCTOBER 1, 2007</u> WHEN NO CHARGES FILED

(a) Scope and Venue

An application for expungement of police records may be filed by any person who has been arrested, detained, or confined by a law enforcement agency, and has subsequently been released without having been charged with a crime, if (1) the applicant has first served on the law enforcement agency that arrested, detained, or confined the applicant a ~~notice and~~ <u>written</u> request for expungement in the form set forth at the end of this Title as Form 4-503.1, which~~, if~~ <u>shall be</u> served within ~~three~~ <u>eight</u> years after the ~~applicant's arrest, detention, or confinement, shall be accompanied by a duly executed General Waiver and Release in the form set forth as Form 4-503.2~~ <u>date of the incident</u>; and (2) the request for expungement has been denied or has not been acted upon within 60 days after ~~its receipt~~ <u>it was served</u>. The application

shall be filed in the District Court for the county in which the applicant was first arrested, detained, or confined.

Cross reference: Code, Criminal Procedure Article, §10-103.

(b) Contents - Time for Filing

The application shall be in the form set forth at the end of this Title as Form 4-503.3 and shall be filed within 30 days after service of notice that the request for expungement is denied by the agency or, if no action is taken by the agency, within 30 days after expiration of the time period provided in subsection (a)(2) of this Rule.

(c) Copies for Service

The applicant shall file with the clerk a sufficient number of copies of the application for service on the State's Attorney and each law enforcement agency named in the application.

(d) Procedure upon Filing

Upon filing of an application, the clerk shall docket the proceeding, issue a Notice of Hearing in the form set forth at the end of this Title as Form 4-503.4, and serve copies of the application and notice on the State's Attorney and each law enforcement agency named in the application.

Committee note: Law enforcement units will automatically expunge records pertaining to arrests, detentions, and confinements occurring on or after October 1, 2007 that do not result in a criminal charge. If the person who has been arrested, detained, or confined does not receive a notice of expungement from the law enforcement unit within 60 days after the person's release or does not receive a writing from the law enforcement unit within 60 days of the notice advising the person of compliance with the order to expunge, the person may seek redress by means of any appropriate legal remedy and recover court costs. See Code, Criminal Procedure Article, §10-103.1.

Source: This Rule is derived from former Rule EX3 a and c 1 and 2.

REPORTER'S NOTE

See the Reporter's note to Rule 4-502.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

FORMS FOR EXPUNGEMENT OF RECORDS

AMEND Form 4-503.1 by deleting language from and adding language to the title, and by deleting part 3., as follows:

Form 4-503.1. ~~NOTICE OF RELEASE FROM DETENTION OR CONFINEMENT WITHOUT CHARGE -~~ REQUEST FOR EXPUNGEMENT OF POLICE RECORD FOR AN ARREST, DETENTION, OR CONFINEMENT OCCURRING BEFORE OCTOBER 1, 2007 WHERE NO CHARGE WAS FILED

~~NOTICE OF RELEASE FROM DETENTION OR CONFINEMENT WITHOUT CHARGE~~
REQUEST FOR EXPUNGEMENT OF POLICE RECORD
FOR AN ARREST, DETENTION, OR CONFINEMENT OCCURRING
BEFORE OCTOBER 1, 2007 WHERE NO CHARGE WAS FILED

To: .....
(law enforcement agency)

.....
(Address)

.....

1. On or about ....., ..., I was arrested,
(Date)

detained, or confined by a law enforcement officer of your agency at ....., Maryland as a result of the following incident (Specify) .....

.....

.....

.....

2. I was released from detention or confinement on or about

....., ..., without being charged
(Date)

with a crime.

~~3. (Check one of the following boxes):~~

~~[ ] Three years or more have passed since the date of my arrest, detention, or confinement.~~

~~[ ] Less than three years have passed since the date of my arrest, detention, or confinement, but I have attached hereto a General Waiver and Release.~~

~~4.~~ 3. I hereby request that the police record of my arrest, detention, or confinement be expunged.

.....
(Date)

.....
(Signature)

.....
(Name - Printed)

.....
(Address)

.....

.....
(Telephone No.)

REPORTER'S NOTE

See the Reporter's note to Rule 4-502.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

FORMS FOR EXPUNGEMENT OF RECORDS

AMEND Form 4-503.2 to delete a reference to a certain statute, as follows:

Form 4-503.2. GENERAL WAIVER AND RELEASE

GENERAL WAIVER AND RELEASE

I, ..., hereby release and forever discharge ..... (complainant) and the ....., (law enforcement agency) all of its officers, agents and employees, and any and all other persons from any and all claims which I may have for wrongful conduct by reason of my arrest, detention, or confinement on or about .....

This General Waiver and Release is conditioned on the expungement of the record of my arrest, detention, or confinement and compliance with Code*, Criminal Procedure Article, ~~§10-103 (c) or~~ §10-105, as applicable, and shall be void if these conditions are not met.

WITNESS my hand and seal this ..... (Date)

TESTE:

.....
Witness

.....(Seal)
Signature

* The reference to "Code" in this General Waiver and Release is to the Annotated Code of Maryland.

REPORTER’S NOTE

See the Reporter’s note to Rule 4-502.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-122 to eliminate duplicate language in the caption of the initial petition, to conform statement 1. to the language of Code, Estates and Trusts Article, §5-105 (b)(4), to change the word "QUALIFIED" to the word "LIMITED" in the caption in section (c), to capitalize the word "ordered" in the caption in section (c), to change the word "of" to the word "for" in the Limited Order to Locate Assets in section (c), and to change the word "for" and to capitalize the word "ordered" in the Limited Order to Locate Will in section (d), as follows:

Rule 6-122. PETITIONS

(a) Initial Petition

The Initial Petition shall be in the following form:

IN THE ORPHANS' COURT FOR
(OR) _____, MARYLAND
BEFORE THE REGISTER OF WILLS FOR
IN THE ESTATE OF:
_____ ESTATE NO: _____

FOR:

[ ]	REGULAR ESTATE PETITION FOR ADMINISTRATION Estate value in excess of $30,000. (If spouse is sole heir or legatee, $50,000.) Complete and attach	[ ]	SMALL ESTATE PETITION FOR ADMINISTRATION Estate value of $30,000 or less. ~~(If spouse is sole~~ (If spouse is sole heir or legatee, $50,000.)	[ ]	WILL OF NO ESTATE Complete items 2 and 5	[ ]	LIMITED ORDERS Complete item 2 and attach Schedule C

Schedule A. Complete and attach Schedule B.

The petition of:

_____ _____
Name
_____
Address

_____ _____
Name
_____
Address

_____ _____
Name
_____
Address

Each of us states:

1. I am (a) at least 18 years of age and either a citizen of the United States or a permanent resident ~~alien spouse of the decedent~~ of the United States who is the spouse of the decedent, an ancestor of the decedent, a descendant of the decedent, or a sibling of the decedent or (b) a trust company or any other corporation authorized by law to act as a personal representative.

2. The Decedent, _____,
was domiciled in _____,
(County)
State of _____ and died on the _____
day of _____, _____, at

_____.

(place of death)

3. If the decedent was not domiciled in this county at the time of death, this is the proper office in which to file this petition because: _____

_____.

4. I am entitled to priority of appointment as personal representative of the decedent's estate pursuant to §5-104 of the Estates and Trusts Article, Annotated Code of Maryland because:

_____

_____

and I am not excluded by §5-105 (b) of the Estates and Trusts Article, Annotated Code of Maryland from serving as personal representative.

5. I have made a diligent search for the decedent's will and to the best of my knowledge:

[ ] none exists; or

[ ] the will dated _____ (including codicils, if any, dated _____) accompanying this petition is the last will and it came into my hands in the following manner: _____

_____

_____

and the names and last known addresses of the witnesses are:

_____ _____

_____ _____

_____ _____

6. Other proceedings, if any, regarding the decedent or the estate are as follows: _____

_____

7. If any information required by paragraphs 2 through 6 has not been furnished, the reason is: _____

_____

_____

8. If appointed, I accept the duties of the office of personal representative and consent to personal jurisdiction in any action brought in this State against me as personal representative or arising out of the duties of the office of personal representative.

WHEREFORE, I request appointment as personal representative of the decedent's estate and the following relief as indicated:

[ ] that the will and codicils, if any, be admitted to administrative probate;

[ ] that the will and codicils, if any, be admitted to judicial probate;

[ ] that the will and codicils, if any, be filed only;

[ ] that only a limited order be issued;

[ ] that the following additional relief be granted: _____

_____

I solemnly affirm under the penalties of perjury that the contents of the foregoing petition are true to the best of my knowledge, information, and belief.

_____	_____
Attorney	Petitioner Date
_____	_____
Address	Petitioner Date
_____	_____
	Petitioner Date
_____	_____
Telephone Number	Telephone Number (optional)

IN THE ORPHANS' COURT FOR
(OR) _____, MARYLAND
BEFORE THE REGISTER OF WILLS FOR
IN THE ESTATE OF:
_____ ESTATE NO. _____

SCHEDULE - A

Regular Estate

Estimated Value of Estate and Unsecured Debts

Personal property (approximate value)..... $_____

Real property (approximate value)..... $_____

Value of property subject to:

(a) Direct Inheritance Tax of ____% ..... $_____

(b) Collateral Inheritance Tax of ____% ..... $_____

Unsecured Debts (approximate amount)..... $_____

$_____

I solemnly affirm under the penalties of perjury that the contents of the foregoing schedule are true to the best of my knowledge, information, and belief.

_____ _____

Attorney | Petitioner | Date

_____ _____

Address | Petitioner | Date

_____ _____

Petitioner | Date

_____ _____

Telephone Number | Telephone Number (optional)

.....

(FOR REGISTER'S USE)

Safekeeping Wills _____ Custody Wills _____

Bond Set $_____ Deputy _____

IN THE ORPHANS' COURT FOR
(OR) _____, MARYLAND
BEFORE THE REGISTER OF WILLS FOR
IN THE ESTATE OF:
_____ ESTATE NO. _____

SCHEDULE - B

Small Estate - Assets and Debts of the Decedent

1. I have made a diligent search to discover all property and debts of the decedent and set forth below are:

(a) A listing of all real and personal property owned by the decedent, individually or as tenant in common, and of any other property to which the decedent or estate would be entitled, including descriptions, values, and how the values were determined:

_____

_____

_____

(b) A listing of all creditors and claimants and the amounts claimed, including secured*, contingent and disputed claims:

_____

_____

2. Allowable funeral expenses are $ _____; statutory family allowances are $_____; and expenses of administration claimed are $_____.

3. Attached is a List of Interested Persons.

4. After the time for filing claims has expired, subject to the statutory order of priorities, and subject to the resolution of disputed claims by the parties or the court, I shall (1) pay all proper claims**, expenses, and allowances not previously paid; (2) if necessary, sell property of the estate in order to do so; and (3) distribute the remaining assets of the estate in accordance with the will or, if none, with the intestacy laws of this State.

_____ _____

Date Personal Representative

*NOTE: §5-601 (d) of the Estates and Trusts Article, Annotated Code of Maryland "For the purpose of this subtitle - value is determined by the fair market value of property less debts of record secured by the property as of the date of death, to the extent that insurance benefits are not payable to the lien holder or secured party for the secured debt."

**NOTE: Proper claims shall be paid pursuant to the provisions of Code, Estates and Trusts Article, §§8-104 and 8-105.

I solemnly affirm under the penalties of perjury that the

contents of the foregoing schedule are true to the best of my knowledge, information, and belief.

_____	_____
Attorney	Petitioner Date
_____	_____
Address	Petitioner Date
_____	_____
	Petitioner Date
_____	_____
Telephone Number	Telephone Number (optional)

IN THE ORPHANS' COURT FOR
(OR) _____, MARYLAND
BEFORE THE REGISTER OF WILLS FOR
IN THE ESTATE OF:
_____ ESTATE NO. _____

SCHEDULE - C

Request for Limited Order

[ ] To Locate Assets

[ ] To Locate Will

1. I am entitled to the issuance of a limited order because I am:

[ ] a nominated personal representative or

[ ] a person interested in the proceedings by reason of

_____

_____

_____

_____

_____

2. The reasons(s) a limited order should be granted are:

_____

_____

_____

I solemnly affirm under the penalties of perjury that the contents of the foregoing schedule are true to the best of my knowledge, information, and belief. I further acknowledge that this order may not be used to transfer assets.

_____	_____
Attorney	Petitioner Date
_____	_____
Address	Petitioner Date
_____	_____
	Petitioner Date
_____	_____
Telephone Number	Telephone Number (optional)

(b) Other Petitions

(1) Generally

Except as otherwise provided by the rules in this Title or permitted by the court, and unless made during a hearing or trial, a petition shall be in writing, shall set forth the relief or order sought, shall state the legal or factual basis for the relief requested, and shall be filed with the Register of Wills. The petitioner may serve on any interested person and shall serve on the personal representative and such persons as the court may direct a copy of the petition, together with a notice informing

the person served of the right to file a response and the time for filing it.

(2) Response

Any response to the petition shall be filed within 20 days after service or within such shorter time as may be fixed by the court for good cause shown. A copy of the response shall be served on the petitioner and the personal representative.

(3) Order of Court

The court shall rule on the petition and enter an appropriate order.

Cross reference: Code, Estates and Trusts Article, §§2-102 (c), 2-105, 5-201 through 5-206, and 7-402.

(c) Limited Order to Locate Assets

Upon the filing of a verified petition pursuant to Rule 6-122 (a), the orphans' court may issue a limited order to search for assets titled in the sole name of a decedent. The petition shall contain the name, address, and date of death of the decedent and a statement as to why the limited order is necessary. The limited order to locate assets shall be in the following form:

IN THE ORPHANS' COURT FOR
(OR) _____, MARYLAND
BEFORE THE REGISTER OF WILLS FOR
IN THE ESTATE OF:
_____ ~~QUALIFIED~~ LIMITED ORDER NO. _____

LIMITED ORDER TO LOCATE ASSETS

Upon the foregoing petition by a person interested in the proceedings, it is this _____ day of _____,

by the Orphans' Court ~~of~~ for _____(county), Maryland, ~~ordered~~ ORDERED that:

1. The following institutions shall disclose to _____ _____ the assets, and the values
(Name of petitioner)
thereof, titled in the sole name of the above decedent:

_____	_____
(Name of financial institution)	(Name of financial institution)
_____	_____
(Name of financial institution)	(Name of financial institution)
_____	_____
(Name of financial institution)	(Name of financial institution)

2. THIS ORDER MAY NOT BE USED TO TRANSFER ASSETS.

(d) Limited Order to Locate Will

Upon the filing of a verified petition pursuant to Rule 6-122 (a), the orphans' court may issue a limited order to a financial institution to enter the safe deposit box of a decedent in the presence of the Register of Wills or the Register's authorized deputy for the sole purpose of locating the decedent's will and, if it is located, to deliver it to the Register of Wills or the authorized deputy. The limited order to locate a will shall be in the following form:

IN THE ORPHANS' COURT FOR
(OR) _____, MARYLAND
BEFORE THE REGISTER OF WILLS FOR
IN THE ESTATE OF:
_____ : LIMITED ORDER NO. _____

LIMITED ORDER TO LOCATE WILL

Upon the foregoing Petition, it is this _____ day of

_____, _____ by the Orphans' Court ~~of~~
(month) (year)

for _____(County),

Maryland, ~~ordered~~ ORDERED that:

_____, located at
(Name of financial institution)

_____ enter the
(Address)

safe deposit box titled in the sole name of _____

_____, in the presence of
(Name of decedent)

the Register of Wills or the Register's authorized deputy for the sole purpose of locating the decedent's will and, if the will is located, deliver it to the Register of Wills.

Committee note: This procedure is not exclusive. Banks may also rely on the procedure set forth in Code, Financial Institutions Article, §12-603.

REPORTER'S NOTE

The Maryland Register of Wills Association has suggested changes to Rule 6-122, most of which are "housekeeping" in nature. They include eliminating duplicate language, changing an incorrect word, capitalizing words, and changing the preposition in the caption of the petition. The Association has also asked that the language of statement 1 in the petition be changed to conform to changes to Code, Estates and Trusts Article, §5-105 (b)(4). The Rules Committee agrees with these changes.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-413 (c) by deleting certain language referring to recording of claims against a decedent's estate and by adding a certificate of service to the claim form, as follows:

Rule 6-413. CLAIM AGAINST ESTATE - PROCEDURE

. . .

(c) Form of Claim

A claim against a decedent's estate may be filed or made substantially in the following form:

In the Estate of: _____ Estate No. _____

Date _____

CLAIM AGAINST DECEDENT'S ESTATE

The claimant certifies that there is due and owing by the decedent in accordance with the attached statement of account or other basis for the claim the sum of $ _____.

I solemnly affirm under the penalties of perjury that the contents of the foregoing claim are true to the best of my knowledge, information, and belief.

_____	_____
Name of Claimant	Signature of claimant or person authorized to make verifications on behalf of claimant

_____ _____
Name and Title of Person Signing Claim

Address

_____

_____
Telephone Number

~~FILED: _____~~

~~RECORDED:~~

~~Claims Docket Liber _____ Folio _____~~

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, _____ (month)

_____, I [ ] delivered or [ ] mailed, first class, postage (year)

prepaid, a copy of the foregoing Claim to the personal

representative, _____

_____.
(name and address)

_____
Signature of Claimant

Instructions:

1. This form may be filed with the Register of Wills upon payment of the filing fee provided by law. A copy must also be sent to the personal representative by the claimant.

2. If a claim is not yet due, indicate the date when it will become due. If a claim is contingent, indicate the nature of the contingency. If a claim is secured, describe the security.

. . .

REPORTER'S NOTE

The Maryland Register of Wills Association pointed out that a certificate of service form should be submitted when a claim is filed against a decedent's estate. The Association suggests adding a Certificate of Service form to the claim form in section (c) of Rule 6-413.

Additionally, the Association suggests deleting the reference to filing and recording in the claim form in section (c) because the records are now scanned and no longer recorded. The Rules Committee agrees with these changes.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-451 by adding language to section (b) to conform to Code, Estates and Trusts Article, §6-305 (b), as follows:

Rule 6-451. RESIGNATION OF PERSONAL REPRESENTATIVE

. . .

(b) Successor

If no one applies for appointment as successor personal representative or special administrator before the filing of the statement of resignation and an appointment is not made within the 20-day period, the resigning personal representative may apply to the court for appointment of a successor.

. . .

REPORTER'S NOTE

The Maryland Register of Wills Association has suggested that language be added to section (b) of Rule 6-451 to conform to the language of Code, Estates and Trusts Article, §6-305 (b) by including a reference to the 20-day period for appointing a successor personal representative. The Rules Committee is in agreement with this change.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-455 to delete language from the Election of Personal Representative for Modified Administration form, the Consent to Election for Modified Administration form, and the Final Report form referring to the Register of Wills and Orphans' Court being prohibited from granting extensions, to conform the first paragraph of the Consent to Election for Modified Administration form to Code, Estates and Trusts Article, §5-702, and to delete the lists of persons eligible for Modified Administration and replace them with a space for stating the relationship to the decedent at the end of the Consent to Election for Modified Administration form, as follows:

Rule 6-455. MODIFIED ADMINISTRATION

(a) Generally

When authorized by law, an election for modified administration may be filed by a personal representative within three (3) months after the appointment of the personal representative.

(b) Form of Election

An election for modified administration shall be in the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

ESTATE OF _____ Estate No. _____

ELECTION OF PERSONAL REPRESENTATIVE FOR
MODIFIED ADMINISTRATION

1. I elect Modified Administration. This estate qualifies for Modified Administration for the following reasons:

(a) The decedent died on _____ [ ] with a will or [ ] without a will.

(b) This Election is filed within 3 months from the date of my appointment which was on _____.

(c) [ ] Each of the residuary legatees named in the will or [ ] each of the heirs of the intestate decedent is either:

[ ] The decedent's personal representative or [ ] an individual or an entity exempt from inheritance tax in the decedent's estate under §7-203 (b), (e), and (f) of the Tax-General Article.

(d) Each trustee of every trust that is a residuary legatee is one or more of the following: the decedent's [ ] personal representative, [ ] surviving spouse, [ ] child.

(e) Consents of the persons referenced in 1 (c) [ ] are filed herewith or [ ] were filed previously.

(f) The estate is solvent and the assets are sufficient to satisfy all specific legacies.

(g) Final distribution of the estate can be made within 12 months after the date of my appointment.

2. Property of the estate is briefly described as follows:

Description	Estimated Value
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

3. I acknowledge that I must file a Final Report Under Modified Administration no later than 10 months after the date of appointment and that, upon request of any interested person, I must provide a full and accurate Inventory and Account to all interested persons.

4. I acknowledge the requirement under Modified Administration to make full distribution within 12 months after the date of appointment ~~and I understand that the Register of Wills and Orphans' Court are prohibited from granting extensions under Modified Administration~~.

5. I acknowledge and understand that Modified Administration shall continue as long as all the requirements are met.

I solemnly affirm under the penalties of perjury that the contents of the foregoing are true to the best of my knowledge, information and belief.

_____ _____

Attorney Personal Representative

_____ _____
Address Personal Representative

_____
Address

_____
Telephone

(c) Consent

An election for modified administration may be filed if all the residuary legatees of a testate decedent and the heirs at law of an intestate decedent consent in the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

ESTATE OF _____ Estate No. _____

CONSENT TO ELECTION FOR
MODIFIED ADMINISTRATION

I am a [ ] residuary legatee who is the decedent's personal representative or an individual or an entity exempt from inheritance tax under §7-203 (b), (e), and (f) of Code, Tax General Article, ~~[ ] trustee of a trust that is a residuary legatee, or~~ [ ] an heir of the decedent who died intestate, and I am the decedent's personal representative or an individual or an entity exempt from inheritance tax under §7-203 (b), (e), and (f), [ ] or a trustee of a trust that is a residuary legatee who is the decedent's personal representative, surviving spouse, or child. ~~I consent to Modified Administration and acknowledge that under Modified Administration:~~

1. Instead of filing a formal Inventory and Account, the personal representative will file a verified Final Report Under Modified Administration no later than 10 months after the date of appointment.

2. Upon written request to the personal representative by any legatee not paid in full or any heir-at-law of a decedent who died without a will, a formal Inventory and Account shall be provided by the personal representative to the legatees or heirs of the estate.

3. At any time during administration of the estate, I may revoke Modified Administration by filing a written objection with the Register of Wills. Once filed, the objection is binding on the estate and cannot be withdrawn.

4. If Modified Administration is revoked, the estate will proceed under Administrative Probate and the personal representative shall file a formal Inventory and Account, as required, until the estate is closed.

5. Unless I waive notice of the verified Final Report Under Modified Administration, the personal representative will provide a copy of the Final Report to me upon its filing, which shall be no later than 10 months after the date of appointment.

6. Final Distribution of the estate will occur not later than 12 months after the date of appointment of the personal representative.

Signature of Residuary Legatee or Heir	~~[ ] Surviving Spouse [ ] Child [ ] Residuary Legatee or Heir~~

~~serving as Personal Representative~~ State Relationship to Decedent

_____
Type or Print Name

_____ _____
Signature of Residuary Legatee or Heir ~~[ ] Surviving Spouse [ ] Child [ ] Residuary Legatee or Heir serving as Personal Representative~~ State Relationship to Decedent

_____
Type or Print Name

_____ _____
Signature of Trustee Signature of Trustee

_____ _____
Type or Print Name Type or Print Name

(d) Final Report

(1) Filing

A verified final report shall be filed no later than 10 months after the date of the personal representative's appointment.

(2) Copies to Interested Persons

Unless an interested person waives notice of the verified final report under modified administration, the personal representative shall serve a copy of the final report on each interested person.

(3) Contents

A final report under modified administration shall be

in the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

ESTATE OF _____ Estate No. _____

Date of Death _____ Date of Appointment of Personal Representative _____

FINAL REPORT UNDER MODIFIED ADMINISTRATION
(Must be filed within 10 months after the date of appointment)

I, Personal Representative of the estate, report the following:

1. The estate continues to qualify for Modified Administration as set forth in the Election for Modified Administration on file with the Register of Wills.

2. Attached are the following Schedules and supporting attachments:

Total Schedule A: Reportable Property ..... $ _____

Total Schedule B: Payments and Disbursements ..... $(_____)

Total Schedule C: Distribution of Net Reportable Property ..... $ _____

3. I acknowledge that:

(a) Final distributions shall be made within 12 months after the date of my appointment as personal representative.

~~(b) The Register of Wills and Orphans' Court are prohibited from granting extensions of time.~~

~~(c)~~ (b) If Modified Administration is revoked, the estate shall proceed under Administrative Probate, and I will file a formal

Inventory and Account, as required, until the estate is closed.

I solemnly affirm under the penalties of perjury that the contents of the foregoing are true to the best of my knowledge, information, and belief and that any property valued by me which I have authority as personal representative to appraise has been valued completely and correctly in accordance with law.

_____	_____
Attorney Signature	Personal Representative Date
_____	_____
Address	Personal Representative Date
_____	_____
Address	Personal Representative Date
_____	
Telephone	

. . .

REPORTER'S NOTE

The Maryland Register of Wills Association has suggested that language in the Election of Personal Representative for Modified Administration and the Consent to Election for Modified Administration forms referring to the Register of Wills and Orphans' Court being prohibited from granting extensions be deleted. The language proposed for deletion implies that no extensions are permitted, but Code, Estates and Trusts Article, §5-703 was amended to allow extensions of the time period for filing a final report and for making distribution with consent of the personal representative and the interested persons. The Rules Committee is in agreement with the proposed deletion of the language.

The Association also has suggested that the Consent to Election for Modified Administration form be expanded to conform to Code, Estates and Trusts Article, §5-702, which had been changed to include individuals or entities exempt from inheritance tax under §7-203 (b), (e), and (f) of the Tax-General

Article as residuary legatees or heirs at law eligible for Modified Administration. The Rules Committee recommends this change.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 500 - APPEALS FROM THE ORPHANS' COURT

TO THE CIRCUIT COURT

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MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 500 - APPEALS FROM THE ORPHANS' COURT

TO THE CIRCUIT COURT

ADD new Rule 7-501, as follows:

Rule 7-501. APPLICABILITY

The rules in this Chapter govern appeals to a circuit court from a judgment or order of an orphans' court.

Committee note: In Harford County and Montgomery County, direct appeal to the Court of Special Appeals is the only method of appellate review of a judgment of the Orphans' Court. See Code, Courts Article, §12-502. In all other jurisdictions, the appellant has the option of a direct appeal to the Court of Special Appeals or an appeal to the circuit court for the county.

Source: This Rule is new.

REPORTER'S NOTE

Larry W. Shipley, recently retired Clerk of the Circuit Court for Carroll County, pointed out that appeals to the circuit court from the Orphans' Court have been causing some problems for the circuit court clerks, because there is no specific set of rules applying to these appeals. The captions in these cases are varied, making it difficult for the clerk to docket the case appropriately. To address the problems, the Rules Committee proposes a set of Rules loosely based on the Rules in Title 7, Chapter 100 (Appeals from the District Court to the Circuit Court), so that Orphans' Court appeals will be handled more uniformly throughout the State.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 500 - APPEALS FROM THE ORPHANS' COURT

TO THE CIRCUIT COURT

ADD new Rule 7-502, as follows:

Rule 7-502. SECURING APPELLATE REVIEW

(a) By Notice of Appeal

Appellate review in the circuit court may be obtained only if a notice of appeal is filed with the Register of Wills within the time prescribed in Rule 7-503.

(b) Caption of Notice of Appeal

A notice of appeal shall be captioned in the following form:

IN THE ORPHANS' COURT FOR _____

IN RE ESTATE OF _____
(Name of decedent, Orphans' Court case number

APPEAL OF _____
(Name and Address)

(c) Joinder Not Required

An appeal may be filed with or without the assent or joinder of other persons.

(d) Substitution

The proper person may be substituted for a party on appeal in accordance with Rule 2-241.

(e) Stay of Proceedings

Stay of Orphans' Court proceedings in the event of appeal is governed by Code, Courts Article, §12-701 (a).

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 7-501.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 500 - APPEALS FROM THE ORPHANS' COURT

TO THE CIRCUIT COURT

ADD new Rule 7-503, as follows:

Rule 7-503. NOTICE OF APPEAL – TIMES FOR FILING

(a) Generally

Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry pursuant to Rule 6-171 of the judgment or order from which the appeal is taken.

(b) Appeals by Other Party

If one party files a timely notice of appeal, any other party may file a notice of appeal within 10 days after the date on which the first notice of appeal was served or within 30 days after entry of the judgment or order from which the appeal is taken, whichever is later.

Cross reference: For striking a notice of appeal by the Orphans' Court under certain circumstances, see Rule 6-464.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 7-501.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 500 - APPEALS FROM THE ORPHANS' COURT

TO THE CIRCUIT COURT

ADD new Rule 7-504, as follows:

Rule 7-504. MODE OF APPEAL

An appeal from an orphans' court to a circuit court shall proceed in accordance with the Rules governing cases instituted in the circuit court. The form and sufficiency of pleadings in the record on appeal are governed by the rules applicable in the Orphans' Court.

Cross reference: Code, Courts Article, §12-502.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's Note to Rule 7-501.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 500 - APPEALS FROM THE ORPHANS' COURT

TO THE CIRCUIT COURT

ADD new Rule 7-505, as follows:

Rule 7-505. RECORD

(a) Contents of Record

The record on appeal shall include a certified copy of the docket entries in the estate proceeding and all original papers filed in the action in the Orphans' Court except those that the parties stipulate may be omitted. A party may supplement the record by paying for and filing a transcript. The Register of Wills shall append a certificate clearly identifying the papers included in the record. The Orphans' Court may order that the original papers in the action be kept in the Orphans' Court pending the appeal, in which case the Register of Wills shall transmit a certified copy of the original papers.

(b) Agreed Statement of the Case

If the parties agree that the questions presented by an appeal can be determined without a trial, they may sign and, upon approval by the Orphans' Court, file with the Register of Wills a statement of the case showing how the questions arose and were decided, and setting forth only those facts or allegations that are essential to a decision of the questions. The parties are

strongly encouraged to agree to such a statement. The statement of the case, the judgment or order from which the appeal is taken, and any opinion of the Orphans' Court shall constitute the record on appeal. The circuit court, however, may direct the Register to transmit all or part of the balance of the record in the Orphans' Court as a supplement to the record on appeal.

(c) Cost of Preparation

The appellant shall pay to the Register the cost of preparation of the record.

(d) Filing Fee

The appellant shall deposit with the Register of Wills the fee prescribed by Code, Courts Article, §7-202 unless the fee has been waived by an order of court or unless the appellant is represented by (1) an attorney assigned by Legal Aid Bureau, Inc. or (2) an attorney assigned by any other legal services organization that accepts as clients only those persons meeting the financial eligibility criteria established by the Federal Legal Services Corporation or other appropriate governmental agency. The filing fee shall be in the form of cash or check or money order payable to the clerk of the circuit court.

(e) Transmittal of Record

Unless a different time is fixed by order entered pursuant to this section, the Register of Wills shall transmit the record to the circuit court within 60 days after the date the first notice of appeal is filed. The filing fee shall be forwarded with the record to the clerk of the circuit court. For purposes

of this Rule, the record is transmitted when it is delivered to the clerk of the circuit court or when it is sent by certified mail by the Register of Wills, addressed to the clerk of the circuit court. On motion or on its own initiative, the Orphans' Court or the circuit court for good cause show may shorten or extend the time for transmittal of the record.

(f) Duties of Register of Wills

(1) Preparation and Service of Docket Entries

The Register of Wills shall prepare and attach to the beginning of the record a certified copy of the docket entries in the estate proceeding. The original papers shall be fastened together in one or more file jackets and numbered consecutively, except that the pages of a transcript of testimony need not be renumbered. The Register shall serve a copy of the docket entries on each party to the appeal.

(2) Statement of Costs

The Register shall prepare and transmit with the record a statement of the costs of preparing and certifying the record, the costs taxed against each party prior to the transmission of the record, and the costs of all transcripts, if any, and of copies of the transcripts for each of the parties.

(g) Correction or Supplementation of Record

On motion or on its own initiative, the circuit court may order that an error or omission in the record be corrected.

(h) Return of Record to Orphans' Court Pending Appeal

Upon a determination that the record should be returned to the Orphans' Court because of a matter pending in that court, the circuit court may order that the record be returned, subject to the conditions stated in the order.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 7-501.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 500 - APPEALS FROM THE ORPHANS' COURT

TO THE CIRCUIT COURT

ADD new Rule 7-506, as follows:

Rule 7-506. DOCKETING AND CAPTION OF APPEALS

Each circuit court shall maintain a docket for appeals from the Orphans' Court. The appeals shall be docketed in the following form:

IN THE CIRCUIT COURT FOR _____	*	Civil
APPEAL OF _____ (Name and Address)	*	Action No._____
IN RE ESTATE OF _____ (Name of decedent, Orphans' Court case number	*	

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 7-501.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 500 - APPEALS FROM THE ORPHANS' COURT

TO THE CIRCUIT COURT

ADD new Rule 7-507, as follows:

Rule 7-507. DISMISSAL OF APPEAL

(a) Grounds

On motion or on its own initiative, the circuit court may dismiss an appeal for any of the following reasons:

(1) the appeal is not allowed by law;

(2) the appeal was not properly taken pursuant to Rule 7-502;

(3) the notice of appeal was not filed with the Register of Wills within the time prescribed by Rule 7-503;

(4) the record was not transmitted within the time prescribed by Rule 7-505, unless the court finds that the failure to transmit the record was caused by the act or omission of a judge, a Register of Wills, a clerk of court, or the appellee;

(5) the appeal has been withdrawn because the appellant filed a notice withdrawing the appeal or failed to appear as required for trial or any other proceeding on the appeal; or

(6) the case has become moot.

(b) Return of Record to Orphans' Court

Upon entry of the circuit court's order dismissing the appeal, the Clerk shall transmit a copy of the order to the

Register of Wills. Any order of satisfaction shall be docketed in the estate proceeding. Unless the circuit court orders otherwise, the original papers included in the record shall be transmitted with the copy of the order.

(c) Reinstatement

If the appeal is reinstated, the circuit court shall notify the Register of Wills of the reinstatement and the Register shall return the record.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 7-501.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 500 - APPEALS FROM THE ORPHANS' COURT

TO THE CIRCUIT COURT

ADD new Rule 7-508, as follows:

Rule 7-508. HEARING

An appeal from an orphans' court to a circuit court shall be heard de novo, and Title 5 of these Rules applies to the proceedings.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 7-501.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 500 - APPEALS FROM THE ORPHANS' COURT

TO THE CIRCUIT COURT

ADD new Rule 7-509, as follows:

Rule 7-509. NOTICE OF CIRCUIT COURT JUDGMENT

The clerk of the circuit court shall promptly send notice of the circuit court judgment to the Register of Wills, who shall enter the notice on the docket.

Committee note: As to further appeal from the judgment of the circuit court to the Court of Special Appeals, see *Jennings v. Jennings*, 20 Md. App. 369, 371 n.4 (1974), *cert. denied*, 271 Md. 738 (1974) and *Carrick v. Henley*, 44 Md. App. 124 (1979).

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 7-501.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 500 - APPEALS FROM THE ORPHANS' COURT

TO THE CIRCUIT COURT

ADD new Rule 7-510, as follows:

Rule 7-510. ASSESSMENT OF COSTS

(a) Allowance and Allocation

The circuit court, by order, may allocate costs among the parties. The prevailing party is entitled to costs unless the circuit court orders otherwise.

(b) State

Costs shall be allowed to or assessed against the State or any official, agency, or political subdivision of the State that is a party in the same manner as costs are allowed to or assessed against a private litigant.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 7-501.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-463 to add a reference to the Rules in Title 7, Chapter 500, as follows:

Rule 6-463. APPEALS

An appeal from a judgment of the court may be taken (a) to the Court of Special Appeals of Maryland pursuant to Code, Courts Article, §12-501, or (b) except in Harford and Montgomery Counties, to the circuit court for the county pursuant to Code, Courts Article, §12-502 and Title 7, Chapter 500 of these Rules.

REPORTER'S NOTE

The proposed amendment to Rule 6-463 adds a reference to the Rules in new Title 7, Chapter 500.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-464 to delete the words "transcript costs or" from subsection (a)(3) and to add a new subsection (a)(4), as follows:

Rule 6-464. STRIKING OF NOTICE OF APPEAL BY ORPHANS' COURT

(a) Generally

On motion or on its own initiative, the orphans' court may strike a notice of appeal (1) that has not been filed within the time prescribed by Rule 6-463, (2) if the Register of Wills has prepared the record pursuant to Code, Courts Article, §§12-501 and 12-502 and the appellant has failed to pay for the record, (3) if the appellant has failed to deposit with the Register of Wills the ~~transcript costs or~~ filing fee required by Code, Estates and Trusts Article, §2-206, unless the fee has been waived by an order of court, (4) the appeal has been taken to the Court of Special Appeals and the appellant has failed to deposit with the Register of Wills the transcript costs, or ~~(4)~~ (5) if by reason of any other neglect on the part of the appellant the record has not been transmitted to the court to which the appeal has been taken within the time prescribed in Code, Courts Article, §12-502.

(b) Notice

Before the orphans' court strikes a notice of appeal on its own initiative, the Register of Wills shall serve on all interested persons pursuant to Rule 6-125 a notice that an order striking the notice of appeal will be entered unless a response is filed within 15 days after service showing good cause why the notice of appeal should not be stricken.

Source: This Rule is new.

REPORTER'S NOTE

Rule 6-464 is proposed to be amended to reflect that a transcript is not a required part of the record in a *de novo* appeal taken from the orphans' court to the circuit court, but it is a required part of the record when an appeal is taken from the orphans' court to the Court of Special Appeals.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-204 to add the language "or delinquent acts" to the cross reference after section (a), to change the word "trial" to the words "criminal or juvenile" in subsection (b)(1)(B), to add the words "or juvenile" in the Committee note after subsection (b)(1)(B), and to add children and liable parents to the list of persons filing responses to applications for leave to appeal in subsection (c)(4), as follows:

Rule 8-204. APPLICATION FOR LEAVE TO APPEAL TO COURT OF SPECIAL APPEALS

(a) Scope

This Rule applies to applications for leave to appeal to the Court of Special Appeals.

Cross reference: For Code provisions governing applications for leave to appeal, see Courts Article, §3-707 concerning bail; Courts Article, §12-302 (e) concerning guilty plea cases; Courts Article, §12-302 (g) concerning revocation of probation cases; Criminal Procedure Article, §11-103 concerning victims of violent crimes or delinquent acts; Criminal Procedure Article, §7-109 concerning post conviction cases; Correctional Services Article, §10-206 et seq. concerning inmate grievances; and Health-General Article, §§12-117 (e)(2), 12-118 (d)(2), and 12-120 (k)(2) concerning continued commitment, conditional release, or discharge of an individual committed as not criminally responsible by reason of insanity or incompetent to stand trial.

(b) Application

. . .

(2) Time for Filing

(A) Generally

Except as otherwise provided in subsection (b)(2)(B) of this Rule, the application shall be filed within 30 days after entry of the judgment or order from which the appeal is sought.

(B) Interlocutory Appeal by Victim

An application with regard to an interlocutory appeal by a victim pursuant to Code, Criminal Procedure Article, §11-103 alleging that the ~~trial~~ criminal or juvenile court denied or failed to consider a victim's right may be filed at the time the victim's right is actually being denied or within 10 days after the request is made on behalf of the victim, whether or not the court has ruled on the request.

Committee note: Code, Courts Article, §11-103 (c) provides that the filing of an application for leave to appeal by a victim does not stay other proceedings in a criminal or juvenile action unless all parties in the action consent to the stay.

(C) Bail

An application for leave to appeal with regard to bail pursuant to Code, Courts Article, §3-707 shall be filed within ten days after entry of the order from which the appeal is sought.

. . .

(c) Record on Application

. . .

(4) Victims

On application by a victim for leave to appeal pursuant to Code, Criminal Procedure Article, §11-103, the record shall contain (A) the application; (B) any response to the application

filed by the defendant, a child or liable parent under Code, Criminal Procedure Article, §11-601, the State's Attorney, or the Attorney General; (C) any pleading regarding the victim's request including, if applicable, a statement that the court has failed to consider a right of the victim; and (D), if applicable, any order or decision of the court.

. . .

REPORTER'S NOTE

In *Lopez-Sanchez v. State*, 388 Md. 214 (2005), the Court held that a victim of a delinquent act that would have been a "violent crime" had it not been committed by a juvenile may not file an application for leave to appeal to the Court of Special Appeals. Chapter 260, Acts of 2006 (SB 508) amended Code, Criminal Procedure Article, §11-103 by extending the right to file an application for leave to appeal to a victim of a delinquent act that would be a violent crime if committed by an adult. The Rules Committee recommends changing Rules 1-326, 8-111, and 8-204 to conform to the legislation.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 8-111 to add a new section (c) pertaining to victims and victims' representatives and to add a new cross reference after section (c), as follows:

Rule 8-111. DESIGNATION OF PARTIES; REFERENCES

. . .

(c) Victims and Victims' Representatives

Although not a party to a criminal or juvenile proceeding, a victim of a crime or a delinquent act or a victim's representative may: (1) file an application for leave to appeal to the Court of Special Appeals from an interlocutory or a final order under Code, Criminal Procedure Article, §11-103 and Rule 8-204; or (2) participate in the same manner as a party regarding the rights of the victim or victim's representative.

Cross reference: See Rule 1-326 for service and notice to attorneys for victims and victims' representatives regarding the rights of victims and representatives.

Source: This Rule is derived as follows:
Section (a) is derived in part from former Rule 827 and in part new.
Section (b) is derived from ~~FRAP~~ Fed. R. App. P. 28 (d).
Section (c) is new.

REPORTER'S NOTE

See the Reporter's note to the proposed amendments to Rule 8-204.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-326 to add a reference to Title 8 in section (a), as follows:

Rule 1-326. PROCEEDINGS REGARDING VICTIMS AND VICTIMS' REPRESENTATIVES

(a) Entry of Appearance

An attorney may enter an appearance on behalf of a victim or a victim's representative in a proceeding under Title 4, Title 8, or Title 11 of these Rules for the purpose of representing the rights of the victim or victim's representative.

. . .

REPORTER'S NOTE

See the Reporter's note to the proposed amendments to Rule 8-204.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-202 to add an exception to subsection (a)(1), to add a certain category of health care professional to sections (a) and (c), to move subsection (a)(2) to section (d), to reword the contents of the certificate in section (b), to change the word "Administrator" to the word "Secretary" in section (d), and to make stylistic changes, as follows:

Rule 10-202. CERTIFICATES ~~- REQUIREMENT AND CONTENT~~

(a) ~~To be Attached to Petition~~ Generally Required

~~(1) Generally~~

Except as provided in section (d), ~~If~~ if guardianship of the person of a disabled person is sought, the petitioner shall file with the petition signed and verified certificates of ~~(A)~~ (1) two physicians licensed to practice medicine in the United States who have examined the disabled person, or ~~(B)~~ (2) one licensed physician who has examined the disabled person and one licensed psychologist or certified clinical social worker who has seen and evaluated the disabled person. An examination or evaluation by at least one of the health care professionals under this subsection shall occur within 21 days before the filing of ~~a~~ the petition ~~for guardianship of a disabled person~~.

(b) Contents

Each certificate shall state: (1) the name, address, and qualifications of the ~~physician or psychologist~~ person who performed the examination or evaluation, (2) a brief history of the ~~physician's or psychologist's~~ person's involvement with the disabled person, (3) the date of the ~~physician's~~ last examination ~~of the disabled person or the psychologist's last~~ or evaluation of the disabled person, and (4) the ~~physician's or psychologist's~~ person's opinion as to: ~~(1)~~ (A) the cause, nature, extent, and probable duration of the disability, ~~(2)~~ (B) whether ~~the person requires~~ institutional care is required, and ~~(3)~~ (C) whether the disabled person has sufficient mental capacity to understand the nature of and consent to the appointment of a guardian.

~~(2) Beneficiary of the Department of Veterans Affairs~~

~~If guardianship of the person of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought, the petitioner shall file with the petition, in lieu of the two certificates required by subsection (1) of this section, a certificate of the Administrator of that Department or an authorized representative of the Administrator stating that the person has been rated as disabled by the Department in accordance with the laws and regulations governing the Department of Veterans Affairs. The certificate shall be prima facie evidence of the necessity for the appointment.~~

~~Cross reference: Code, Estates and Trusts Article, §13-705.~~

~~(b)~~ (c) Delayed Filing of Certificates

(1) After Refusal to Permit Examination

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

(2) Appointment of Health Care Professionals by Court

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

(d) Beneficiary of the Department of Veterans Affairs

If guardianship of the person of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought, the petitioner shall file with the petition, in lieu of the two certificates required by section (a) of this Rule, a certificate of the Secretary of that Department or an authorized representative of the Secretary stating that the person has been rated as disabled by the Department in accordance with the laws and regulations governing the Department of Veterans Affairs. The certificate shall be prima facie evidence of the necessity for the appointment.

Cross reference: Code, Estates and Trusts Article, §13-705.

Cross reference: Rule 1-341.

Source: This Rule is in part derived from former Rule R73 b 1 and b 2 and is in part new.

REPORTER'S NOTE

Chapter 250, Acts of 2007 (HB 672) added a licensed certified clinical social worker as a health care professional who is allowed to evaluate the competency of disabled persons for whom a guardianship is being sought. The Rules Committee recommends amending Rules 10-202, 10-203, 10-205, 10-301, 10-302, and 10-304 to reflect this change.

The Committee also recommends moving subsection (a)(2) to the end of Rule 10-202 to make clear that the certificates issued by the Secretary of Veterans Affairs are not the same certificates to which section (a) refers. The title of "Administrator of Veterans Affairs" has been changed to "Secretary of Veterans Affairs," so Rules 10-202 and 10-301 must be corrected to reflect this change.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-203 (c) by deleting the reference to certain health care professionals, by adding a reference to Rule 10-202, by adding a reference to "health care professionals," and by making stylistic changes, as follows:

Rule 10-203. SERVICE; NOTICE

(a) Service on Minor or Alleged Disabled Person

The petitioner shall serve a show cause order issued pursuant to Rule 10-104 on the minor or alleged disabled person and on the parent, guardian, or other person having care or custody of the minor or alleged disabled person. Service shall be in accordance with Rule 2-121 (a). If the minor or alleged disabled person resides with the petitioner, service shall be made upon the minor or disabled person and on such other person as the court may direct. Service upon a minor under the age of ten years may be waived provided that the other service requirements of this section are met. The show cause order served on a disabled person shall be accompanied by an "Advice of Rights" in the form set forth in Rule 10-204.

(b) Notice to Other Persons

(1) To Attorney

Unless the court orders otherwise, the petitioner shall mail a copy of the petition and show cause order by ordinary mail to the attorney for the minor or alleged disabled person.

(2) To Interested Persons

Unless the court orders otherwise, the petitioner shall mail by ordinary mail and by certified mail to all other interested persons a copy of the petition and show cause order and a "Notice to Interested Persons."

(c) Notice to Interested Persons

The Notice to Interested Persons shall be in the following form:

In the Matter of	In the Circuit Court for
_____	_____
(Name of minor or alleged disabled person)	(County)
	_____
	(docket reference)

NOTICE TO INTERESTED PERSONS

A petition has been filed seeking appointment of a guardian of the person of _____, who is alleged to be a minor or disabled person.

You are an "interested person," that is, someone who should receive notice of this proceeding because you are related to or otherwise concerned with the welfare of this person.

If the court appoints a guardian for the person, that person will lose certain valuable rights to make individual decisions.

Please examine the attached papers carefully. If you object to the appointment of a guardian, please file a response in accordance with the attached show cause order. (Be sure to include the case number). If you wish otherwise to participate in this proceeding, notify the court and be prepared to attend any hearing.

~~A physician's or psychologist's~~ Each certificate filed pursuant to Rule 10-202 that is attached to the petition will be admissible as substantive evidence without the presence or testimony of the ~~physician or psychologist~~ certifying health care professional unless you file a request that the ~~physician or psychologist~~ health care professional appear to testify. The request must be filed at least 10 days before the trial date, ~~except that, if~~ unless the trial date is less than 10 days from the date your response is due~~,~~. If the trial date is less than 10 days from the date your response is due, the request may be filed at any time before trial.

If you believe you need further legal advice about this matter, you should consult your attorney.

Source: This Rule is in part derived from former Rule R74 and Code, Estates and Trusts Article, §1-103 (b) and is in part new.

REPORTER'S NOTE

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

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-205 by deleting a reference to certain health care professionals, by adding a reference to Rule 10-202, by adding references to "health care professionals," and by making stylistic changes, as follows:

Rule 10-205. HEARING

(a) Guardianship of the Person of a Minor

(1) No Response to Show Cause Order

If no response to the show cause order is filed and the court is satisfied that the petitioner has complied with the provisions of Rule 10-203, the court may rule on the petition summarily.

(2) Response to Show Cause Order

If a response to the show cause order objects to the relief requested, the court shall set the matter for trial, and shall give notice of the time and place of trial to all persons who have responded.

Cross reference: Code, Estates and Trusts Article, §13-702.

(b) Guardianship of Alleged Disabled Person

(1) Generally

When the petition is for guardianship of the person of an alleged disabled person, the court shall set the matter for

jury trial. The alleged disabled person or the attorney representing the person may waive a jury trial at any time before trial. If a jury trial is held, the jury shall return a verdict pursuant to Rule 2-522 (c) as to any alleged disability. ~~A physician's or psychologist's~~ Each certificate filed pursuant to Rule 10-202 is admissible as substantive evidence without the presence or testimony of the ~~physician or psychologist~~ certifying health care professional unless, not later than 10 days before trial, an interested person who is not an individual under a disability, or the attorney for the alleged disabled person, files a request that the ~~physician or psychologist~~ health care professional appear to testify. If the trial date is less than 10 days from the date the response is due, a request that the ~~physician or psychologist~~ health care professional appear may be filed at any time before trial. If the alleged disabled person asserts that, because of his or her disability, the alleged disabled person cannot attend a trial at the courthouse, the court may hold the trial at a place to which the alleged disabled person has reasonable access.

(2) Beneficiary of the Department of Veterans Affairs

If guardianship of the person of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought and no objection to the guardianship is made, a hearing shall not be held unless the Court finds that extraordinary circumstances require a hearing.

Source: This Rule is in part derived from former Rule R77 and is in part new.

REPORTER'S NOTE

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

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 300 - GUARDIAN OF PROPERTY

AMEND Rule 10-301 (d) by deleting a reference to certain health care professionals, by changing the word "Administrator" to the word "Secretary," and by making stylistic changes, as follows:

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

. . .

(d) Required Exhibits

The petitioner shall attach to the petition as exhibits (1) a copy of any instrument nominating a guardian; (2)(A) ~~any physician's or psychologist's~~ the certificates required by Rule 10-202, or (B) if guardianship of the property of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought, in lieu of the ~~certificates required by~~ requirements of Rule 10-202, a certificate of the ~~Administrator~~ Secretary of that Department or an authorized representative of the ~~Administrator~~ Secretary stating that the person has been rated as disabled by the Department in accordance with the laws and regulations governing the Department of Veterans Affairs; and (3) if the petition is for the appointment of a guardian for a minor who is a beneficiary of the Department of Veterans Affairs, a certificate of the Secretary of that

Department or any authorized representative of the Secretary, in accordance with Code, Estates and Trusts Article, §13-802.

. . .

REPORTER'S NOTE

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

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 300 - GUARDIAN OF PROPERTY

AMEND Rule 10-302 by deleting a reference to certain health care professionals, by adding a reference to Rule 10-202, by adding references to “health care professionals,” and by making stylistic changes, as follows:

Rule 10-302. SERVICE; NOTICE

(a) Service on Minor or Alleged Disabled Person

The petitioner shall serve a show cause order issued pursuant to Rule 10-104 on the minor or alleged disabled person and on the parent, guardian, or other person having care or custody of the minor or alleged disabled person or of the estate belonging to the minor or alleged disabled person. Service shall be in accordance with Rule 2-121 (a). If the minor or alleged disabled person resides with the petitioner, service shall be made upon the minor or alleged disabled person and on such other person as the court may direct. Service upon a minor under the age of ten years may be waived provided that the other service requirements of this section are met. The show cause order served on an alleged disabled person shall be accompanied by an "Advice of Rights" in the form set forth in Rule 10-303.

(b) Notice to Other Persons

(1) To Attorney

Unless the court orders otherwise, the petitioner shall mail a copy of the petition and show cause order by ordinary mail to the attorney for the minor or alleged disabled person.

(2) To Interested Persons

Unless the court orders otherwise, the petitioner shall mail by ordinary mail and by certified mail to all other interested persons a copy of the petition and show cause order and a "Notice to Interested Persons."

(c) Notice to Interested Persons

The Notice to Interested Persons shall be in the following form:

In the Matter of _____ (Name of minor or alleged disabled person)

In the Circuit Court for _____ (County)

_____ (docket reference)

NOTICE TO INTERESTED PERSONS

A petition has been filed seeking appointment of a guardian of the property of _____, who is alleged to be a minor or alleged disabled person.

You are an "interested person", that is, someone who should receive notice of this proceeding because you are related to or otherwise concerned with the welfare of this person.

If the court appoints a guardian of the property for _____, that person will lose the right to manage his or her property.

Please examine the attached papers carefully. If you object to the appointment of a guardian, please file a response in accordance with the attached show cause order. (Be sure to include the case number). If you wish otherwise to participate in this proceeding, notify the court and be prepared to attend any hearing.

~~A physician's or psychologist's~~ Each certificate filed pursuant to Rule 10-202 that is attached to the petition will be admissible as substantive evidence without the presence or testimony of the ~~physician or psychologist~~ certifying health care professional unless you file a request that the ~~physician or psychologist~~ health care professional appear to testify. The request must be filed at least 10 days before the trial date, ~~except that, if~~ unless the trial date is less than 10 days from the date your response is due~~,~~. If the trial date is less than 10 days from the date your response is due, the request may be filed at any time before trial.

If you believe you need further legal advice about this matter, you should consult your attorney.

Source: This Rule is in part derived from former Rule R74 and Code, Estates and Trusts Article, §1-103 (b) and is in part new.

REPORTER'S NOTE

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

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 300 - GUARDIAN OF PROPERTY

AMEND Rule 10-304 by deleting references to certain health care professionals, by adding references to "health care professionals," and by making stylistic changes, as follows:

Rule 10-304. HEARING

(a) No Response to Show Cause Order

If no response to the show cause order is filed and the court is satisfied that the petitioner has complied with the provisions of Rule 10-302, the court may rule on the petition summarily.

(b) Response to Show Cause Order; Place of Trial

If a response to the show cause order objects to the relief requested, the court shall set the matter for trial, and shall give notice of the time and place of trial to all persons who have responded. Upon motion by the alleged disabled person asserting that, because of his or her disability, the alleged disabled person cannot attend a trial at the courthouse, the court may hold the trial at a place to which the alleged disabled person has reasonable access.

Cross reference: Code, Estates and Trusts Article, §13-211.

(c) Request for Attendance of ~~Physician or Psychologist~~ Health Care Professional

When the petition is for guardianship of the property of a disabled person, ~~a physician's or psychologist's~~ each certificate filed pursuant to ~~that complies with~~ Rule 10-202 is admissible as substantive evidence without the presence or testimony of the ~~physician or psychologist~~ health care professional unless, not later than 10 days before trial, an interested person who is not an individual under a disability, or the attorney for the disabled person, files a request that the ~~physician or psychologist~~ health care professional appear to testify. If the trial date is less than 10 days from the date the response is due, a request that the ~~physician or psychologist~~ health care professional appear may be filed at any time before trial.

Source: This Rule is in part derived from former Rule R77 and is in part new.

REPORTER'S NOTE

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

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 200 - CONTEMPT

AMEND Rule 15-207 by adding a Committee note after subsection (e)(1), as follows:

Rule 15-207. CONSTRUCTIVE CONTEMPT; FURTHER PROCEEDINGS

. . .

(e) Constructive Civil Contempt - Support Enforcement Action

(1) Applicability

This section applies to proceedings for constructive civil contempt based on an alleged failure to pay spousal or child support, including an award of emergency family maintenance under Code, Family Law Article, Title 4, Subtitle 5.

Committee note: Sanctions for attorneys found to be in contempt for failure to pay child support may include referral to Bar Counsel pursuant to Rule 16-731. See Code, Family Law Article, §10-119.3.

. . .

REPORTER'S NOTE

Chapter 256, Acts of 2007 (HB 792) amended Code, Family Law Article, §10-119.3 to include the Court of Appeals as one of the licensing authorities that can issue a sanction against someone who is in arrears in paying child support. The statute provides that if the person in arrears is an attorney, the Child Support Enforcement Administration may refer the matter to the Attorney Grievance Commission for disciplinary action. If an attorney is found to be in arrears in paying child support, the Court of Appeals may suspend his or her license or take any action authorized by the Rules in Title 16. To make the Rules consistent with the statutory change, the Rules Committee recommends: (1) adding a Committee note after subsection (e)(1)

of Rule 15-207 to indicate that sanctions for attorneys found to be in contempt for failure to pay child support may include a referral to Bar Counsel for possible discipline, (2) amending Rule 16-701 by adding a definition of "constructive civil contempt" that refers to a finding of contempt for failure to pay child support and by adding references to "constructive civil contempt" to the definition of "statement of charges," (3) amending Rule 16-731 (a) and (c) to include constructive civil contempt as a subject of a complaint, (4) amending Rule 16-751 by adding a reference to "constructive civil contempt" as a possible charge to be listed in the form of the petition, and (5) making conforming changes to Rules 16-771 and 8.1.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-701 to add a definition of constructive civil contempt, and to add a reference to "constructive civil contempt" to section (n), as follows:

Rule 16-701. DEFINITIONS

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

(a) Attorney

"Attorney" means a person admitted by the Court of Appeals to practice law in this State. For purposes of discipline or inactive status, the term also includes a person not admitted by the Court of Appeals who engages in the practice of law in this State, or who holds himself or herself out as practicing law in this State, or who has the obligation of supervision or control over another lawyer who engages in the practice of law in this State.

Cross reference: See Rule 8.5 of the Maryland Lawyers' Rules of Professional Conduct.

(b) Circuit

"Circuit" means Appellate Judicial Circuit.

(c) Commission

"Commission" means the Attorney Grievance Commission of Maryland.

(d) Conditional Diversion Agreement

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

(e) Constructive Civil Contempt

"Constructive civil contempt" means a finding of contempt for failure to pay child support pursuant to Rule 15-207 (e).

~~(e)~~ (f) Disbarment

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

~~(f)~~ (g) Incapacity

"Incapacity" means the inability to render adequate legal service by reason of mental or physical illness or infirmity, or addiction to or dependence upon an intoxicant or drug.

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

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

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

"Petition for disciplinary or remedial action" means the initial pleading filed in the Court of Appeals against an attorney alleging that the attorney has engaged in professional misconduct or is incapacitated or both.

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

"Professional misconduct" or "misconduct" has the meaning set forth in Rule 8.4 of the Maryland Lawyers' Rules of Professional Conduct, as adopted by Rule 16-812. The term

includes the knowing failure to respond to a request for information authorized by this Chapter without asserting, in writing, a privilege or other basis for such failure.

~~(j)~~ (k) Reinstatement

"Reinstatement" means the termination of disbarment, suspension, or inactive status and the termination of any exclusion to practice law in this State.

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

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

~~(l)~~ (m) State

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

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

"Statement of charges" means the document that alleges professional misconduct, constructive civil contempt, or incapacity and initiates disciplinary or remedial proceedings against an attorney pursuant to Rule 16-741.

~~(n)~~ (o) Suspension

"Suspension" means the temporary or indefinite termination of the privilege to practice law and, when applied to an attorney

not admitted by the Court of Appeals to practice law, means the temporary or indefinite exclusion from the admission to or the exercise of any privilege to practice law in this State.

~~(o)~~ (p) Warning

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

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

REPORTER'S NOTE

See the Reporter's note to Rule 15-207.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-731 by adding a reference to "constructive civil contempt" to sections (a), (b), and (c), as follows:

Rule 16-731. COMPLAINT; INVESTIGATION BY BAR COUNSEL

(a) Complaints

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

(b) Review of Complaint

(1) Bar Counsel shall make an appropriate investigation of every complaint that is not facially frivolous or unfounded.

(2) If Bar Counsel concludes that the complaint is either frivolous or unfounded or does not allege facts which, if true, would demonstrate either professional misconduct, constructive civil contempt, or incapacity, Bar Counsel shall dismiss the complaint and notify the complainant of the dismissal.

Otherwise, Bar Counsel shall (A) open a file on the complaint, (B) acknowledge receipt of the complaint and explain in writing to the complainant the procedures for investigating and processing the complaint, (C) comply with the notice requirement of section (c) of this Rule, and (D) conduct an investigation to determine whether reasonable grounds exist to believe the allegations of the complaint.

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

(c) Notice to Attorney

(1) Except as otherwise provided in this section, Bar Counsel shall notify the attorney who is the subject of the complaint that Bar Counsel is undertaking an investigation to determine whether the attorney has engaged in professional misconduct or is incapacitated. The notice shall be given before the conclusion of the investigation and shall include the name and address of the complainant and the general nature of the professional misconduct<u>, constructive civil contempt,</u> or incapacity under investigation. As part of the notice, Bar Counsel may demand that the attorney provide information and records that Bar Counsel deems appropriate and relevant to the investigation. The notice shall state the time within which the attorney shall provide the information and any other information that the attorney may wish to present. The notice shall be served on the attorney in accordance with Rule 16-724 (b).

(2) Bar Counsel need not give notice of investigation to an attorney if, with the approval of the Commission, Bar Counsel proceeds under Rule 16-771, 16-773, or 16-774.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 15-207.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-751 to add language to section (c) referring to "constructive civil contempt," as follows:

Rule 16-751. PETITION FOR DISCIPLINARY OR REMEDIAL ACTION

. . .

(c) Form of Petition

The petition shall be sufficiently clear and specific to inform the respondent of any professional misconduct or constructive civil contempt charged and the basis of any allegation that the respondent is incapacitated and should be placed on inactive status.

. . .

REPORTER'S NOTE

See the Reporter's Note to Rule 15-207.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-771 to conform a cross reference to the relettering of Rule 16-701, as follows:

Rule 16-771. DISCIPLINARY OR REMEDIAL ACTION UPON CONVICTION OF CRIME

(a) Duty of Attorney Charged

An attorney charged with a serious crime in this State or any other jurisdiction shall promptly inform Bar Counsel in writing of the criminal charge. Thereafter, the attorney shall promptly notify Bar Counsel of the final disposition of the charge in each court that exercises jurisdiction over the charge.

Cross reference: Rule 16-701 ~~(k)~~ (l).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 15-207.

MARYLAND RULES OF PROCEDURE

APPENDIX: THE MARYLAND LAWYERS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 8.1 to conform an internal reference to the relettering of Rule 16-701, as follows:

Rule 8.1. BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission or reinstatement to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

COMMENT

[1] The duty imposed by this Rule extends to persons seeking admission or reinstatement to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission or for reinstatement, it may be the basis for subsequent disciplinary action if the person is admitted or reinstated, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. This Rule also requires affirmative clarification of any misunderstanding on the part of the admissions or

disciplinary authority of which the person involved becomes aware.

[2] The Court of Appeals has considered this Rule applicable when information is sought by the Attorney Grievance Commission from any lawyer on any matter, whether or not the lawyer is personally involved. See *Attorney Grievance Commission v. Oswinkle*, 364 Md. 182 (2001).

[3] This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[4] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship.

Cross reference: Md. Rule 16-701 ~~(j)~~ (k) (defining "Reinstatement").

REPORTER'S NOTE

See the Reporter's note to Rule 15-207.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 600 - ATTORNEY TRUST ACCOUNTS

AMEND Rule 16-610 by adding a reference to the Maryland Legal Services Corporation (MLSC) in section a, by deleting language from and adding clarifying language to section a, by adding a sentence to section a concerning an extension of approval of a previously approved financial institution, by adding the words "name and address of the" to subsection b 1 C (ii), by deleting language from and adding language to subsection b 1 (D) explaining how to determine the rate of interest on IOLTA accounts, by adding language to section c referring to the MLSC and requiring notification to a financial institution of a certain termination, and by adding a section d referring to filing exceptions, as follows:

Rule 16-610. APPROVAL OF FINANCIAL INSTITUTIONS

a. Written Agreement to be Filed with Commission.

The Commission shall approve a financial institution upon the filing with the Commission of a written agreement with the Maryland Legal Services Corporation (MLSC), complying with this Rule and in a form provided by the Commission, applicable to all branches of the institution ~~located in this State~~ that are subject to this Rule. The Commission may extend its approval of a previously approved financial institution for a reasonable

period to allow the financial institution and the MLSC the opportunity to enter into a revised agreement that complies with this Rule.

b. Contents of Agreement.

1. Duties to be Performed.

The agreement shall provide that the financial institution, as a condition of accepting the deposit of any funds into an attorney trust account, shall:

(A) Notify the attorney or law firm promptly of any overdraft in the account or the dishonor for insufficient funds of any instrument drawn on the account.

(B) Report the overdraft or dishonor to Bar Counsel as set forth in subsection b 1 (C) of this Rule.

(C) Use the following procedure for reports to Bar Counsel required under subsection b 1 (B) of this Rule:

(i) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the institution's other regular account holders. The report shall be mailed to Bar Counsel within the time provided by law for notice of dishonor to the depositor and simultaneously with the sending of that notice.

(ii) If an instrument is honored but at the time of presentation the total funds in the account, both collected and uncollected, do not equal or exceed the amount of the instrument, the report shall identify the financial institution, the name and address of the attorney or law firm maintaining the account, the

account name, the account number, the date of presentation for payment, and the payment date of the instrument, as well as the amount of the overdraft created. The report shall be mailed to Bar Counsel within five banking days after the date of presentation, notwithstanding any overdraft privileges that may attach to the account.

(D) ~~Not deduct from interest on the account that otherwise would be payable to the Maryland Legal Services Corporation Fund any fees for wire transfers, presentations against insufficient funds, certified checks, overdrafts, deposits of dishonored items, and account reconciliation services.~~ Pay interest on its IOLTA accounts at a rate no less than the highest non-promotional interest rate generally available from the institution to its non-IOLTA customers at the same branch when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications for its non-IOLTA accounts at that branch. In determining the highest interest rate generally available from the institution to its IOLTA customers at a particular branch, an approved institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution at that branch when setting interest rates for its non-IOLTA customers; provided, however, that these factors shall not discriminate between IOLTA accounts and non-IOLTA accounts, nor shall the factors include or consider the fact that the account is an IOLTA account.

(i) An approved institution may satisfy the requirement described in subsection b 1 (D) of this Rule by establishing the IOLTA account in an account paying the highest rate for which the IOLTA account qualifies. The approved institution may deduct from interest earned on the IOLTA account Allowable Reasonable Fees as defined in subsection b 1 (d)(iii). This account may be any one of the following product option types, assuming the particular financial institution offers these account types to its non-IOLTA customers, and the particular IOLTA account qualifies to be established as this type of account at the particular branch:

(a) a business checking account with an automated investment feature, which is an overnight sweep and investment in repurchase agreements fully collateralized by U.S. Government securities, including securities of government-sponsored entities;

(b) checking accounts paying interest rates in excess of the lowest-paying interest-bearing checking account;

(c) any other suitable interest-bearing checking account offered by the approved institution to its non-IOLTA customers.

(ii) In lieu of the options provided in subsection b 1 (D)(i), an approved financial institution may: (a) retain the existing IOLTA account and pay the equivalent applicable rate that would be paid at that branch on the highest-yield product for which the IOLTA account qualifies and deduct from interest earned on the IOLTA account Allowable Reasonable Fees; (b) offer a “safe harbor” rate that is equal to 55% of the Federal Funds Target Rate

as reported in the Wall Street Journal on the first calendar day of the month on high-balance IOLTA accounts to satisfy the requirements described in subsection b 1 (D), but no fees may be deducted from the interest on a “safe harbor” rate account; or (c) pay a rate specified by the MLSC, if it chooses to specify a rate, which is agreed to by the financial institution and would be in effect for and remain unchanged during a period of twelve months from the agreement between the financial institution and MLSC to pay the specified rate. Allowable Reasonable Fees may be deducted from the interest on this “specified rate” account as agreed between MLSC and the financial institution.

(iii) “Allowable Reasonable Fees” means fees and service charges in amounts customarily charged to non-IOLTA customers with the same type of account and balance at the same branch, including per-check charges, per-deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, and sweep fees, plus a reasonable IOLTA account administrative fee. Allowable Reasonable Fees may be deducted from interest earned on an IOLTA account only in amounts and in accordance with the customary practices of the approved institution for non-IOLTA customers at the particular branch. Fees or service charges are not Allowable Reasonable Fees if they are charged for the convenience of or arise due to errors or omissions by the attorney or law firm maintaining the IOLTA account or that attorney’s or law firm’s clients, including fees for wire transfers, certified checks, account reconciliation

services, presentations against insufficient funds, overdrafts, or deposits of dishonored items.

(iv) Nothing in this Rule shall preclude an approved institution from paying a higher interest rate than described herein or electing to waive any fees and service charges on an IOLTA account.

(v) Fees that are not Allowable Reasonable Fees are the responsibility of, and may be charged to, the attorney or law firm maintaining the IOLTA account.

Cross reference: Rule 16-607 b 1.

(E) Allow reasonable access to all records of an attorney trust account if an audit of the account is ordered pursuant to Rule 16-722 (Audit of Attorney Accounts and Records).

2. Service Charges for Performing Duties Under Agreement.

Nothing in the agreement shall preclude an approved financial institution from charging the attorney or law firm maintaining an attorney trust account (1) a reasonable fee for providing any notice or record pursuant to the agreement or (2) ~~the~~ fees and service charges other than the "Allowable Reasonable Fees" listed in subsection b 1 (D)(iii) of this Rule.

c. Termination of Agreement.

The agreement shall terminate only if:

1. the financial institution files a petition under any applicable insolvency law or makes an assignment for the benefit of creditors; or

2. the financial institution gives thirty days' notice in writing to the MLSC and to Bar Counsel that the institution intends to terminate the agreement and its status as an approved financial institution on a stated date and that copies of the termination notice have been mailed to all attorneys and law firms that maintain trust accounts with any branch of that institution; or

3. after a complaint is filed by the MLSC or on its own initiative, ~~The~~ the Commission finds, after prior written notice to the institution and adequate opportunity to be heard, that the institution has failed or refused without justification to perform a duty required by the agreement. The Commission shall notify the institution that the agreement and the Commission's approval of the institution are terminated.

d. Exceptions

Within 15 days after service of the notice of termination pursuant to subsection c 3 of this Rule, the institution may file with the Court of Appeals exceptions to the decision of the Commission. The institution shall file eight copies of the exceptions which shall conform to the requirements of Rule 8-112. The Court shall set a date for oral argument, unless oral argument is waived by the parties. Oral argument shall be conducted in accordance with Rule 8-522. The decision of the Court of Appeals is final and shall be evidenced by an order of the Court.

Source: This Rule is derived from former Rule BU10.

REPORTER'S NOTE

The Maryland Legal Services Corporation ("MLSC") has been concerned that some financial institutions in Maryland have not been offering on IOLTA accounts a rate of interest that is comparable to the rate offered on similar non-IOLTA accounts.

The Rules Committee heard from representatives of the Maryland Bankers' Association and the MLSC, and reviewed IOLTA interest "comparability" provisions in effect in other States. The Committee recommends amendments to Rule 16-610 a and b 1 (D) to require a financial institution that wishes to be an "approved financial institution," as defined in Rule 16-602 a, to enter into an agreement to pay interest on IOLTA accounts computed in accordance with the provisions of this Rule.

The Committee also recommends the addition of a sentence to subsection c 3, providing for notification to a financial institution of termination of approval if the Attorney Grievance Commission finds that the institution has failed or refused to perform a duty required by the agreement.

Additionally, the Committee recommends a new section d, providing a mechanism for the financial institution to file exceptions to a decision by the Attorney Grievance Commission to terminate its approval of a financial institution.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 600 - ATTORNEY TRUST ACCOUNTS

AMEND Rule 16-602 to add a definition of “IOLTA,” as follows:

Rule 16-602. DEFINITIONS

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

a. Approved Financial Institution.

"Approved financial institution" means a financial institution approved by the Commission in accordance with these Rules.

b. Attorney.

"Attorney" means any person admitted by the Court of Appeals to practice law.

c. Attorney Trust Account.

"Attorney trust account" means an account, including an escrow account, maintained in a financial institution for the deposit of funds received or held by an attorney or law firm on behalf of a client or third person.

d. Bar Counsel.

"Bar Counsel" means the person appointed by the Commission as the principal executive officer of the disciplinary system

affecting attorneys. All duties of Bar Counsel prescribed by these Rules shall be subject to the supervision and procedural guidelines of the Commission.

e. Client.

"Client" includes any individual, firm, or entity for which an attorney performs any legal service, including acting as an escrow agent or as a legal representative of a fiduciary. The term does not include a public or private entity of which an attorney is a full-time employee.

f. Commission.

"Commission" means the Attorney Grievance Commission of Maryland, as authorized and created by Rule 16-711 (Attorney Grievance Commission).

g. Financial Institution.

"Financial institution" means a bank, trust company, savings bank, or savings and loan association authorized by law to do business in this State, in the District of Columbia, or in a state contiguous to this State, the accounts of which are insured by an agency or instrumentality of the United States.

h. IOLTA.

"IOLTA" (Interest on Lawyer Trust Accounts) means interest on attorney trust accounts payable to the Maryland Legal Services Corporation Fund under Code, Business Occupations and Professions Article, §10-303.

~~h.~~ i. Law Firm.

"Law firm" includes a partnership of attorneys, a professional or nonprofit corporation of attorneys, and a combination thereof engaged in the practice of law. In the case of a law firm with offices in this State and in other jurisdictions, the Rules in this Chapter apply only to the offices in this State.

Source: This Rule is derived from former Rule BU2.

REPORTER'S NOTE

The proposed amendment to Rule 16-602 adds a definition of "IOLTA."

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 600 - ATTORNEY TRUST ACCOUNTS

AMEND Rule 16-608 to delete language from section b, as follows:

Rule 16-608. INTEREST ON FUNDS IN ATTORNEY TRUST ACCOUNTS

a. Generally.

Any interest paid on funds deposited in an attorney trust account, after deducting service charges and fees of the financial institution, shall be credited and belong to the client or third person whose funds are on deposit during the period the interest is earned, except to the extent that interest is paid to the Maryland Legal Services Corporation Fund as authorized by law. The attorney or law firm shall have no right or claim to the interest.

Cross reference: See Rule 16-610 b 1 (D) providing that certain fees may not be deducted from interest that otherwise would be payable to the Maryland Legal Services Corporation Fund.

b. Duty to Report IOLTA Participation.

Each attorney admitted to practice in Maryland shall report annually information concerning all IOLTA ~~(Interest on Lawyer Trust Accounts)~~ accounts, including name, address, location, and account number, on a form approved by the Court of Appeals and mailed and returned annually as directed by the Court of Appeals.

Cross reference: See Code, Business Occupations and Professions Article, §10-303.

Source: Section a of this Rule is former Rule BU8. Section b is new.

REPORTER'S NOTE

The proposed amendment to Rule 16-608 deletes from section b language that is unnecessary in light of the proposed addition of a definition of "IOLTA" to Rule 16-602.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-743 to require a Peer Review Panel to transmit to the Commission a recommended disposition that has been agreed upon by Bar Counsel and the attorney, to require the Panel to afford the parties an opportunity to enter into a Conditional Diversion Agreement under certain circumstances, to clarify provisions concerning a recommended disposition absent agreement of Bar Counsel and the attorney, and to make stylistic changes, as follows:

Rule 16-743. PEER REVIEW PROCESS

(a) Purpose of Peer Review Process

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

evidentiary hearings, adjudicate facts, or write full opinions or reports.

Committee note: If a Peer Review Panel concludes that the complaint has a substantial basis indicating the need for some remedy, some behavioral or operational changes on the part of the lawyer, or some discipline short of suspension or disbarment, part of the peer review process can be an attempt through both evaluative and facilitative dialogue, (A) to effectuate directly or suggest a mechanism for effecting an amicable resolution of the existing dispute between the lawyer and the complainant, and (B) to encourage the lawyer to recognize any deficiencies on his or her part that led to the problem and take appropriate remedial steps to address those deficiencies. The goal, in this setting, is not to punish or stigmatize the lawyer or to create a fear that any admission of deficiency will result in substantial harm, but rather to create an ambience for a constructive solution. The objective views of two fellow lawyers and a lay person, expressed in the form of advice and opinion rather than in the form of adjudication, may assist the lawyer (and the complainant) to retreat from confrontational positions and look at the problem more realistically.

(b) Scheduling of Meeting; Notice to Attorney

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

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

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

(4) The notice to the attorney shall inform the attorney of the attorney's right to respond in writing to the Statement of Charges by filing a written response with the Commission and sending a copy of it to Bar Counsel and each member of the Peer Review Panel at least ten days before the scheduled meeting.

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

(c) Meeting

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

(2) If the Panel determines that the Statement of Charges has a substantial basis and that there is reason to believe that the attorney has committed professional misconduct or is incapacitated, the Panel may (A) conclude the meeting and make an

appropriate recommendation to the Commission or (B) inform the parties of its determination and allow the attorney an opportunity to consider a reprimand or a Conditional Diversion Agreement.

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

(d) Ex parte Communications

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

(e) Recommendation <u>of Peer Review Panel</u>

<u>(1) Agreed Upon Recommendation</u>

<u>If Bar Counsel and the attorney agree upon a recommended disposition, the Peer Review Panel shall transmit that recommendation to the Commission. If a Peer Review Panel determines that the attorney committed professional misconduct, or is incapacitated, and that the parties should enter into a Conditional Diversion Agreement, the Panel shall orally advise the</u>

parties of that determination and afford them an opportunity to enter into a Conditional Diversion Agreement in accordance with Rule 16-736. If agreement is reached, the Conditional Diversion Agreement shall be the Panel's recommended disposition.

(2) If No Agreement

~~The Peer Review Panel may recommend to the Commission that a Petition for Disciplinary or Remedial Action be filed or make any recommendation to the Commission that Bar Counsel may make under Rule 16-734 (a), (b), or (c). The Panel~~ If there is no agreed-upon recommendation under subsection (e)(1) of this Rule, the Panel shall transmit to the Commission an independent recommendation, not subject to the approval of Bar Counsel, and shall accompany its recommendation with a brief explanatory statement. The Panel's recommendation shall be one of the following:

(A) the filing of a Petition for Disciplinary or Remedial Action;

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

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

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

(f) Action by Commission

The Commission may (1) ~~approve the filing of~~ direct Bar Counsel to file a Petition for Disciplinary or Remedial Action, (2) take any action on the Panel's recommendation that the Commission may take on a similar recommendation made by Bar Counsel under Rule 16-734, or (3) dismiss the Statement of Charges and terminate the proceeding.

Source: This Rule is new.

REPORTER'S NOTE

Guideline 6.5 of the Administrative and Procedural Guidelines of the Attorney Grievance Commission requires the approval of Bar Counsel for any recommendation of the Peer Review Panel other than dismissal or the filing of a Petition for Disciplinary or Remedial Action. The Rules Committee acknowledges that Bar Counsel's role in effecting a Conditional Diversionary Agreement may require Bar Counsel's approval of such an agreement, but requiring Bar Counsel's approval of a recommendation by a Panel that an attorney be reprimanded negates the opinion of the Peer Review Panel and diminishes the value of the Peer Review process.

The Committee proposes amendments to several of the Rules pertaining to attorney discipline to clarify that, absent agreement of the parties, the Panel's responsibility is to make an independent recommendation to the Commission. The amendments to Rules 16-743, 16-735, and 16-737 make clear that a Panel is not limited to recommending either dismissal or the filing of a Petition for Disciplinary or Remedial Action. A Panel also may recommend to the Commission that a complaint be dismissed with a warning or that an attorney be reprimanded. In Rule 16-743, new subsection (e)(1) requires a Peer Review Panel to transmit to the Commission a recommended disposition that has been agreed upon by Bar Counsel and the attorney. The second sentence of subsection (e)(1) requires the Panel, in cases in which it determines that a Conditional Diversionary Agreement may be appropriate, to orally advise the parties of that determination and afford them the opportunity to enter into an Agreement, which is then transmitted to the Commission as the Panel's recommendation.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-735 to clarify the procedure for a Peer Review Panel to recommend dismissal with a warning, as follows:

Rule 16-735. DISMISSAL OR OTHER TERMINATION OF COMPLAINT

(a) Dismissal or Termination

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

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

(B) the disciplinary or remedial proceeding be terminated, with or without a warning because Bar Counsel or the Panel has concluded that any professional misconduct on the part of the attorney (i) was not sufficiently serious to warrant discipline and (ii) is not likely to be repeated.

(2) If satisfied with ~~Bar Counsel's~~ the recommendation of Bar Counsel or the Panel, the Commission shall dismiss the complaint or otherwise terminate the disciplinary or remedial proceeding, as appropriate. If Bar Counsel or the Panel has recommended a

warning, the matter shall proceed as provided in section (b) of this Rule.

(b) Termination Accompanied by Warning

(1) If Bar Counsel or the Panel concludes that the attorney may have engaged in some professional misconduct, that the conduct was not sufficiently serious to warrant discipline, but that a specific warning to the attorney would be helpful to ensure that the conduct is not repeated, Bar Counsel or the Panel may recommend that the termination be accompanied by a warning against repetition. If satisfied with the recommendation, the Commission shall proceed in accordance with subsection (b)(2) of this Rule and, if the warning is not rejected, accompany the termination of the disciplinary or remedial proceeding with a warning. A warning does not constitute discipline, but the complainant shall be notified that termination of the proceeding was accompanied by a warning against repetition of the conduct.

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

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

(c) Effect of Dismissal or Termination

(1) Except as provided in subsection (c)(2) of this Rule, a dismissal or a termination under this Rule, with or without a warning, shall not be disclosed by the Commission or Bar Counsel in response to any request for information as to whether an attorney has been the subject of a disciplinary or remedial proceeding. The nature and existence of a proceeding terminated under this Rule, including any investigation by Bar Counsel that led to the proceeding, need not be disclosed by an attorney in response to a request for information as to whether the attorney has been the subject of a disciplinary or remedial proceeding.

(2) The fact that a warning was issued in conjunction with the termination of a complaint shall be disclosed to the complainant, and the fact that a warning was issued and the facts underlying the warning may be disclosed in a subsequent proceeding against the attorney when relevant to a complaint alleging similar misconduct.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's Note to Rule 16-743.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-737 to clarify the procedure for a Peer Review Panel to recommend a reprimand, as follows:

Rule 16-737. REPRIMAND BY COMMISSION

(a) Offer

If Bar Counsel determines after completion of an investigation, or the Peer Review Panel determines after a Panel meeting, that an attorney has engaged in professional misconduct and that the appropriate sanction for the misconduct is a reprimand, Bar Counsel or the Panel shall serve on the attorney a written offer ~~to administer~~ of a reprimand and ~~enter into a joint~~ a waiver of further disciplinary or remedial proceedings that is contingent upon acceptance of the reprimand by the attorney and approval of the reprimand by the Commission. The offer shall include the text of the proposed reprimand, the date when the offer will expire, a ~~stipulation for waiving~~ a contingent waiver of further disciplinary or remedial proceedings, and advice that the offer, if accepted, is subject to approval by the Commission. The text of the proposed reprimand shall summarize the misconduct for which the reprimand is to be imposed and include a reference to any rule, statute, or other law allegedly violated by the attorney.

(b) Response

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

(c) Action by Commission

If the ~~parties agree~~ attorney agrees to a reprimand, ~~they~~ Bar Counsel or the Panel shall submit the proposed reprimand to the Commission for approval. ~~The parties~~ Bar Counsel or the attorney may submit also any explanatory material that ~~they believe~~ either believes relevant and shall submit any further material that the Commission requests. Upon the submission, the Commission may take any of the following actions:

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

(2) the Commission may recommend amendments to the reprimand as a condition of approval, which the parties may accept or reject. If the parties accept the amendments, they shall notify the Commission of the acceptance, and the Commission shall then

approve the reprimand. If either party rejects a proposed amendment, the reprimand shall be deemed disapproved.

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

(d) Effect of Rejection or Disapproval

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

(e) Effect of Reprimand

A reprimand constitutes discipline.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 16-743.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-813 to add new language to Canon 4F permitting a former judge who is approved for recall for temporary service to conduct alternative dispute resolution proceedings in a private capacity with certain restrictions; to add a Committee note; to add to the Comment following Canon 4F; to make the entire Code other than Canon 4C applicable to former judges approved for recall; and to add language to Canon 6 that clarifies the recusal obligations of former judges approved for recall who engage in charitable, civic, or governmental activities, as follows:

Rule 16-813. MARYLAND CODE OF JUDICIAL CONDUCT

. . .

CANON 4

Extra Judicial Activities

. . .

D. Financial Activities

(1) A judge shall not engage in business or financial dealings that:

(a) reasonably would be perceived to violate Canon 2B; or

(b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves.

COMMENT

Canon 4D (1)(b) is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for recusal. A judge also should discourage members of the judge's family from engaging in dealings that reasonably would appear to exploit the judge's judicial position. With respect to affiliation of relatives of the judge with law firms appearing before the judge, see the Comment to Canon 3D (1)(d) relating to recusal.

Participation by a judge in business and financial dealings is subject to the general prohibitions in Canon 4A against activities that cause a substantial question as to impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation also is subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Canon 2B against misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See the Comment to Canon 4B regarding use of the phrase "subject to other provisions of this Code."

(2) Subject to other provisions of this Code, a judge may hold and manage investments, including real estate, and engage in other remunerative activities except that a full-time judge shall not hold a directorship or office in a bank, insurance company, lending institution, public utility, savings and loan association, or other business, enterprise, or venture that is affected with a public interest.

~~Cross reference: As to exemption for former judges approved for recall, see Canon 6C.~~

. . .

E. Fiduciary Activities

(1) (a) Except as provided in Canon 4E (1) and then only subject to other provisions of this Code and statutes, a judge shall not serve as a fiduciary.

(b) A judge may serve as a fiduciary for a member of the judge's family.

(c) A judge who has served as a trustee of a trust since December 31, 1969, may continue to do so as allowed by law.

(2) A judge shall not agree to serve as a fiduciary if it is likely that, as a fiduciary, the judge will be engaged in proceedings that ordinarily would come before the judge or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or in a court under the appellate jurisdiction of the court on which the judge serves.

(3) The restrictions that apply to personal financial activities of a judge also apply to the judge's fiduciary financial activities.

COMMENT

The Time for Compliance provision of this Code (Canon 6D) postpones the time for compliance with certain provisions of Canon 4E in some cases.

Committee note: Code, Estates and Trusts Article, §§5-105 (b)(5) and 14-104 prohibit a judge from serving as a personal representative or trustee for someone who is not a spouse or within the third degree of relationship (although a judge serving as trustee as of 12/31/69 is allowed to continue in that capacity). Neither the 1987 Maryland Code of Judicial Conduct nor any other Maryland law explicitly prohibits a judge from serving as any other type of fiduciary for anyone.

~~Cross reference: As to exemption for former judges approved for recall, see Canon 6C.~~

F. Service as Arbitrator or Mediator

(1) A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

(2) A former judge who is approved for recall for temporary service under Maryland Constitution, Article IV, §3A may conduct alternative dispute resolution ("ADR") proceedings in a private capacity only if the judge:

(A) conducts no ADR proceedings in a private capacity relating to a case in which the judge currently is presiding;

(B) is not affiliated with a law firm, regardless of whether the law firm also offers ADR services;

(C) discloses to the parties in each judicial proceeding over which the judge presides: (i) the judge's professional association with any entity that is engaged in offering ADR services, (ii) whether the judge is conducting, or has conducted within the previous 12 months, an ADR proceeding involving any party, attorney, or law firm involved in the judicial proceeding pending before the judge, and (iii) any negotiations or agreements for future ADR services involving the judge and any of the parties or counsel to the case; and

Committee note: A former judge approved for recall may affiliate with an entity that exclusively is engaged in offering ADR services, but may not affiliate with any entity that also is engaged in the practice of law.

(D) except if there is non-recusal by agreement as permitted by Canon 3E, does not preside over a judicial proceeding in which

the judge's **impartiality** might reasonably be questioned because of ADR services engaged in or offered by the judge.

COMMENT

Canon 4F does not ~~preclude~~ prohibit a judge or former judge approved for recall from participating in arbitration, mediation, or settlement conferences performed as part of judicial duties. If by reason of disclosure made during or as a result of ~~a conference, a judge's~~ an arbitration, mediation, or settlement conference, the **impartiality** of a judge or former judge approved for recall might reasonably be questioned, the judge or former judge should not participate in the matter further. See Canon 3D (1).

The purpose of Canon 4F (2) is to ensure that the **impartiality** of a former judge approved for recall is not subject to question. Although the former judge in a private capacity may act as an arbitrator, mediator, or other provider of ADR services, attention must be given to relationships with lawyers and law firms that may **require** disclosure or disqualification. These provisions are intended to prohibit the former judge from soliciting lawyers to use the former judge's ADR services when those lawyers are or may be before the former judge in proceedings where the former judge is acting in a judicial capacity. Canon 4F (2) does not prohibit a former judge from presiding over the same type of cases in the same circuit in which the judge conducts ADR proceedings of that type.

~~Cross reference: As to exemption for former judges approved for recall, see Canon 6C.~~

G. Practice of Law

. . .

CANON 6

Compliance

A. Courts

This Code applies to each judge of the Court of Appeals, the Court of Special Appeals, a circuit court, the District Court, or an orphans' court.

B. Construction

Violation of any of the Canons by a judge may be regarded as conduct prejudicial to the proper administration of justice within the meaning of Maryland Rule 16-803 (j), as to the Commission on Judicial Disabilities.

Committee note: Whether a violation is or is not prejudicial conduct is to be determined by the Court of Appeals of Maryland. Maryland Constitution, Article IV, §4B gives that Court the authority to discipline any judge upon recommendation of the Commission on Judicial Disabilities. This disciplinary power is alternative to and cumulative with the impeachment authority of the General Assembly.

C. Former Judges

This Code, other than Canon 4C (Charitable, Civic, and Governmental Activities), ~~D(2) (Financial Activities), E (Fiduciary Activities), and F (Service as Arbitrator or Mediator),~~ applies to each former judge of one of those courts who is approved for recall for temporary service under Maryland Constitution, Article IV, §3A. Except if there is non-recusal by agreement as permitted by Canon 3E, a former judge approved for recall for temporary service shall not preside over a judicial proceeding in which the former judge's **impartiality** might reasonably be questioned because of the former judge's charitable, civic, or governmental activities.

Cross reference: As to approval of a former judge for recall, see Code, Courts Article, §1-302.

D. Time for Compliance

An individual to whom this Code becomes applicable shall comply immediately with all provisions of this Code except: Canon 2C (Avoidance of Impropriety and the Appearance of Impropriety), Canon 4D (2) (Financial Activities), and Canon 4E (**Fiduciary** Activities). The individual shall comply with Canons 2C and 4D (2) and E as soon as reasonably possible, and shall do so in any event as to Canon 2C within two years and as to Canon 4D (2) and E within one year.

Source: . . .

Canon 4.

Canon 4F is derived from Maryland Code (1987), Canon 4H, with the addition of the reference to unauthorized performance of "judicial functions in a private capacity," in accordance with ABA Code (2000), Canon 4F and from Canon 5F of the Florida Code of Judicial Conduct. The Comment to Canon 4F is derived from the Comment to Maryland Code (1987), Canon 4F, ~~and~~ the first sentence of the Commentary to ABA Code (2000), Canon 4F, and the Commentary to Canon 5F of the Florida Code of Judicial Conduct.

. . .

Canon 6.

Canon 6A is derived from Maryland Code (1987), Canon 6A, with the Committee note omitted.

Canon 6B is derived from Maryland Code (1987), Canon 6B, with substitution of "Canons" for "any of the provisions of this Code of Judicial Conduct" to clarify that a judge can be charged only with violating a Canon and not a Comment or Committee note.

Canon 6C is derived from Maryland Code (1987), Canon 6C, but with ~~Canon 4D (4)~~ the entire Code other than Canon 4C made applicable to recalled judges. The second sentence is new.

Canon 6D is derived from ABA Code (2000), Canon 6F.

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REPORTER'S NOTE

The Rules Committee has reconsidered proposed amendments to Rule 16-813 in light of the directive of the Court of Appeals that the Committee examine the policies of Florida regarding recalled judges acting as mediators and arbitrators.

The Committee recommends following much of the substance of Florida's Canon 5F 2. However, the Committee recommends allowing a former judge approved for recall to preside over the same type of cases in the same circuit in which the judge conducts ADR proceedings, which is not permitted in Florida. Also, Florida allows former judges to advertise or solicit ADR business only as part of an entity that provides ADR services; the Committee believes this to be too restrictive, since even word-of-mouth is a form of solicitation and the Florida provision discriminates against former judges who choose not to affiliate with a group. Additionally, instead of absolutely prohibiting the former judge from presiding over a case involving any party, attorney, or law firm that is using or has used the judge as a arbitrator or mediator within the previous three years, the Committee recommends requiring the judge to disclose any such utilization that is occurring or has occurred within the previous 12 months. Proposed additions to Canons 4F and 6 make the disclosure/recusal/non-recusal-only-by-agreement paradigm of Canons 3D and E applicable to former judges approved for recall who also provide ADR services in a private capacity or who engage in charitable, civic, or governmental activities.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-815 to require that a former judge approved for recall for temporary service file a certain financial disclosure statement, as follows:

Rule 16-815. FINANCIAL DISCLOSURE STATEMENT

a. For purposes of this Rule, former judge means a former judge approved for recall for temporary service under Maryland Constitution, Article IV, §3A.

~~a.~~ b. ~~Every~~ Each judge and each former judge shall file with the State Court Administrator an annual financial disclosure statement on the form prescribed by the Court of Appeals. When filed, a financial disclosure statement is a public record.

~~b.~~ c. Except as provided in paragraph ~~c~~ d of this Rule:

1. The initial financial disclosure statement shall be filed on or before April 15, 1987 and shall cover the period beginning on January 1, 1986 and ending on December 31, 1986.

2. A subsequent statement shall be filed annually on or before April 15 of each year and shall cover the preceding calendar year or that portion of the preceding calendar year during which the judge held office.

3. A financial disclosure statement is presumed to have been filed unless the State Court Administrator, on April 16, notifies

a judge that the judge's statement for the preceding calendar year or portion thereof has not been received.

~~c.~~ d. If a judge or other person who files a certificate of candidacy for nomination for an election to an elected judgeship has filed a statement pursuant to §15-610 (b) of the State Government Article, Annotated Code of Maryland, the person need not file for the same period of time the statement required by paragraph ~~b~~ c of this Rule.

~~d.~~ e. The State Court Administrator is designated as the person to receive statements from the State Administrative Board of Election Laws pursuant to §15-610 (b) of the State Government Article.

~~e.~~ f. Extension of Time for Filing.

1. Except when the judge or the former judge is required to file a statement pursuant to §15-610 (b) of the State Government Article, Annotated Code of Maryland, a judge or former judge may apply to the State Court Administrator for an extension of time for filing the statement. The application shall be submitted prior to the deadline for filing the statement, and shall set forth in detail the reasons an extension is requested and the date upon which a completed statement will be filed.

2. For good cause shown, the State Court Administrator may grant a reasonable extension of time for filing the statement. Whether ~~he~~ the State Court Administrator grants or denies the request, the State Court Administrator shall furnish the judge or former judge and the Judicial Ethics Committee with a written

statement of ~~his~~ the State Court Administrator's reasons for the decision~~,~~ and the facts upon which ~~this~~ the decision is based.

3. A judge or former judge who is dissatisfied with the State Court Administrator's decision may seek review of the decision by the Judicial Ethics Committee by filing with the Committee a statement of reasons for the judge's or former judge's dissatisfaction within ten days from the date of the State Court Administrator's decision. The Committee may take the action it deems appropriate with or without a hearing or the consideration of additional documents.

~~f.~~ g. Failure to File Statement - Incomplete Statement.

1. A judge or former judge who fails to file a timely statement, or who files an incomplete statement, shall be notified in writing by the State Court Administrator, and given a reasonable time, not to exceed ten days, within which to correct the deficiency. If the deficiency has not been corrected within the time allowed, the State Court Administrator shall report the matter to the on Judicial Ethics Committee.

2. If the Committee finds, after inquiry, that the failure to file or the omission of information was either inadvertent or in a good faith belief that the omitted information was not required to be disclosed, the Committee shall give the judge or former judge a reasonable period, not to exceed 15 days, within which to correct the deficiency. Otherwise, the Committee shall refer the matter to the Commission on Judicial Disabilities. If a judge or former judge who has been allowed additional time within which to correct

a deficiency fails to do so within that time, the matter shall also be referred to the Commission on Judicial Disabilities.

~~g.~~ h. This rule applies to ~~any~~ each judge of a court named in Canon 6 A who has resigned or retired in any calendar year, with respect to the portion of that calendar year prior to ~~his~~ the judge's resignation or retirement, and to each former judge with respect to the previous calendar year.

Source: This Rule is derived from former Rule 1233.

REPORTER'S NOTE

In conjunction with proposed amendments to Rule 16-813, Rule 16-815 is proposed to be amended to require that a former judge approved for recall for temporary service under Maryland Constitution, Article IV, §3A file a financial disclosure statement for the previous calendar year. Stylistic changes also are made.

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE

BAR OF MARYLAND

ADD new Rule 6.1 to the Rules Governing Admission to the Bar of Maryland, as follows:

Rule 6.1. APPEAL OF DENIAL OF ADA TEST ACCOMMODATION REQUEST

(a) Definition

In this Rule, "applicant" includes a petitioner under Rule 13 who seeks a test accommodation under the ADA for the attorney examination.

(b) Accommodations Review Committee

(1) Creation and Composition

There is an Accommodations Review Committee that shall consist of nine members appointed by the Court of Appeals. Six members shall be lawyers who are not members of the Board. Three members shall not be lawyers. Each non-lawyer member shall be a licensed psychologist or physician who during the member's term does not serve the Board as a consultant or in any capacity other than as a member of the Committee. The Court shall designate one lawyer member as Chair of the Committee and one lawyer member as the Vice Chair. In the absence or disability of the Chair or upon express delegation of authority by the Chair, the Vice Chair shall have the authority and perform the duties of the Chair.

(2) Term

Subject to subsection (b)(4) of this Rule, the term of each member is five years. A member may serve more than one term.

(3) Reimbursement; Compensation

A member is entitled to reimbursement for expenses reasonably incurred in the performance of official duties in accordance with standard State travel regulations. In addition, the Court may provide compensation for the members.

(4) Removal

The Court of Appeals may remove a member of the Accommodations Review Committee at any time.

(c) Procedure for Appeal

(1) Notice of Appeal

An applicant whose request for a test accommodation pursuant to the ADA is denied in whole or in part by the Board may note an appeal to the Accommodations Review Committee by filing a Notice of Appeal with the Board.

Committee note: It is likely that an appeal may not be resolved before the date of the scheduled bar examination that the applicant has petitioned to take. No applicant "has the right to take a particular bar examination at a particular time, nor to be admitted to the bar at any particular time." *Application of Kimmer*, 392 Md. 251, 272 (2006). After an appeal has been resolved, the applicant may file a timely petition to take a later scheduled bar examination with the accommodation, if any, granted as a result of the appeal process.

(2) Transmittal of Record

Upon receiving a notice of appeal, the Board promptly shall (A) transmit to the Chair of the Accommodations Review Committee a copy of the applicant's request for a test accommodation, all documentation submitted in support of the request, the report of each expert retained by the Board to analyze the applicant's request, and the Board's letter denying the request and (B) mail to the applicant notice of the

transmittal and a copy of each report of an expert retained by the Board.

(3) Hearing

The Chair of the Accommodations Review Committee shall appoint a panel of the Committee, consisting of two lawyers and one non-lawyer, to hold a hearing at which the applicant and the Board have the right to present witnesses and documentary evidence and be represented by counsel. In the interest of justice, the panel may decline to require strict application of the Rules in Title 5, other than those relating to the competency of witnesses. Lawful privileges shall be respected. The hearing shall be recorded verbatim by shorthand, stenotype, mechanical, or electronic audio recording methods, electronic word or text processing methods, or any combination of those methods.

(4) Report

The panel shall (A) file with the Board a report containing its recommendation, the reasons for the recommendation, and findings of fact upon which the recommendation is based, (B) mail a copy of its report to the applicant, and (C) provide a copy of the report to the Chair of the Committee.

(d) Exceptions

Within 30 days after the report of the panel is filed with the Board, the applicant or the Board may file with the Chair of the Committee exceptions to the recommendation and shall mail a copy of the exceptions to the other party. Upon receiving the exceptions, the Chair shall cause to be prepared a transcript of the proceedings and transmit to the Court of Appeals the record of

the proceedings, which shall include the transcript and the exceptions. The Chair shall notify the applicant and the Board of the transmittal to the Court and provide to each party a copy of the transcript.

(e) Proceedings in the Court of Appeals

Proceedings in the Court of Appeals shall be on the record made before the panel. The Court shall require the party who filed exceptions to show cause why the exceptions should not be denied.

(f) If No Exceptions Filed

If no exceptions pursuant to section (d) of this Rule are timely filed, no transcript of the proceedings before the panel shall be prepared, the panel shall transmit its record to the Board, and the Board shall provide the test accommodation, if any, recommended by the panel.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rules 6, 9, and 13 of the Rules Governing Admission to the Bar ("RGAB") state that an applicant who seeks a test accommodation for the bar examination, or a petitioner who seeks a test accommodation for the attorney examination, must file an "Accommodation Request" on a form prescribed by the Board and provide any supporting documentation that the Board requires. The deadline for filing the request and documentation is the same as the deadline for filing a petition to take the scheduled examination for which the test accommodation is requested. Board Rule 3 governs the internal process by which the Board determines whether a requested test accommodation is warranted pursuant to the ADA. If the Board denies, in whole or in part, the requested accommodation, the applicant or petitioner may appeal the denial in accordance with proposed new Rule 6.1.

New Rule 6.1, which adds to the RGAB a procedure for the appeal, is proposed in light of *Application of Kimmer*, 392 Md. 251 (2006).

Section (a) provides that the word "applicant," as used in Rule 6.1, includes a petitioner under Rule 13 who seeks a test accommodation for the attorney examination.

Using language derived in part from sections (a), (b), (c), (d), and (f) of Rule 16-711 (Attorney Grievance Commission), section (b) of Rule 6.1 creates a 9-member Accommodations Review Committee appointed by the Court of Appeals. Six members are lawyers. Because ADA accommodations can be required for both mental and physical disabilities, three non-lawyers who are either licensed psychologists or physicians are included as members. Each member serves a five-year term, subject to removal by the Court at any time. The members are entitled to reimbursement for their expenses and, to ensure the availability of qualified professionals willing to serve, subsection (b)(3) allows the Court to provide compensation.

Subsection (c)(1) states that the appeal process is initiated by the applicant filing a Notice of Appeal with the Board.

Subsection (c)(2) requires the Board to transmit its record to the Accommodations Review Committee promptly upon receiving a Notice of Appeal and to send to the applicant a notice of the transmittal and a copy of each report of an expert retained by the Board.

Subsection (c)(3) requires an evidentiary hearing and, using language from Rule 16-404 (e), requires that the hearing be recorded verbatim. The hearing is before a panel of three members (two lawyers and one non-lawyer) of the Accommodation Review Committee, appointed by the Chair of the Committee. Using language from Rule 5-101 (c), Rule 6.1 (c)(3) allows discretionary application of the Rules in Title 5 (Evidence).

Pursuant to subsection (c)(4), a report, containing the panel's findings of fact, recommendation, and reasons for the recommendation, is filed with the Board. Copies of the report are mailed to the applicant and provided to the Chair of the Committee.

The Board or the applicant may file exceptions to the recommendation, in accordance with section (d). If exceptions are filed, a transcript of the hearing is prepared, and the record of the proceedings, including the transcript, is transmitted to the Court of Appeals.

Pursuant to section (e), proceedings in the Court of Appeals are on the record made before the panel. The burden to show cause why the exceptions should not be denied rests with the party who filed the exceptions.

Under section (f), if no exceptions are filed, the panel's record is transmitted to the Board, and the Board provides the test accommodation, if any, that is recommended by the panel.

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE

BAR OF MARYLAND

AMEND Rule 1 of the Rules Governing Admission to the Bar of Maryland by adding a definition of "ADA" and relettering the Rule, as follows:

Rule 1. Definitions.

In these Rules, the following definitions apply, except as expressly otherwise provided or as necessary implication requires:

(a) ADA

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

~~(a)~~ (b) Board

"Board" means the Board of Law Examiners of the State of Maryland.

~~(b)~~ (c) Court

"Court" means the Court of Appeals of Maryland.

~~(c)~~ (d) Code, Reference to

Reference to an article and section of the Code means the article and section of the Annotated Code of Public General Laws of Maryland as from time to time amended.

~~(d)~~ (e) Filed

"Filed" means received in the office of the Secretary of the Board during normal business hours.

~~(e)~~ (f) MBE

"MBE" means the Multi-state Bar Examination published by the National Conference of Bar Examiners.

~~(f)~~ (g) MPT

"MPT" means the Multistate Performance Test published by the National Conference of Bar Examiners.

~~(g)~~ (h) Oath

"Oath" means a declaration or affirmation made under the penalties of perjury that a certain statement or fact is true.

~~(h)~~ (i) State

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

Source: This Rule is derived from former Rule 1.

REPORTER'S NOTE

The proposed amendment to Rule 1 of the Rules Governing Admission to the Bar of Maryland adds a definition of "ADA," a term that is used in proposed new Rule 6.1 and proposed amendments to Rules 6, 9, and 13.

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE

BAR OF MARYLAND

AMEND Rule 6 of the Rules Governing Admission to the Bar of Maryland by adding a new section (b) concerning a request for a test accommodation under the ADA, by adding a Committee note, by adding a cross reference, and by relettering the Rule, as follows:

Rule 6. PETITION TO TAKE A SCHEDULED EXAMINATION

(a) Filing

An applicant may file a petition to take a scheduled bar examination if the applicant (1) is eligible under Rule 4 to take the bar examination and (2) has applied for admission pursuant to Rule 2 and the application has not been withdrawn or rejected pursuant to Rule 5. The petition shall be under oath and shall be filed on the form prescribed by the Board.

(b) Request for Test Accommodation

An applicant who seeks a test accommodation under the ADA for the bar examination shall file with the Board an "Accommodation Request" on a form prescribed by the Board, together with any supporting documentation that the Board requires. The form and documentation shall be filed no later than the deadline stated in section (c) of this Rule for filing a petition to take a scheduled bar examination.

Committee note: An applicant who may need a test accommodation is encouraged to file an Accommodation Request as early as possible.

Cross reference: See Rule 6.1 for the procedure to appeal a denial of a request for a test accommodation.

~~(b)~~ (c) Time for Filing

. . .

~~(c)~~ (d) Affirmation and Verification of Eligibility

. . .

~~(d)~~ (e) Voiding of Examination Results for Ineligibility

. . .

~~(e)~~ (f) Certification by Law School

. . .

~~(f)~~ (g) Refunds

. . .

REPORTER'S NOTE

See the Reporter's note to proposed new Rule 6.1.

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE

BAR OF MARYLAND

AMEND Rule 9 of the Rules Governing Admission to the Bar of Maryland by adding a new section (b) concerning a request for a test accommodation under the ADA, by adding a Committee note, by adding a cross reference, and by relettering the Rule, as follows:

Rule 9. RE-EXAMINATION AFTER FAILURE

(a) Petition for Re-examination

An unsuccessful examinee may file a petition to take another scheduled examination. The petition shall be on the form prescribed by the Board and shall be accompanied by the required examination fee.

(b) Request for Test Accommodation

An applicant who seeks a test accommodation under the ADA for the bar examination shall file with the Board an "Accommodation Request" on a form prescribed by the Board, together with any supporting documentation that the Board requires. The form and documentation shall be filed no later than the deadline stated in section (c) of this Rule for filing a petition to take a scheduled bar examination.

Committee note: An applicant who may need a test accommodation is encouraged to file an Accommodation Request as early as possible.

Cross reference: See Rule 6.1 for the procedure to appeal a denial of a request for a test accommodation.

~~(b)~~ (c) Time for Filing

. . .

~~(c)~~ (d) Deferment of Re-examination

. . .

~~(d)~~ (e) Three or More Failures - Re-examination Conditional

. . .

~~(e)~~ (f) No Refunds

. . .

REPORTER'S NOTE

See the Reporter's note to proposed new Rule 6.1.

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE

BAR OF MARYLAND

AMEND Rule 13 of the Rules Governing Admission to the Bar of Maryland by adding a new section (g) concerning a request for a test accommodation under the ADA, by adding a Committee note, by adding a cross reference, and by relettering the Rule, as follows:

Rule 13. OUT-OF-STATE ATTORNEYS

. . .

(g) Request for Test Accommodation

A petitioner who seeks a test accommodation under the ADA for the attorney examination shall file with the Board an "Accommodation Request" on a form prescribed by the Board, together with any supporting documentation that the Board requires. The form and documentation shall be filed no later than the deadline stated in section (i) of this Rule for filing a petition to take a scheduled attorney examination.

Committee note: A petitioner who may need a test accommodation is encouraged to file an Accommodation Request as early as possible.

Cross reference: See Rule 6.1 for the procedure to appeal a denial of a request for a test accommodation.

~~(g)~~ (h) Refunds

. . .

~~(h)~~ (i) Time for Filing

. . .

~~(i)~~ (j) Standard for Admission and Burden of Proof

. . .

~~(j)~~ (k) Action by Board on Petition

. . .

~~(k)~~ (l) Exceptions

. . .

~~(l)~~ (m) Attorney Examination

. . .

~~(m)~~ (n) Re-examination

. . .

~~(n)~~ (o) Report to Court - Order

. . .

~~(o)~~ (p) Required Course on Professionalism

. . .

~~(p)~~ (q) Time Limitation for Admission to the Bar

. . .

REPORTER'S NOTE

See the Reporter's note to proposed new Rule 6.1.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-312 to correct internal references, as follows:

Rule 1-312. REQUIREMENTS OF SIGNING ATTORNEY

(a) General

In addition to having been admitted to practice law in this State, an attorney signing a pleading or paper in compliance with Rule 1-311 shall comply with one of the following three requirements. The attorney shall:

(1) maintain an office for the practice of law in the United States;

(2) be a regular employee of an agency of government or of a business or other nongovernmental organization or association and be authorized to sign pleadings on behalf of the employer. The attorney shall not sign pleadings and papers on behalf of other clients unless both of the following requirements are met: (A) a substantial portion of the attorney's duties performed for the regular employer in the regular course of employment must constitute the practice of law, and (B) the office address as shown on the pleadings must be located in the United States and a substantial amount of the attorney's time must be spent in that office during ordinary business hours in the traditional work week; or

(3) have a practice limited exclusively to participation in a legal services or pro bono publico program sponsored or supported by a local Bar Association as defined by Rule ~~16-701 b~~ 16-811 e 1, the Maryland State Bar Association, an affiliated bar foundation, or the Maryland Legal Services Corporation, and the attorney shall include on the pleading or paper the address and telephone number of (A) the legal services or pro bono publico program in which the attorney is practicing, or (B) the attorney's primary residence, which shall be in the United States.

Cross reference: Rule ~~16-811 f 1~~ 16-811 e 2.

. . .

REPORTER'S NOTE

Due to the renumbering of some Rules, the references to "Rule 16-701 b" in subsection (a)(3) and to "Rule 16-811 f 1" in the cross reference after subsection (a)(3) need to be updated, so that they refer to the correct Rules.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-341 to add clarifying language to section (e), as follows:

Rule 2-341. AMENDMENT OF PLEADINGS

. . .

(e) Highlighting of Amendments

Unless the court orders otherwise, a party filing an amended pleading also shall ~~also~~ file at the same time a comparison copy of the amended pleading showing by lining through or enclosing in brackets material that has been stricken and by underlining or setting forth in bold-faced type new material.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 2-341 (e) makes clear that an amended pleading and the comparison copy of that pleading must be filed at the same time.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT

CHAPTER 500 - TRIAL

AMEND Rule 3-510 to add two Code references to the cross reference after section (d), to change subsection (h)(1) by substituting the term “custodian of records” for the term “health care provider,” by deleting language relating to x-ray films, and by deleting language referring to “the patient;” to add a cross reference after subsection (h)(1); to add a tagline to subsection (h)(1) and to change the term “health care provider” to the word “custodian;” to add a tagline to subsection (h)(2) and to clarify that the District Court may enter an order allowing the inspection of certain records prior to trial; to add a tagline to subsection (h)(3), to delete a word, and to add language requiring that a subpoena state with specificity the reason for the presence of the custodian; to delete a Code Reference in the cross reference following subsection (h)(3), as follows:

Rule 3-510. SUBPOENAS

(a) Use

A subpoena is required to compel the person to whom it is directed to attend, give testimony, and produce designated documents or other tangible things at a court proceeding, including proceedings before an examiner. A subpoena is also required to compel a nonparty and may be used to compel a party

over whom the court has acquired jurisdiction to attend, give testimony, and produce and permit inspection and copying of designated documents or other tangible things at a deposition taken pursuant to Rule 3-401 or 3-431. A subpoena shall not be used for any other purpose. If the court, on motion of a party alleging a violation of this section or on its own initiative, after affording the alleged violator a hearing, finds that a party or attorney used or attempted to use a subpoena for a purpose other than a purpose allowed under this section, the court may impose an appropriate sanction upon the party or attorney, including an award of a reasonable attorney's fee and costs, the exclusion of evidence obtained by the subpoena, and reimbursement of any person inconvenienced for time and expenses incurred.

(b) Issuance

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

(c) Form

Every subpoena shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is

directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, (5) a description of any documents or other tangible things to be produced.

(d) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 3-121 (a)(3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. Unless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing.

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

(e) Objection to Subpoena for Court Proceedings

On motion of a person served with a subpoena to attend a court proceeding (including a proceeding before an examiner) filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance, the court may enter an order that justice requires to protect the person from annoyance,

embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the subpoena be quashed or modified;

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

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

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

(f) Objection to Subpoena for Deposition

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

to the deponent, the party serving the subpoena may move for an order to compel the production.

(g) Protection of Persons Subject to Subpoenas

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

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

(h) Records ~~of Health Care Providers~~ Produced by Custodians

(1) Generally

A ~~health care provider, as defined by Code, Courts Article, §3-2A-01 (e),~~ custodian of records served with a subpoena to produce ~~at trial~~ records~~, including x-ray films, relating to the condition or treatment of a patient~~ at trial may comply by delivering the records to the clerk of the court that issued the subpoena at or before the time specified for production. The ~~health care provider~~ custodian may produce exact copies of the records designated unless the subpoena specifies that the original records be produced. The records shall be delivered in a sealed envelope labeled with the caption of the action, the date specified for production, and the name and address of the person at whose request the subpoena was issued. The records shall be accompanied by a certificate of the custodian that they are the complete records ~~for the patient~~ requested for the period designated in the subpoena and that the

records are maintained in the regular course of business ~~of the health care provider~~. The certification shall be prima facie evidence of the authenticity of the records.

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

(2) During Trial

Unless the court has ordered that the records may be inspected and copied prior to trial, ~~Upon~~ upon commencement of the trial, the clerk shall release the records only to the courtroom clerk assigned to the trial. The courtroom clerk shall return the records to the clerk promptly upon completion of trial or at an earlier time if there is no longer a need for them. Upon final disposition of the action, the clerk shall return the original records to the ~~health care provider~~ custodian but need not return copies.

(3) Presence of Custodian

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

Cross reference: Code, Courts Article, §10-104 includes an alternative method of authenticating medical records in certain cases. ~~Code, Health-General Article, §4-306 requires that a subpoena to produce medical records without the authorization of a person in interest be accompanied by a certification that a copy of the subpoena has been served on the person whose records are being sought or that the court has waived service for good cause.~~

(i) Attachment

A witness served with a subpoena under this Rule is liable to body attachment and fine for failure to obey the subpoena

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

Source: This Rule is derived as follows:
Section (a) is new but the second sentence is derived in part from former Rule 407 a.
Section (b) is new.
Section (c) is derived from former M.D.R. 114 a and b and 115 a.
Section (d) is derived from former M.D.R. 104 a and b and 116 b.
Section (e) is derived from former M.D.R. 115 b.
Section (f) is derived from the 1980 version of Fed. R. Civ. P. 45 (d)(1).
Section (g) is derived from the 1991 version of Fed. R. Civ. P. 45 (c)(1).
Section (h) is new.
Section (i) is derived from former M.D.R. 114 d and 742 e.

REPORTER'S NOTE

A cross reference following Rule 3-510 (d) is added for the reason stated in the Reporter's note to Rule 2-510.

Amendments to Rule 3-510 (h) conform the section to the procedure set forth in section (i) of Rule 2-510 for the reasons stated in the Reporter's note to that Rule.

An additional change to subsection (h)(2) is based upon a suggestion from Nichole M. Hatcher, Esq., who pointed out that the wording of subsections (h)(1) and (2) of Rule 3-510 implies that a defendant is not allowed to view the medical history of a plaintiff until the day of trial. Subsection (h)(1) provides: "...the records shall be delivered in a sealed envelope labeled with the caption of the action, the date specified for

production, and the name and address of the person at whose request the subpoena was issued...". Subsection (h)(2) states: "Upon commencement of the trial, the clerk shall release the records only to the courtroom clerk assigned to the trial. The courtroom clerk shall return the records to the clerk promptly upon completion of trial or at an earlier time if there is no longer a need for them...". Ms. Hatcher cited a recent case in the District Court in Baltimore County in which the judge quashed a subpoena based, in part, on the allegation by the plaintiff that Rule 3-510 requires that records be sealed until the day of trial. Ms. Hatcher notes that Code, Courts Article, §10-104 provides that a party who intends to introduce the writing or record of a health care provider without the provider's testimony must serve a notice of intent, a list that identifies each writing or record, and a copy of the writing or record on the other parties at least 30 days before the beginning of the trial. A defendant who is not permitted access to the subpoenaed records until the day of trial would not be able to comply with Code, Courts Article, §10-104 and would not be able to have his or her own expert view the medical history of a plaintiff claiming personal injuries in advance of trial.

To correct this interpretation of the Rule, the Rules Committee proposes to add to subsection (h)(2) the phrase, "Unless the Court has ordered that the records may be inspected and copied prior to trial."

The extent to which Rule 3-510 should be conformed to the amendments to Rule 2-510 pertaining to electronically stored information is under study by the Committee.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 5-101 by adding a new section (d) to clarify that lawful privileges must be respected, as follows:

Rule 5-101. SCOPE

. . .

(d) Privileges

In all actions and proceedings, lawful privileges shall be respected.

Source: This Rule is derived in part from Uniform Rule of Evidence 1101 and is in part new.

REPORTER'S NOTE

The proposed addition of new section (d) to Rule 5-101 makes clear that lawful privileges must be respected in all actions and proceedings, including actions and proceedings listed in sections (b) and (c) of the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 600 - WITNESSES

AMEND Rule 5-609 to update a statutory reference in a Committee note, as follows:

Rule 5-609. IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME

. . .

(d) Effect of Plea of Nolo Contendere

For purposes of this Rule, "conviction" includes a plea of nolo contendere followed by a sentence, whether or not the sentence is suspended.

Committee note: See Code, Courts Article, ~~§3-824~~ §3-8A-23 for the effect of juvenile adjudications and for restrictions on their admissibility as evidence generally. Evidence of these adjudications may be admissible under the Confrontation Clause to show bias; see *Davis v. Alaska*, 415 U.S. 308 (1974).

Source: This Rule is derived from F.R.Ev. 609 and Rule 1-502.

REPORTER'S NOTE

The statutory reference in the Committee note following section (d) of Rule 5-609 is proposed to be corrected in light of a reorganization of Title 3 of Code, Courts Article.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 800 - HEARSAY

AMEND Rule 5-803 by correcting the cross reference after subsection (b)(6), as follows:

Rule 5-803. HEARSAY EXCEPTIONS: UNAVAILABILITY OF DECLARANT NOT REQUIRED

. . .

(b) Other Exceptions

(1) Present Sense Impression

A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited Utterance

A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then Existing Mental, Emotional, or Physical Condition

A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), offered to prove the declarant's then existing condition or the declarant's future action, but not including a statement of memory or belief to prove the fact remembered or believed unless

it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for Purposes of Medical Diagnosis or Treatment

Statements made for purposes of medical treatment or medical diagnosis in contemplation of treatment and describing medical history, or past or present symptoms, pain, or sensation, or the inception or general character of the cause or external sources thereof insofar as reasonably pertinent to treatment or diagnosis in contemplation of treatment.

(5) Recorded Recollection

See Rule 5-802.1 (e) for recorded recollection.

(6) Records of Regularly Conducted Business Activity

A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses if (A) it was made at or near the time of the act, event, or condition, or the rendition of the diagnosis, (B) it was made by a person with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course of a regularly conducted business activity, and (D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation. A record of this kind may be excluded if the source of information or the method or circumstances of the preparation of the record indicate that the information in the record lacks trustworthiness. In this paragraph, "business" includes business, institution, association, profession,

occupation, and calling of every kind, whether or not conducted for profit.

Cross reference: Rule 5-902 ~~(11)~~ (b).

. . .

REPORTER'S NOTE

The cross reference after subsection (b)(6) of Rule 5-803 is proposed to be modified to reflect the relettering of subsection (a)(11) of Rule 5-902 as section (b) of that Rule.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 900 - AUTHENTICATION AND IDENTIFICATION

AMEND Rule 5-902 to correct the placement of a comma and the language of the form of certificate, as follows:

Rule 5-902. SELF-AUTHENTICATION

. . .

(b) Certified Records of Regularly Conducted Business Activity

. . .

(2) Form of Certificate

For purposes of subsection (b)(1) of this Rule, the original or duplicate of the business record shall be certified in substantially the following form:

Certification of Custodian of Records

or Other Qualified Individual

I, _____, do hereby certify that:

(1) I am the Custodian of Records of or am otherwise qualified to administer the records for:

_____ (identify the organization that maintains the records), and

(2) The attached records

(a) are true and correct copies of records that were made at or near the time of the occurrence of the matters set forth~~,~~ by~~,~~ or from the information transmitted by, a person with knowledge of these matters; and

(b) were kept in the course of ~~the regulated~~ regularly conducted activity; and

(c) were made and kept by the regularly conducted business activity as a regular practice.

I declare under penalty of perjury that the foregoing is true and correct.

_____
Signature and Title

_____
Date

. . .

REPORTER'S NOTE

The proposed amendment to Rule 5-902 corrects errors in the form of the Certification of the Custodian of Records or Other Qualified Individual set forth in subsection (b)(2).

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-213 to revise a cross reference, as follows:

Rule 10-213. ORDER

. . .

(e) Report of Temporary Guardian

When protective services are rendered on the basis of an emergency order, the temporary guardian shall submit a report to the court describing the services and outcome and any forcible entry used to obtain custody of the person. The report shall become a part of the court record. The temporary guardian shall also send a copy of the report to

(1) the disabled person and the attorney for the disabled person, and

(2) the director of the local department of social services if the disabled person is under 65, or

(3) the director of the local office on aging if the disabled person is 65 or older, and

(4) any other person or entity as required by the court or by law.

Cross reference: Code, ~~Article 70B~~ Human Services Article, Title 10.

Source: This Rule is derived from Code, Estates and Trusts Article, §13-709.

REPORTER'S NOTE

A proposed amendment to the cross reference that follows Rule 10-213 conforms it to Chapter 3, Acts of 2007 (SB 6) by which the General Assembly added the new Human Services Article to the Code.

MARYLAND RULES OF PROCEDURE

TITLE 13 - RECEIVERS AND ASSIGNEES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 13-102 by expanding the cross reference at the end of the Rule to refer to two statutes, as follows:

Rule 13-102. SCOPE

. . .

Cross reference: For an example of a statute specifically providing that these rules apply, see Code, Financial Institutions Article, §9-708. For examples of statutes authorizing the appointment of a receiver, see Code, Corporations and Associations Article, §§3-411, 3-414, 3-415, and 3-514; Financial Institutions Article, §§5-605 and 6-307; Commercial Law Article, §§6-106 and 15-210; ~~and~~ Health-General Article, §19-334; and Real Property Article, §§11-109.3 and 11B-111.5. This list is illustrative only.

Source: This Rule is derived in part from former Rule BP1 b.

REPORTER'S NOTE

The General Assembly enacted Chapter 321, Acts of 2007 (SB 287) which added a procedure for appointment by a court of a receiver when a council of unit owners of a condominium or a homeowners association fails to fill vacancies on the board of directors. The Rules Committee recommends adding to the list of cross references after Rule 13-102 a reference to the new statutes.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 300 - CIRCUIT COURT CLERKS' OFFICES

AMEND Rule 16-307 by adding a reference to "real property instruments" to the title, by adding to section (a) language referring to the electronic filing of land instruments, by adding a cross reference to a certain Code provision after section (a), and by adding language to section (b) referring to "real property instruments," as follows:

Rule 16-307. ELECTRONIC FILING OF PLEADINGS, ~~AND~~ PAPERS, AND REAL PROPERTY INSTRUMENTS

a. Applicability; Conflicts with Other Rules

This Rule applies to the electronic filing of pleadings and papers in a circuit court and to the electronic filing of instruments authorized or required by law to be recorded and indexed in the land records. A pleading, ~~or~~ paper, or instrument may not be filed by direct electronic transmission to the court except in accordance with this Rule. To the extent of any inconsistency with any other Rule, this Rule and any administrative order entered pursuant to it shall prevail.

Cross reference: Code, Real Property Article, §3-502.

b. Submission of Plan

A County Administrative Judge may submit to the State Court Administrator a detailed plan for a pilot project for the

electronic filing of pleadings and papers or of real property instruments. In developing the plan, the County Administrative Judge shall consult with the Clerk of the Circuit Court, appropriate vendors, the State Court Administrator, and any other judges, court clerks, members of the bar, vendors of electronic filing systems, and interested persons that the County Administrative Judge chooses to ensure that: (1) the proposed electronic filing system is compatible with the data processing systems, operational systems, and electronic filing systems used or expected to be used by the judiciary; (2) the installation and use of the proposed system does not create an undue financial or operational burden on the court; (3) the proposed system is reasonably available for use at a reasonable cost, or an efficient and compatible system of manual filing will be maintained; (4) the proposed system is effective, secure and not likely to break down; (5) the proposed system makes appropriate provision for the protection of privacy and for public access to public records; and (6) the court can discard or replace the system during or at the conclusion of a trial period without undue financial or operational burden. The State Court Administrator shall review the plan and make a recommendation to the Court of Appeals with respect to it.

Cross reference: For the definition of "public record," see Code, State Government Article, §10-611.

c. Approval; Duration

A plan may not be implemented unless approved by administrative order of the Court of Appeals. The plan shall terminate two years after the date of the administrative order unless the Court terminates it earlier or modifies or extends it by a subsequent administrative order.

d. Evaluation

The Chief Judge of the Court of Appeals may appoint a committee consisting of one or more judges, court clerks, lawyers, legal educators, bar association representatives, and other interested and knowledgeable persons to monitor and evaluate the plan. Before the expiration of the two-year period set forth in section c of this Rule, the Court of Appeals, after considering the recommendations of the committee, shall evaluate the operation of the plan.

e. Public Availability of Plan

The State Court Administrator and the Clerk of the Circuit Court shall make available for public inspection a copy of any current plan.

Source: This Rule is derived from former Rule 1217A.

REPORTER'S NOTE

The General Assembly enacted Chapter 234, Acts of 2007, (HB 331) which allows the Administrative Office of the Courts to establish a pilot program for the electronic filing of instruments authorized or required by law to be recorded and indexed in the land records. The new law requires that the plans for the pilot program are to be governed and implemented by Rule 16-307. The Rules Committee recommends modifying Rule 16-307 to make it applicable to the pilot programs provided for in the statute.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 300 - CIRCUIT COURT CLERKS' OFFICES

AMEND Rule 16-308 b 2 to delete language requiring the clerk to provide certain criminal record information to the Motor Vehicle Administration and to add language requiring the Judicial Information Systems to provide the information pursuant to an Administrative Order of the Chief Judge of the Court of Appeals, as follows:

Rule 16-308. COURT INFORMATION SYSTEM

. . .

b. Reporting and Transmittal of Criminal History Record Information

. . .

2. Transmittal of Reports of Dispositions

(a) ~~Within 15 days after~~ As directed by Administrative Order of the Chief Judge of the Court of Appeals, Judicial Information Systems shall report to the State Motor Vehicle Administration the conviction, forfeiture of bail, dismissal of an appeal or an acquittal in any case involving a violation of the Maryland Vehicle Law or other traffic law or ordinance, or any conviction for manslaughter or assault committed by means of an automobile, or of any felony involving the use of an automobile~~, the clerk of the court shall forward to the State~~

~~Motor Vehicle Administration a certified abstract of the record on a form furnished by the State Motor Vehicle Administration~~.

. . .

Source: This Rule is derived from former Rule 1218.

REPORTER'S NOTE

Rule 16-308 b 2 (a) requires the clerk of the court to furnish certain information from criminal records pertaining to traffic violations and motor vehicle crimes to the Motor Vehicle Administration ("MVA"), which is required to report the information to the federal government. In responding to a request by a circuit court clerk concerning possible compliance problems with the Rule, the Office of the Attorney General pointed out that the Rule needs to be modified, because the time period during which the MVA must forward the information to the federal government has been changed from 15 days to 10 days, effective October 1, 2008, and the Rule needs to conform to this. The Rules Committee recommends that the reporting requirements be included in an Administrative Order of the Chief Judge of the Court of Appeals, which can require the Judicial Information Systems to effectuate all of the reporting requirements and can easily be modified to conform to further changes in the time period.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1006 to revise the Committee note following section (c) and to add to section (h) a category of case records relating to a petition for an emergency evaluation to the list of confidential medical records, 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:

. . .

(c) In any action or proceeding, a record created or maintained by an agency concerning child abuse or neglect that is required by statute to be kept confidential.

Committee note: Statutes that require child abuse or neglect records to be kept confidential include Code, ~~Article 88A, §§6 (b) and 6A~~ Human Services Article, §§1-202 and 1-203 and Code, Family Law Article, §5-707.

. . .

(h) The following case records containing medical information:

(1) A case record, other than an autopsy report of a medical examiner, that (A) consists of a medical or psychological report or record from a hospital, physician, psychologist, or other professional health care provider, and (B) contains medical or psychological information about an individual.

(2) A case record pertaining to the testing of an individual for HIV that is declared confidential under Code, Health-General Article, §18-338.1 or §18-338.2.

(3) A case record that consists of information, documents, or records of a child fatality review team, to the extent they are declared confidential by Code, Health-General Article, §5-709.

(4) A case record that contains a report by a physician or institution concerning whether an individual has an infectious disease, declared confidential under Code, Health-General Article, §18-201 or §18-202.

(5) A case record that contains information concerning the consultation, examination, or treatment of a developmentally disabled person, declared confidential by Code, Health-General Article, §7-1003.

(6) A case record relating to a petition for an emergency evaluation made under Code, Health-General Article, §10-622 and declared confidential under Code, Health-General Article, §10-630.

. . .

REPORTER'S NOTE

The proposed amendment to the Committee note that follows section (c) of Rule 16-1006 conforms it to Chapter 3, Acts of 2007 (SB 6), which added the new Human Services Article to the Code.

In Chapter 557, Acts of 2007 (SB 472), the legislature added court records relating to a petition for a mental health emergency evaluation to the list of records that are not accessible to the public without a court order. The Rules

Committee recommends amending Rule 16-1006 (h) by adding these records to the list of records containing medical information that are confidential and not open to the public.