

IN THE COURT OF APPEALS OF MARYLAND

R U L E S   O R D E R

This Court's Standing Committee on Rules of Practice and Procedure having submitted its One Hundred Forty-Ninth Report to the Court, recommending adoption of proposed new Rules 16-110 and 17-109 and amendments to Rules 1-101, 2-124, 2-327, 2-522, 2-551, 2-601, 3-124, 3-326, 3-522, 4-252, 4-331, 4-345, 4-347, 4-407, 9-205, 10-205, 12-208, 15-311, 16-608, 16-757, 16-811, 17-102, 17-103, 17-104, and 17-105 and Form 4-217.1 of the Maryland Rules of Procedure; Rules 4.2, 4.4, and 6.1 in Appendix: Maryland Lawyers' Rules of Professional Conduct; and Rules 12 and 13 of the Rules Governing Admission to the Bar of Maryland, all as set forth in that Report published in the *Maryland Register*, Vol. 28, Issue 9, pages 856 - 881 (May 4, 2001); and

This Court having considered at open meetings, notices of which were posted as prescribed by law, all those proposed rules changes, together with the comments received, and making certain

amendments to the proposed rules changes on its own motion, it is this 1st day of November, 2001,

ORDERED, by the Court of Appeals of Maryland, that new Rule 17-109 be, and it is hereby, adopted in the form previously published; and it is further

ORDERED that amendments to Rules 1-101, 2-551, 2-601, 3-326, 3-522, 4-252, 4-331, 4-407, 10-205, 12-208, 15-311, 16-757, 17-104, and 17-105, Form 4-217.1, and Rule 13 of the Rules Governing Admission to the Bar of Maryland be, and they are hereby, adopted in the form previously published; and it is further

ORDERED that amendments to Rules 2-327, 2-522, 4-345, 4-347, 9-205, 16-608, and 17-102, Rules 4.2 and 4.4 in Appendix: Maryland Lawyers' Rules of Professional Conduct, and Rule 12 of the Rules Governing Admission to the Bar of Maryland be, and they are hereby adopted in the form attached to this Order; and it is further

ORDERED that the proposed amendment to Rule 17-103 be, and it is hereby, rejected; and it is further

ORDERED that action on proposed new Rule 16-110, the proposed amendments to Rules 2-124, 3-124, and 16-811, and the proposed amendments to Rule 6.1 in Appendix: Maryland Lawyers' Rules of Professional Conduct be, and it is hereby, deferred for further consideration by the Court; and it is further

ORDERED that the amendments to Rules 12 and 13 of the Rules Governing Admission to the Bar of Maryland shall govern the State Board of Law Examiners, the courts of this State, and all applicants and petitioners for admission to the Bar of this State, and shall take effect January 1, 2002 and apply to all applications and petitions for admission to the Bar filed on or after that date and to all applications and petitions then pending; and it is further

ORDERED that all other rules changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after January 1, 2002, and insofar as practicable to all actions then pending; and it is further

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

/s/ Robert M. Bell

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Robert M. Bell

/s/ John C. Eldridge

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John C. Eldridge

/s/ Irma S. Raker

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Irma S. Raker

/s/ Alan M. Wilner

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Alan M. Wilner

/s/ Dale R. Cathell

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Dale R. Cathell

/s/ Glenn T. Harrell, Jr.

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Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia

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Lynne A. Battaglia

Filed: November 1, 2001

/s/ Alexander L. Cummings

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Clerk

Court of Appeals of Maryland

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

AMEND Rule 2-327 to allow a circuit court to transfer a domestic violence action to the District Court under certain circumstances, as follows:

Rule 2-327. TRANSFER OF ACTION

(a) Transfer to District Court

(1) If Circuit Court Lacks Jurisdiction

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

(2) If Circuit Court Has Jurisdiction -- Generally

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

action within the jurisdiction of the District Court.

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

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

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

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

(D) After the action is transferred, the District Court has jurisdiction for the purposes of enforcing and extending the

temporary *ex parte* order as allowed by law.

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

(b) Improper Venue

If a court sustains a defense of improper venue but determines that in the interest of justice the action should not be dismissed, it may transfer the action to any county in which it could have been brought.

(c) Convenience of the Parties and Witnesses

On motion of any party, the court may transfer any action to any other circuit court where the action might have been brought if the transfer is for the convenience of the parties and witnesses and serves the interests of justice.

(d) Actions Involving Common Questions of Law or Fact

(1) If civil actions involving one or more common questions of law or fact are pending in more than one judicial circuit, the actions or any claims or issues in the actions may be transferred in accordance with this section for consolidated pretrial proceedings or trial to a circuit court in which (A) the actions to be transferred might have been brought, and (B) similar actions are pending.

(2) A transfer under this section may be made on motion of a party or on the transferor court's own initiative. When transfer is being considered on the court's own initiative, the circuit administrative judge having administrative authority over the

court shall enter an order directing the parties to show cause on or before a date specified in the order why the action, claim, or issue should not be transferred for consolidated proceedings.

Whether the issue arises from a motion or a show cause order, on the written request of any party the circuit administrative judge shall conduct a hearing.

(3) A transfer under this section shall not be made except upon (A) a finding by the circuit administrative judge having administrative authority over the transferor court that the requirements of subsection (d)(1) of this Rule are satisfied and that the transfer will promote the just and efficient conduct of the actions to be consolidated and not unduly inconvenience the parties and witnesses in the actions subject to the proposed transfer; and (B) acceptance of the transfer by the circuit administrative judge having administrative authority over the court to which the actions, claims, or issues will be transferred.

(4) The transfer shall be pursuant to an order entered by the circuit administrative judge having administrative authority over the transferor court. The order shall specify (A) the basis for the judge's finding under subsection (d)(3) of this Rule, (B) the actions subject to the order, (C) whether the entire action is transferred, and if not, which claims or issues are being transferred, (D) the effective date of the transfer, (E) the nature of the proceedings to be conducted by the transferee

court, (F) the papers, or copies thereof, to be transferred, and (G) any other provisions deemed necessary or desirable to implement the transfer. The transferor court may amend the order from time to time as justice requires.

(5) (A) If, at the conclusion of proceedings in the transferee court pursuant to the order of transfer, the transferred action has been terminated by entry of judgment, it shall not be remanded but the clerk of the transferee court shall notify the clerk of the transferor court of the entry of the judgment.

(B) If, at the conclusion of proceedings in the transferee court pursuant to the order of transfer, the transferred action has not been terminated by entry of judgment and further proceedings are necessary,

(i) within 30 days after the entry of an order concluding the proceeding, any party may file in the transferee court a motion to reconsider or revise any order or ruling entered by the transferee court,

(ii) if such a motion is filed, the transferee court shall consider and decide the motion, and

(iii) following the expiration of the 30-day period or, if a timely motion for reconsideration is filed, upon disposition of the motion, the circuit administrative judge having administrative authority over the transferee court shall enter an order remanding the action to the transferor court.

Notwithstanding any other Rule or law, the rulings, decisions, and orders made or entered by the transferee court shall be binding upon the transferor and the transferee courts.

Source: This Rule is derived as follows:

Section (a) is derived in part from the last phrase of former Rule 515 a and is in part new.

Section (b) is derived from former Rule 317.

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

Section (d) is new.

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

AMEND Rule 2-522 to eliminate the term "special" verdict and to make a certain stylistic change, as follows:

Rule 2-522. COURT DECISION - JURY VERDICT

(a) Court Decision

In a contested court trial, the judge, before or at the time judgment is entered, shall ~~prepare and file or~~ dictate into the record ~~or prepare and file in the action~~ a brief statement of the reasons for the decision and the basis of determining any damages.

(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 request of a party or upon 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 not concurred in the verdict, the court may direct the jury to retire for further deliberation or may discharge the jury.

(c) ~~Special~~ Verdict ~~Containing Written Findings~~

The court may require a jury to return a ~~special~~ verdict

in the form of written findings upon specific issues. For that purpose, the court may use any method of submitting the issues and requiring written findings as it deems appropriate, including the submission of written questions susceptible of brief answers or of written forms of the several special findings that might properly be made under the pleadings and evidence. The court shall instruct the jury as may be necessary to enable it to make its findings upon each issue. If the court fails to submit any issue raised by the pleadings or by the evidence, all parties waive their right to a trial by jury of the issues omitted unless before the jury retires a party demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding or, if it fails to do so, the finding shall be deemed to have been made in accordance with the judgment entered.

No party may assign as error the submission of issues to the jury, the instructions of the court, or the refusal of the court to submit a requested issue unless the party objects on the record before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Upon request of any party, the court shall receive objections out of the hearing of the jury.

Source: This Rule is derived as follows:

Section (a) replaces former Rule 18 b from which it is in part derived.

Section (b) is derived from former Rule 759 a and e and from FRCP 48.

Section (c) is derived from former Rule 560 and FRCP 49 (a).

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

AMEND Rule 4-345 to add a notice to victims provision; to add a provision prohibiting the judge from hearing a motion to modify or reduce a sentence unless victims and victims' representatives have been notified; to expressly state the rights of the defendant, the State, victims, and victims' representatives to be heard if a hearing is held on the motion; and to add a certain provision concerning a statement of the reasons for granting the motion, as follows:

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

(a) Illegal Sentence

The court may correct an illegal sentence at any time.

(b) Modification or Reduction - Time For

The court has revisory power and control over a sentence upon a motion filed within 90 days after its imposition (1) in the District Court, if an appeal has not been perfected, and (2) in a circuit court, whether or not an appeal has been filed. Thereafter, the court has revisory power and control over the sentence in case of fraud, mistake, or irregularity, or as provided in section ~~(d)~~ (e) of this Rule. The court may not increase a sentence after the sentence has been imposed, except

that it may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

(c) Notice to Victims

The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, §11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, §11-503 that states (1) that a motion to modify or reduce a sentence has been filed; (2) that the motion has been denied without a hearing or the date, time, and location of the hearing; and (3) if a hearing is to be held, that each victim or victim's representative may attend and testify.

(e) (d) Open Court Hearing

The court may modify, reduce, correct, or vacate a sentence only on the record ~~after notice to the parties and in~~ open court, after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. No hearing shall be held on a motion to modify or reduce the sentence until the court determines that the notice requirements in section (c) of this Rule have been satisfied. If the court grants the motion, the court ordinarily

shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.

~~(d)~~ (e) Desertion and Non-support Cases

At any time before expiration of the sentence in a case involving desertion and non-support of spouse, children or destitute parents, the court may modify, reduce, or vacate the sentence or place the defendant on probation under the terms and conditions the court imposes.

Source: This Rule is derived from former Rule 774 and M.D.R. 774.

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

AMEND Rule 4-347 (e)(1) to permit a judge other than the sentencing judge to hear a violation of probation proceeding under certain circumstances, as follows:

Rule 4-347. PROCEEDINGS FOR REVOCATION OF PROBATION

(a) How Initiated

Proceedings for revocation of probation shall be initiated by an order directing the issuance of a summons or warrant. The order may be issued by the court on its own initiative or on a verified petition of the State's Attorney or the Division of Parole and Probation. The petition, or order if issued on the court's initiative, shall state each condition of probation that the defendant is charged with having violated and the nature of the violation.

(b) Notice

A copy of the petition, if any, and the order shall be served on the defendant with the summons or warrant.

(c) Release Pending Revocation Hearing

Unless the judge who issues the warrant sets conditions of release or expressly denies bail, a defendant arrested upon a warrant shall be taken before a judicial officer of the District Court without unnecessary delay or, if the warrant so specifies,

before a judge of the District Court or circuit court for the purpose of determining the defendant's eligibility for release.

(d) Waiver of Counsel

The provisions of Rule 4-215 apply to proceedings for revocation of probation.

(e) Hearing

(1) Generally

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

Cross reference: See *State v. Peterson*, 315 Md. 73 (1989), construing the third sentence of this subsection.

(2) Conduct of Hearing

The court may conduct the revocation hearing in an informal manner and, in the interest of justice, may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses. The defendant shall be given the opportunity to admit or deny the alleged violations, to

testify, to present witnesses, and to cross-examine the witnesses testifying against the defendant. If the defendant is found to be in violation of any condition of probation, the court shall (A) specify the condition violated and (B) afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment.

Cross reference: See *Hersch and Cleary v. State*, 317 Md. 200 (1989), setting forth certain requirements with respect to admissions of probation violations, and *State v. Fuller*, 308 Md. 547 (1987), regarding the application of the right to confrontation in probation revocation proceedings.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE  
TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 200 - DIVORCE, ANNULMENT AND ALIMONY

AMEND Rule 9-205 to conform section (d) to certain amendments to Rule 17-102 (d), to add a certain Committee note following section (d), and to provide that confidentiality of mediation communications under the Rule is governed by Rule 17-109, as follows:

Rule 9-205. MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTES

. . .

(d) If Agreement

If the parties agree on some or all of the disputed issues, the mediator ~~shall prepare a written memorandum~~ **may assist the parties in making a record** of the points of agreement ~~and send~~. **The mediator shall provide** copies of it **any memorandum of points of agreement** to the parties and their attorneys for review and signature. If the memorandum is signed by the parties as submitted or as modified by the parties, **a copy of the signed memorandum shall be sent to** the mediator, **who** shall submit it to the court ~~for whatever action the court deems appropriate~~.

**Committee note: It is permissible for a mediator to make a brief record of points of agreement reached by the parties during the mediation and assist the parties in articulating those points in the form of a written memorandum, so that they are clear and accurately reflect the agreements reached. Mediators should act only as scribes recording the parties' points of agreement, and not as drafters creating legal memoranda.**

. . .

(f) Confidentiality

~~Except for a memorandum submitted to the court pursuant to section (d) of this Rule, no statement or writing made in the course of mediation is subject to discovery or admissible in evidence in any proceeding under this Chapter unless the parties and their counsel agree otherwise in writing. Neither the mediator nor an attorney may be called as a witness in such a proceeding to give evidence regarding the mediation or custody or visitation.~~ Confidentiality of mediation communications under this Rule is governed by Rule 17-109.

Cross reference: ~~See Code, Family Law Article, §5-701 et seq. for provisions that require the reporting of suspected child abuse.~~ For the definition of "mediation communication," see Rule 17-102 (e).

. . .

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 600 - ATTORNEY TRUST ACCOUNTS

AMEND Rule 16-608 to add a new section providing for mandatory reporting of IOLTA participation by attorneys, 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 16-160 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.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-102 to add Committee notes to sections (a) and (b); to modify the definitions of "arbitration," "mediation," and "neutral case evaluation"; and to add a definition of "mediation communication," as follows:

Rule 17-102. DEFINITIONS

In this Chapter, the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(a) Alternative Dispute Resolution

"Alternative dispute resolution" means the process of resolving matters in pending litigation through a settlement conference, neutral case evaluation, neutral fact-finding, arbitration, mediation, other non-judicial dispute resolution process, or combination of those processes.

Committee note: Nothing in these Rules is intended to restrict the use of consensus-building to assist in the resolution of disputes. Consensus-building means a process generally used to prevent or resolve disputes or to facilitate decision making, often within a multi-party dispute, group process, or public policy-making process. In consensus-building processes, one or more neutral facilitators may identify and convene all stakeholders or their representatives and use techniques to open communication, build trust, and enable all parties to develop options and determine mutually acceptable solutions.

(b) Arbitration

"Arbitration" means a process in which (1) the parties appear before one or more impartial arbitrators and present evidence and argument supporting their respective positions, and (2) the arbitrators render a decision in the form of an award that, is not binding, unless the parties otherwise agree otherwise in writing, is not binding.

Committee note: Under the Federal Arbitration Act, the Maryland Uniform Arbitration Act, at common law, and in common usage outside the context of court-referred cases, arbitration awards are binding unless the parties agree otherwise.

(c) Fee-for-service

"Fee-for-service" means that a party will be charged a fee by the person or persons conducting the alternative dispute resolution proceeding.

(d) Mediation

"Mediation" means a process in which the parties appear before an impartial work with one or more impartial mediators who, through the application of standard mediation techniques generally accepted within the professional mediation community and without providing legal advice, assists the parties in reaching their own voluntary agreement for the resolution of all or part of their the dispute or issues in the dispute. A mediator may identify issues and options, assist the parties or their attorneys in, explore exploring the needs underlying settlement alternatives, and discuss candidly with the parties or their attorneys the basis and practicality of their respective positions, but, unless the parties agree otherwise, and, upon

request, record points of agreement reached by the parties.

While acting as a mediator, the mediator does not engage in arbitration, neutral case evaluation, ~~or~~ neutral fact-finding, or other alternative dispute resolution processes and does not recommend the terms of an agreement.

(e) Mediation Communication

"Mediation communication" means speech, writing, or conduct made as part of a mediation, including communications made for the purpose of considering, initiating, continuing, or reconvening a mediation or retaining a mediator.

~~(e)~~ (f) Neutral Case Evaluation

"Neutral case evaluation" means a process in which (1) the parties, their attorneys, or both appear before an impartial person and present in summary fashion the evidence and arguments supporting their respective positions, and (2) the impartial person renders an evaluation of their positions and an opinion as to the likely outcome of the dispute or issues in the dispute if the action is tried.

~~(f)~~ (g) Neutral Fact-finding

"Neutral fact-finding" means a process in which (1) the parties, their attorneys, or both appear before an impartial person and present evidence and arguments supporting their respective positions as to particular disputed factual issues, and (2) the impartial person makes findings of fact as to those issues. Unless the parties otherwise agree in writing, those

findings are not binding.

~~(g)~~ (h) Settlement Conference

"Settlement conference" means a conference at which the parties, their attorneys, or both appear before an impartial person to discuss the issues and positions of the parties in the action in an attempt to resolve the dispute or issues in the dispute by agreement or by means other than trial. A settlement conference may include neutral case evaluation and neutral fact-finding, and the impartial person may recommend the terms of an agreement.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE  
APPENDIX - THE MARYLAND LAWYERS' RULES OF  
PROFESSIONAL CONDUCT

AMEND Rule 4.2 to add to paragraph (a) a clause referring to an exception in paragraph (b), to change the word "party" to "person," to add a reference to a "court order," to add new language listing the persons with whom a lawyer may not communicate, to add new language requiring a lawyer to inquire if an agent or employee is one with whom communication is prohibited, to add a certain Committee note following paragraph (a), to add a new paragraph (b) providing for a lawyer being allowed to communicate with government officials under certain circumstances, and to make certain modifications to the commentary, as follows:

Rule 4.2. Communication With Person Represented by Counsel.

(a) Except as provided in paragraph (b), in representing a client, a lawyer shall not communicate about the subject of the representation with a ~~party~~ person who the lawyer knows ~~to be~~ is represented ~~by another lawyer~~ in the matter, by another lawyer unless the lawyer has the consent of the other lawyer or is authorized by law or court order to do so. If the person represented by another lawyer is an organization, the prohibition extends to each of the organization's (1) current officers, directors, and managing agents and (2) current agents or

employees who supervise, direct, or regularly communicate with the organization's lawyers concerning the matter or whose acts or omissions in the matter may bind the organization for civil or criminal liability. The lawyer may not communicate with a current agent or employee of the organization unless the lawyer first has made inquiry to ensure that the agent or employee is not an individual with whom communication is prohibited by this paragraph and has disclosed to the individual the lawyer's identity and the fact that the lawyer represents a client who has an interest adverse to the organization.

(b) A lawyer may communicate with a government official about matters that are the subject of the representation if the government official has the authority to redress the grievances of the lawyer's client and the lawyer first makes the disclosures specified in paragraph (a).

Committee note: The changes in the text and comment to Rule 4.2, including substitution of the word "person" for "party" in paragraph (a), are not intended to enlarge or restrict the extent of permissible law enforcement activities of government lawyers under applicable judicial precedent.

#### COMMENT

This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the lawyer-client relationship, and the uncounseled disclosure of information relating to the representation.

This Rule does not prohibit communication with a ~~party~~ **person**, or an employee or agent of a ~~party~~ **the person**, concerning matters outside the representation. For example, the existence of a controversy between a ~~government agency~~ and a ~~private party~~,

~~or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification or legal authorization for communicating with the other party a represented person is permitted to do so. Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.~~

Communications authorized by law include communications in the course of investigative activities of lawyers representing governmental entities, directly or through investigative agents, before the commencement of criminal or civil enforcement proceedings if there is applicable judicial precedent holding either that the activity is permissible or that the Rule does not apply to the activity. The term "civil enforcement proceedings" includes administrative enforcement proceedings. Except to the extent applicable judicial precedent holds otherwise, a government lawyer who communicates with a represented criminal defendant must comply with this Rule.

A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order in exceptional circumstances. For example, when a represented criminal defendant expresses a desire to speak to the prosecutor without the knowledge of the defendant's lawyer, the prosecutor may seek a court order appointing substitute counsel to represent the defendant with respect to the communication.

This Rule applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract, or negotiation, who is represented by counsel concerning the matter to which the communication relates. The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

~~In the case of an organization, this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization.~~ If any an agent or employee of the a represented person that is an organization is represented in the matter by

his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4 (f). In communicating with a current agent or employee of an organization, a lawyer must not seek to obtain information that the lawyer knows or reasonably should know is subject to an evidentiary or other privilege of the organization. Regarding communications with former employees, see Rule 4.4 (b).

~~This Rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question.~~

The prohibition on communications with a represented person applies only if the lawyer has actual knowledge that the person in fact is represented in the matter to be discussed. Actual knowledge may be inferred from the circumstances. The lawyer cannot evade the requirement of obtaining the consent of counsel by ignoring the obvious.

Rule 4.3 applies to a communication by a lawyer with a person not known to be represented by counsel.

Paragraph (b) recognizes that special considerations come into play when a lawyer is seeking to redress grievances involving the government. Subject to certain conditions, it permits communications with those in government having the authority to redress the grievances (but not with any other government personnel) without the prior consent of the lawyer representing the government in the matter. Paragraph (b) does not, however, permit a lawyer to bypass counsel representing the government on every issue that may arise in the course of disputes with the government. Rather, the paragraph provides lawyers with access to decision makers in government with respect to genuine grievances, such as to present the view that the government's basic policy position with respect to a dispute is faulty or that government personnel are conducting themselves improperly with respect to aspects of the dispute. It does not provide direct access on routine disputes, such as ordinary discovery disputes or extensions of time.

Code Comparison.- ~~This Rule is substantially identical to DR 7-104 (A)(1).~~ DR 7-104 (A)(1) provides that in representing a client, a lawyer shall not "communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so."

MARYLAND RULES OF PROCEDURE  
APPENDIX - THE MARYLAND LAWYERS' RULES OF  
PROFESSIONAL CONDUCT

AMEND Rule 4.4 to add a new paragraph (b) concerning communications with third persons and to add related commentary, as follows:

Rule 4.4. Respect for Rights of Third Person.

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

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

Committee note: If the person entitled to enforce the protection against disclosure is represented by counsel, the notice required by this Rule shall be given to the person's counsel. See Rule 1-331 and Maryland Rule of Professional Conduct 4.2.

Cross reference: See Camden v. Maryland, 910 F. Supp. 1115 (D. Md. 1996).

#### COMMENT

Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons.

Third persons may possess information that is confidential to another person under an evidentiary privilege or under a law providing specific confidentiality protection, such as trademark, copyright, or patent law. For example, present or former organizational employees or agents may have information that is protected as a privileged attorney-client communication or as work product. A lawyer may not knowingly seek to obtain confidential information from a person who has no authority to waive the privilege. Regarding current employees of a represented organization, see also Rule 4.2.

Code Comparison.-- DR 7-106 (C)(2) provides that a lawyer shall not "ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person." DR 7-102 (A)(1) provides that a lawyer shall not "take ... action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another." DR 7-108 (D) provides that "after discharge of the jury ... the lawyer shall not ask questions or make comments to a member of that jury that are calculated merely to harass or embarrass the juror ... ." DR 7-108 (E) provides that "a lawyer shall not conduct ... a vexatious or harassing investigation of either a venireman or a juror."

MARYLAND RULES OF PROCEDURE  
RULES GOVERNING ADMISSION TO THE  
BAR OF MARYLAND

AMEND Bar Admission Rule 12 to add a certain time limitation and to correct certain references in the cross reference that follows the Rule, as follows:

Rule 12. ~~Final~~ Order of Admission; Time Limitation

When the Court has determined that a candidate is qualified to practice law and is of good moral character, it shall enter an order directing that the candidate be admitted to the Bar on taking the oath required by law. A candidate who has passed the Maryland bar examination may not take the oath of admission to the Bar later than 24 months after the date that the Court of Appeals ratified the Board's report for that examination. For good cause, the Board may extend the time for taking the oath, but the candidate's failure to take action to satisfy admission requirements does not constitute good cause. A candidate who fails to take the oath within the required time period shall reapply for admission and retake the bar examination, unless excused by the Court.

Cross reference: See Code, Business Occupations and Professions Article, §10-212, for form of oath. See also Maryland Rule 16-811 f (Clients' Security Fund - Payments to Fund) and Maryland Rule ~~16-702 (Attorney Grievance Commission - Disciplinary Fund)~~ 16-714 (Disciplinary Fund), which require persons admitted to the Maryland Bar, as a condition precedent to the practice of law in

this State, to pay an annual assessment to the Clients' Security Trust Fund and the Attorney Grievance Commission Disciplinary Fund.

Source: This Rule is in part derived from former Rule 13 and is in part new.