

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 Seventy-Seventh Report to the Court recommending adoption of proposed new Rules 2-701, 2-702, 2-703, 2-704, 2-705, 2-706, 3-741, 17-401, 17-402, 17-403, and 17-404; new Appendix: Guidelines Regarding Compensable and Non-Compensable Attorneys' Fees and Related Expenses; and amendments to Rules 1-101, 1-341, 2-305, 2-433, 2-521, 2-603, 3-305, 4-102, 4-202, 4-213, 4-215, 4-262, 4-263, 4-301, 4-326, 8-205, 8-206, 8-503, and 17-101 of the Maryland Rules of Procedure; all as set forth in that Report published in the *Maryland Register*, Vol. 40, Issue 8, pages 702 - 722 (April 19, 2013); and

The Rules Committee having withdrawn from the One Hundred Seventy-Seventh Report the proposed amendments to Rules 4-102, 4-202, 4-213, 4-215, and 4-301; and

This Court having considered at open meetings, notices of which were posted as prescribed by law, all those proposed rules changes, together with comments received, making on its own motion certain additions and deletions to the proposed rules changes, it is this 17th day of October, 2013,

ORDERED, by the Court of Appeals of Maryland, that the Rules in new Title 2, Chapter 700 (Claims for Attorneys' Fees and Related Expenses) and new Rule 3-741 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED, that the Rules in Title 17, Chapter 400 (Proceedings in the Court of Special Appeals) and new Appendix: Guidelines Regarding Compensable and Non-Compensable Attorneys' Fees and Related Expenses be, and they are hereby, adopted in the form previously published; and it is further

ORDERED that amendments to Rules 1-341, 2-433, 2-521, and 4-326 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that amendments to Rules 1-101, 2-305, 2-603, 3-305, 4-262, 4-263, 8-205, 8-206, 8-503, and 17-101 be, and they are hereby, adopted in the form previously published; and it is further

ORDERED that new Title 2, Chapter 700; new Rule 3-741; new Appendix: Guidelines Regarding Compensable and Non-Compensable Attorneys' Fees and Related Expenses; and the amendments to Rules 1-341, 2-305, 2-433, 2-603, and 3-305 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 only to all actions commenced on or after January 1, 2014 and shall not apply to any action commenced on or before December 31, 2013; 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, 2014 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/ Mary Ellen Barbera

Mary Ellen Barbera

/s/ Glenn T. Harrell, Jr.

Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia

Lynne A. Battaglia

/s/ Clayton Greene, Jr.

Clayton Greene, Jr.

/s/ Sally D. Adkins

Sally D. Adkins

/s/ Robert N. McDonald

Robert N. McDonald

/s/ Shirley M. Watts

Shirley M. Watts

Filed: October 17, 2013

/s/ Bessie M. Decker

Clerk
Court of Appeals of Maryland

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

AMEND Rule 1-101 to conform section (q) to revisions of
Title 17, as follows:

Rule 1-101. APPLICABILITY

. . .

(q) Title 17

Title 17 applies to alternative dispute resolution proceedings in civil actions in the District Court, a circuit court, and the Court of Special Appeals, except for actions or orders to enforce a contractual agreement to submit a dispute to alternative dispute resolution.

. . .

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-341 to add a certain requirement for a motion; to add a new section (b) pertaining to a statement regarding costs and expenses, including attorneys' fees; to add a new section (c) pertaining to a certain response; to add a new section (d) pertaining to certain guidelines; and to make stylistic changes, as follows:

Rule 1-341. BAD FAITH - UNJUSTIFIED PROCEEDING

(a) Remedial Authority of Court

In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable ~~attorney's~~ attorneys' fees, incurred by the adverse party in opposing it.

(b) Statement Regarding Costs and Expenses, Including Attorneys' Fees

(1) Generally

A motion requesting an award of costs and expenses, including attorneys' fees, shall include or be separately

supported by a verified statement that sets forth the information required in subsections (b) (2) or (b) (3) of this Rule, as applicable.

(2) Costs and Expenses Other than Attorneys' Fees

The statement in support of a request for costs and expenses other than attorneys' fees shall itemize the type and amount of the costs and expenses requested and shall include any available documentation of those costs and expenses.

(3) Attorneys' Fees

(A) Except as otherwise provided in subsection (b) (3) (B) of this Rule or by order of court, the statement in support of a request for attorneys' fees shall set forth:

(i) a detailed description of the work performed, broken down by hours or fractions thereof expended on each task;

(ii) the amount or rate charged or agreed to in writing by the requesting party and the attorney;

(iii) the attorney's customary fee for similar legal services;

(iv) the customary fee prevailing in the attorney's legal community for similar legal services;

(v) the fee customarily charged for similar legal services in the county where the action is pending; and

(vi) any additional relevant factors that the requesting party wishes to bring to the court's attention.

(B) Unless otherwise ordered by the court, a statement in support of a request for attorneys' fees not exceeding \$500 need

not contain the information set forth in subsection (b) (3) (A) (iv) and (v) of this Rule.

(c) Response

Within 15 days after the filing of the statement, the offending party may file a response.

(d) Guidelines

In determining an award of attorneys' fees and related expenses in excess of \$500 under this Rule, the court may consider the Guidelines Regarding Compensable and Non-Compensable Attorneys' Fees and Related Expenses contained in an Appendix to these Rules.

Source: This Rule is derived in part from former Rule 604 b and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-305 to add a cross reference concerning attorneys' fees, as follows:

Rule 2-305. CLAIMS FOR RELIEF

A pleading that sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for the relief sought. Unless otherwise required by law, (a) a demand for a money judgment that does not exceed \$75,000 shall include the amount of damages sought, and (b) a demand for a money judgment that exceeds \$75,000 shall not specify the amount sought, but shall include a general statement that the amount sought exceeds \$75,000. Relief in the alternative or of several different types may be demanded.

Cross reference: For pleading requirements and other procedures when attorneys' fees are claimed, see the Rules in Title 2, Chapter 700.

Committee note: If the amount sought exceeds \$75,000, a general statement to that effect is necessary in order to determine if the case may be removed to a federal court based on diversity of citizenship. See 28 U.S.C.S. §1332. A specific dollar amount must be given when the damages sought are less than or equal to \$75,000 because the dollar amount is relevant to determining whether the amount is sufficient for circuit court jurisdiction or a jury trial.

Source: This Rule is derived in part from former Rules 301 c, 340 a, and 370 a 3 and the 1966 version of Fed. R. Civ. P. 8 (a) and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-433 to add to sections (a) and (d) the words "costs and" before the word "expenses"; to add language to the tagline of section (d); to add to section (d) a reference to Rule 2-434; to add a new section (e) pertaining to a verified statement regarding costs and expenses, including attorneys' fees; to add a new section (f) pertaining to a response to a request for an award of costs and expenses, including attorneys' fees; to add a new section (g) referring to the Guidelines Regarding Compensable and Non-compensable Attorneys' Fees and Related Expenses; and to make stylistic changes, 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~~ of those orders 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 costs and expenses, including attorneys' fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of costs and 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.

(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.

(d) Award of Costs and Expenses, Including Attorneys' Fees

If a motion filed under ~~Rule 2-432 or under Rule 2-403~~ Rule 2-403, 2-432, or 2-434 is granted, the court, after opportunity for hearing, shall require (1) the party or deponent whose conduct necessitated the motion, ~~or~~ (2) the party or the attorney advising the conduct, ~~or~~ (3) both of them to pay to the moving party the reasonable costs and expenses incurred in obtaining the order, including attorneys' 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 (1) moving party, ~~or~~ (2) the attorney advising the motion, ~~or~~ (3) both of them to pay to the party or deponent who opposed the motion the reasonable costs and expenses incurred in opposing the motion, including ~~attorney's~~ attorneys'

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 costs and expenses incurred in relation to the motion among the parties and persons in a just manner.

(e) Statement Regarding Costs and Expenses, Including Attorneys' Fees

If a motion or a response to a motion contains a request for an award of costs and expenses, including attorneys' fees, the request shall (1) include, or (2) be separately supported by, a verified statement in conformance with Rule 1-341 (b). With the approval of the court, the party requesting the award may defer the filing of the supporting statement until 15 days after the court determines the party's entitlement to costs and expenses, including attorneys' fees.

(f) Response to Request

Within 15 days after the filing of a statement in support of a request for an award of costs, expenses, or attorneys' fees, a party against whom the award is sought may file a response.

(g) Guidelines

In determining an award of attorneys' fees and related expenses in excess of \$500 under this Rule, the court may consider the Guidelines Regarding Compensable and Non-compensable Attorneys' Fees and Related Expenses contained in an Appendix to

these Rules.

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 (c) is derived from former Rule 422 b.

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

Section (e) is new.

Section (f) is new.

Section (g) is new.

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

AMEND Rule 2-521 to delete current section (d) and add a new section (d) specifying certain duties of judges, clerks, and other court officials and employees concerning written and oral communications from the jury, as follows:

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

(a) Jurors' Notes

The court may, and 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 notes after the trial. Notes may not be reviewed or relied upon for any purpose by any person other than the 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

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).

(c) Jury Request to Review Evidence

The court, after notice to the parties, may make available to the jury testimony or other evidence requested by it. In order that undue prominence not be given to the evidence requested, the court may also make available additional evidence relating to the same factual issue.

(d) Communications with Jury

~~The court shall notify the parties of the receipt of any communication from the jury pertaining to the action as promptly as practicable and in any event before responding to the communication. All such communications between the court and the jury shall be on the record in open court or shall be in writing and filed in the action. The clerk or the court shall note on a written communication the date and time it was received from the jury.~~

(1) Notification of Judge; Duty of Judge

A court official or employee who receives any written or oral communication from the jury shall immediately notify the presiding judge of the communication. If the communication pertains to the action, the judge shall promptly, and before responding to the communication, direct that the parties be notified of the communication and invite and consider, on the record, the parties' position on any response. The judge may

respond to the communication (A) in writing, or (B) orally in open court on the record.

(2) Duty of Clerk

The clerk shall (A) record on any written communication the date and time it was received by the judge, and (B) enter on the docket (i) any written communication and the nature of any oral communication, (ii) the date and time the communication was received by the judge, (iii) that the parties were notified and had an opportunity on the record to state their position on any response, (iv) how the communication was addressed by the judge, and (v) any written response by the judge to the communication.

Source: This Rule is derived as follows:

Section (a) is new.

Section (b) is derived from former Rules 558 a, b and d and 758 b.

Section (c) is derived from former Rule 758 c.

Section (d) is derived in part from former Rule 758 d and is in part new.

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

AMEND Rule 2-603 (b) to delete an obsolete provision and to require that a request for the assessment of certain costs be filed within a specified time, as follows:

Rule 2-603. COSTS

. . .

(b) Assessment by the Clerk

The clerk shall assess as costs all fees of the clerk and sheriff, ~~statutory fees actually paid to witnesses who testify,~~ and, in proceedings under Title 7, Chapter 200 of these Rules, the costs specified by Rule 7-206 (a). On written request of a party filed within 15 days after the later of the entry of judgment or the entry of an order denying a motion filed under Rules 2-532, 2-533, or 2-534, the clerk shall assess other costs prescribed by rule or law. The clerk shall notify each party of the assessment in writing. On motion of any party filed within five days after the party receives notice of the clerk's assessment, the court shall review the action of the clerk.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 700 - CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

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MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 700 - CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

ADD new Rule 2-701, as follows:

Rule 2-701. DEFINITIONS

In this Chapter, except as otherwise provided or necessary implication requires:

- (a) "Attorneys' fees" includes related expenses; and
- (b) "Related expenses" means expenses related to and incurred as part of the provision of legal services, including compensation for the services of paralegals and law clerks.

Committee note: In *Friolo v. Frankel*, 373 Md. 501, 530 (2003), the Court held, for purposes of a claim under the Wage Payment Law, which allowed an award of reasonable "counsel fees," that charges for paralegals and law clerks were subsumed within the attorneys' fees and should not be separately charged as attorneys' fees. It appears that most courts do allow compensation for paralegals and law clerks to be included in a statutory fee-shifting claim. The intent of this Rule is to allow the compensation paid to paralegals and law clerks for work done in connection with a claim permitting the recovery of attorneys' fees to be included as a separately identified related expense. This is intended to reduce the amounts claimed for attorneys' fees by encouraging attorneys to permit lower-paid paralegals and law clerks to perform tasks they properly can perform that otherwise would have to be done by the attorneys and would avoid the anomaly of labeling compensation paid to non-attorneys as attorneys' fees.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 700 - CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

ADD new Rule 2-702, as follows:

Rule 2-702. SCOPE OF CHAPTER

(a) Generally

Subject to section (b) of this Rule, the Rules in this Chapter apply to actions in which, by law or contract, a party is entitled to claim attorneys' fees from another party.

Committee note: Maryland generally follows the "American Rule" under which a party is not liable for the attorneys' fees of another party unless such liability is provided for by law or by a contract between the parties. Subject to the provisions of section (b) of this Rule, the Rules in this Chapter apply only to claims for attorneys' fees that fall under the exceptions to the "American Rule" in civil litigation in a circuit court. A comparable Rule for claims in civil litigation in the District Court appears as Rule 3-741.

(b) Particular Claims

The procedural requirements of these Rules do not apply to claims for attorneys' fees (1) in an action under Code, Family Law Article where an award of attorneys' fees does not depend on the applicant's having prevailed in the action or on any particular claim or issue in the action; (2) in a proceeding under Rules 1-341 or 2-433, or any other Rule permitting an award of reasonable attorneys' fees as a sanction or remedy for the violation of a Rule or court order; (3) by an attorney for legal services rendered by the attorney to the attorney's client; or

(4) in an action to foreclose a lien under Title 14 of the Maryland Rules. In determining the reasonableness of any requested fee in the proceedings enumerated in this section, the court may apply some or all of the evidentiary requirements and standards set forth in the Rules in this Chapter, as appropriate under the circumstances.

Cross reference: For the procedure to be followed in claiming attorneys' fees in foreclosure cases, see Rules 14-215, 14-305, and 14-306.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 700 - CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

ADD new Rule 2-703, as follows:

Rule 2-703. ATTORNEYS' FEES ALLOWED BY LAW

(a) Scope of Rule

This Rule applies to claims for attorneys' fees allowable by law to a party in an action in a circuit court.

Committee note: This Rule applies predominantly to actions in which attorneys' fees are allowed by statute. This Rule would also apply where attorneys' fees may be awarded under common law or by a Rule, other than as set forth in Rule 2-702 (b).

(b) Pleading

A party who seeks attorneys' fees from another party pursuant to this Rule shall include a claim for such fees in the party's initial pleading or, if the grounds for such a claim arise after the initial pleading is filed, in an amended pleading filed promptly after the grounds for the claim arose.

(c) Scheduling Conference and Order

Unless the court orders otherwise, if a claim for attorneys' fees is made pursuant to this Rule, the court shall conduct a scheduling conference and, as part of a scheduling order entered pursuant to Rule 2-504 shall:

(1) determine whether to require enhanced documentation, quarterly statements, or other procedures permitted by section

(d) of this Rule;

(2) determine whether evidence regarding the party's entitlement to attorneys' fees or the amount thereof may practicably be submitted during the parties' cases-in-chief with respect to the underlying cause of action or should await a verdict by the jury or finding by the court with respect to that underlying cause of action; and

(3) in light of the determination made under subsection (c)(2), determine whether, pursuant to section (f) of this Rule, any award of attorneys' fees will be included in the judgment entered on the underlying cause of action or as a separate judgment.

Committee note: If the court intends to delay the presentation of evidence on the claim for attorneys fees until after a determination of the underlying cause of action, but desires to enter one judgment that would include the denial or grant of an award of attorneys' fees, the jury's verdict or court findings on the underlying cause of action should be docketed, but the court must assure that no judgment is entered on the verdict or findings until the claim for attorneys' fees is resolved.

(d) Enhanced Procedures and Requirements for Certain Cases

Upon a determination by the court that the case is likely to result in a substantial claim for attorneys' fees for services over a significant period of time, the court may:

(1) require parties seeking an award (A) to keep time records in a specific manner, and (B) to provide to parties against whom an award is sought quarterly statements showing the total amount of time all attorneys, paralegals, and other professionals have spent on the case during the quarter and the total value of that

time;

(2) determine whether, and to what extent, the Guidelines Regarding Compensable and Non-Compensable Attorneys' Fees and Related Expenses contained in an Appendix to this Chapter shall be applied; and

(3) establish procedures and time schedules for the presentation of evidence and argument on issues relating to a party's entitlement to an award and the amount thereof.

(e) Evidence

Evidence in support of or in opposition to an award shall focus on the standards set forth in subsection (f)(3) of this Rule.

(f) Determination of Award

(1) If No Award Permitted

If, under applicable law, the verdict of a jury or the findings of the court on the underlying cause of action do not permit an award of attorneys' fees, the court shall include in its judgment entered on the underlying cause of action the denial of such an award.

(2) If Award Permitted or Required

If, under applicable law, the verdict of the jury or the findings of the court on the underlying cause of action permit but do not require an award of attorneys' fees, the court shall determine whether an award should be made. If the court determines that a permitted award should be made or that under applicable law an award is required, the court shall apply the

standards set forth in subsection (f) (3) of this Rule and determine the amount of the award.

Committee note: Where the claim for attorneys' fees is based on law, rather than a contract, the determination of whether, in light of the verdict or findings on the underlying cause of action, an award must or should be made and, if so, the amount thereof is for the court. See *Admiral Mortgage v. Cooper*, 357 Md. 533, 550-53 (2000); *Friolo v. Frankel*, 373 Md. 501, 519 (2003); *Friolo v. Frankel*, 403 Md. 443, 457, n.12 (2008).

(3) Factors To Be Considered

In making its determinations under subsection (f) (2) of this Rule, the court shall consider, with respect to the claims for which fee-shifting is permissible:

- (A) the time and labor required;
- (B) the novelty and difficulty of the questions;
- (C) the skill required to perform the legal service properly;
- (D) whether acceptance of the case precluded other employment by the attorney;
- (E) the customary fee for similar legal services;
- (F) whether the fee is fixed or contingent;
- (G) any time limitations imposed by the client or the circumstances;
- (H) the amount involved and the results obtained;
- (I) the experience, reputation, and ability of the attorneys;
- (J) the undesirability of the case;
- (K) the nature and length of the professional relationship with the client; and

(L) awards in similar cases.

Committee note: The factors listed in subsection (f)(3) of this Rule have been approved by the Court of Appeals in statutory fee-shifting cases, where the "lodestar method" is applied in determining an award. See *Monmouth Meadows v. Hamilton*, 416 Md. 325, 333-34 (2010). See Rule 2-704 (f) for the factors to be applied in contractual fee-shifting actions.

(g) Judgment

Except as provided in subsection (f)(1) of this Rule, the grant or denial of an award of attorneys' fees may be included in the judgment on the underlying cause of action or in a separate judgment, as directed by the court. The court shall state on the record or in a memorandum filed in the record the basis for its grant or denial of an award.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 700 - CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

ADD new Rule 2-704, as follows:

Rule 2-704. ATTORNEYS' FEES ALLOWED BY CONTRACT AS AN ELEMENT OF DAMAGES

(a) Scope of Rule

This Rule applies to a claim for attorneys' fees in an action in a circuit court that are allowed by a contract as an element of damages for breach of that contract. It does not apply to a claim for an award of attorneys' fees to the prevailing party pursuant to a fee-shifting provision in a contract.

Cross reference: See Rule 2-705 for the procedure where a contract provides for an award of attorneys' fees to a prevailing party in the litigation.

(b) Pleading

A party who seeks attorneys' fees from another party pursuant to this Rule shall include a claim for such fees in the party's initial pleading or, if the grounds for such a claim arise after the initial pleading is filed, in an amended pleading filed promptly after the grounds for the claim arise.

(c) Scheduling Conference and Order

If a claim for attorneys' fees is made pursuant to this Rule, unless the court orders otherwise, the court shall conduct

a scheduling conference in conformance with Rule 2-703 (c).

Committee note: Unlike a claim under Rule 2-703 based on fee-shifting permitted by law, where attorneys' fees are an element of damages for breach of a contractual obligation, any award must be included in the judgment entered on the breach of contract claim. In complex cases, however, where the evidence regarding attorneys' fees is likely to be extensive, it may be expedient to defer the presentation of such evidence and resolution of that claim until after a verdict or finding by the court establishing an entitlement to an award. See section (d) of this Rule. In that event, the admonition in the Committee note to Rule 2-703 (c) is especially critical - that, although the verdict or findings on the underlying cause of action should be docketed, no judgment should be entered thereon until the claim for attorneys' fees is resolved and can be included in the judgment.

(d) Presentation of Evidence

(1) Generally

Evidence in support of or in opposition to a claim for attorneys' fees under this Rule shall be presented in the party's case-in-chief and shall focus on the standards set forth in Rule 2-703 (f) (3) or subsection (e) (4) of this Rule, as applicable.

(2) Judgment by Confession

If the party seeking attorneys' fees has requested judgment by confession pursuant to Rule 2-611, evidence establishing entitlement to such fees and the reasonableness of the amount requested shall be included in the affidavit required by Rule 2-611 (a). If judgment by confession is not entered or is stricken and the action proceeds to trial, the evidence may be submitted at trial in accordance with this Rule.

(e) Determination of Award

(1) If No Award Permitted

If a verdict returned by a jury or findings made by the

court do not permit an award of attorneys' fees, the court shall include in its judgment on the underlying cause of action a denial of such an award.

(2) Trial By Court

If the underlying cause of action is tried by the court, the court shall determine whether an award of attorneys' fees is required or permitted. If the court finds that an award is required, it shall determine the amount. If the court finds that an award is permitted but not required, it shall determine whether an award should be made and, if so, the amount thereof. In determining the amount of an award, the court shall apply the standards set forth in Rule 2-703 (f) (3) or subsection (e) (4) of this Rule, as applicable.

(3) Trial by Jury

If the underlying cause of action is tried by a jury, the jury, under appropriate instructions from the court, shall determine, as part of its verdict, whether an award of attorneys' fees should be made to a party based on a breach of the contract by another party and the amount of such an award. If an award is made, on motion by any party affected by the award, the court, applying the standards set forth in Rule 2-703 (f) (3) or subsection (e) (4) of this Rule, as applicable, shall determine whether the amount of the award is reasonable and, if not, shall modify the award accordingly. This determination does not preclude any other relief the court may grant under Rules 2-532, 2-533, or 2-535.

Committee note: This subsection preserves to the jury, in a breach of contract case where attorneys' fees are part of the alleged damages, the right to determine whether an award should be made and, if so, in what amount, but preserves to the trial court the right to determine whether the award is reasonable. Under this approach, in the event of an appeal, the appellate court will have available both the jury's and the trial court's determination of reasonableness.

(4) Limited Evidence Permitted

If the claim for an award of attorneys' fees does not exceed the lesser of 15% of the principal amount found to be due or \$4,500, the court need not require evidence on all of the factors set forth in Rule 2-703 (f) (3) if the party claiming the award produces evidence otherwise sufficient to demonstrate that the amount claimed is reasonable and does not exceed the amount that the claiming party has agreed to pay that party's attorney. The evidence shall include at a minimum:

(A) a detailed description of the work performed, broken down by hours or fractions thereof expended on each task;

(B) the amount or rate charged or agreed to in writing by the requesting party and the attorney; and

(C) the attorney's customary fee for similar legal services.

Committee note: Section (e) follows the approach set forth in *Monmouth Meadows v. Hamilton*, 416 Md. 325 (2010), for contractual fee-shifting cases generally. Subsection (e) (4) is intended to permit the court to excuse the need to consider all of the Rule 2-703 (f) (3) factors where the claim for attorneys' fees does not exceed the lesser of 15% of the amount due or \$4,500. Fees in those limited amounts are common in consumer transactions and have been found reasonable by the General Assembly in some of those settings. See Code, Commercial Law Article, §§12-307.1 (Consumer Loans) and 12-623 (Retail Installment Sales).

(f) Part of Judgment

An award of attorneys' fees shall be included in the judgment on the underlying cause of action but shall be separately stated.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 700 - CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

ADD new Rule 2-705, as follows:

Rule 2-705. ATTORNEYS' FEES TO A PREVAILING PARTY PURSUANT TO CONTRACT

(a) Scope of Rule

This Rule applies to a claim for an award of attorneys' fees to attributable to litigation in a circuit court pursuant to a contractual provision permitting an award of attorneys' fees to the prevailing party in litigation arising out of the contract. It does not apply to a claim for attorneys' fees allowed by contract as an element of damages for breach of the contract or to a claim for attorneys' fees authorized by statute or other law.

Cross reference: See Rules 2-703 and 2-704.

(b) Pleading

A party who seeks attorneys' fees from another party pursuant to this Rule shall include a claim for such fees in the party's initial pleading or, if the grounds for such a claim arise after the initial pleading is filed, in an amended pleading filed promptly after the grounds for the claim arise.

(c) Scheduling Conference and Order

If a claim for attorneys' fees is made pursuant to this

Rule, unless the court orders otherwise, the court shall conduct a scheduling conference in conformance with Rule 2-703 (c).

(d) Enhanced Procedures and Requirements for Certain Cases

Upon a determination by the court that the case is one that likely will result in a substantial claim for attorneys' fees covering a significant period of time, the court may enter orders in conformance with Rule 2-703 (d).

(e) Determination of Award by Court

Upon a jury verdict or, in an action tried by the court, a finding by the court in favor of a party entitled to attorneys' fees as a "prevailing party," the court shall determine the amount of an award in accordance with section (f) of this Rule.

(f) Factors to be Considered

(1) If the party seeking attorneys' fees prevailed with respect to a claim for which fee-shifting is permissible, the court shall consider the factors set forth in Rule 2-703 (f) (3) and the principal amount in dispute in the litigation, and may consider the agreement between party seeking the award and that party's attorneys and any other factor reasonably related to the fairness of an award.

(2) If the claim for an award of attorneys' fees does not exceed the lesser of 15% of the principal amount found to be due or \$4,500, the court need not require evidence on all of the factors set forth in Rule 2-703 (f) (3) if the party claiming the award produces evidence otherwise sufficient to demonstrate that the amount claimed is reasonable and does not exceed the amount

that the claiming party has agreed to pay that party's attorney. The evidence shall include at a minimum:

(A) a detailed description of the work performed, broken down by hours or fractions thereof expended on each task;

(B) the amount or rate charged or agreed to in writing by the requesting party and the attorney; and

(C) the attorney's customary fee for similar legal services.

Committee note: Subsection (f)(1) of this Rule follows the approach set forth in *Monmouth Meadows v. Hamilton*, 416 Md. 325 (2010), for contractual fee-shifting cases generally. Subsection (f)(2) of this Rule is intended to permit the court to excuse the need to consider all of the Rule 2-703 (f)(3) factors where the claim for attorneys' fees does not exceed the lesser of 15% of the amount due or \$4,500. Fees in those limited amounts are common in consumer transactions and have been found reasonable by the General Assembly in some of those settings. See Code, Commercial Law Article, §§12-307.1 (Consumer Loans) and 12-623 (Retail Installment Sales).

(g) Part of Judgment

An award of attorneys' fees shall be included in the judgment on the underlying cause of action but shall be separately stated. The court shall state on the record or in a memorandum filed in the record the basis for its findings and conclusions regarding the denial or issuance of an award.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 700 - CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

ADD new Rule 2-706, as follows:

Rule 2-706. FEES FOR APPELLATE LITIGATION

A party who seeks an award of attorneys' fees incurred in connection with an appeal, application for leave to appeal, or petition for certiorari shall file a motion for such fees in the circuit court that entered the judgment or order that is the subject of the appellate litigation. The motion shall be filed within 30 days after entry of the last mandate or order disposing of the appeal, application, or petition. Proceedings on the motion shall be in the circuit court and shall be consistent with the standards and procedures set forth in Rule 2-703 or Rule 2-705, as applicable.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-305 to add a cross reference concerning attorneys' fees, as follows:

Rule 3-305. CLAIMS FOR RELIEF

A pleading that sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for the relief sought. Relief in the alternative or of several different types may be demanded.

Cross reference: For pleading requirements and other procedures when attorneys' fees are claimed, see Rule 3-741.

Source: This Rule is derived from former M.D.R. 301 a (ii) and the 1966 version of Fed. R. Civ. P. 8 (a).

MARYLAND RULES OF PROCEDURE
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT
CHAPTER 700 - SPECIAL PROCEEDINGS

ADD new Rule 3-741, as follows:

Rule 3-741. ATTORNEYS' FEES

(a) Definitions

In this Rule "attorneys' fees" and "related expenses" have the meanings set forth in Rule 2-701.

(b) Scope of Rule

This Rule applies to claims made in an action in the District Court for attorneys' fees allowed by law or by contract. The Rule does not apply to a dispute between an attorney and the attorney's client over the attorney's fee and it does not apply to a proceeding under Rule 1-341 or other Rule permitting the award of reasonable counsel fees as a sanction or remedy for violation of a court order.

(c) Request

(1) Generally

A claim for attorneys' fees shall be made in the complaint, other pleading allowed by Rule 3-302, or amendment to a pleading allowed by Rule 3-341.

(2) Exception

When the party seeking fees is a defendant in any action brought under Code, Real Property Article, Title 8, Subtitle 4;

Title 8A, Subtitle 17; or §14-132, the claim may be made at trial.

(d) Presentation of Supporting Evidence

(1) Generally

Except as provided in subsections (d) (2), (d) (3), or (d) (4) of this Rule or otherwise ordered by the court, evidence in support of or in opposition to the entitlement to such fees and the reasonableness of the amount requested shall be presented at trial of the underlying cause of action.

(2) Judgment on Affidavit

If the party seeking attorneys' fees filed a motion for judgment on affidavit pursuant to Rule 3-306, evidence establishing the right to such fees and the reasonableness of the requested fee shall be included in an accompanying affidavit. If the action proceeds to trial, the evidence may be supplemented at trial.

Cross reference: See Rule 3-306 (d) for additional requirements if the action is based on an assigned consumer debt.

(3) Judgment by Confession

If the party seeking attorneys' fees has requested judgment by confession pursuant to Rule 3-611, evidence establishing the right to such fees and the reasonableness of the requested fee shall be included in the affidavit required by Rule 3-611 (a). If judgment by confession is not entered or is stricken and the action proceeds to trial, the evidence may be supplemented at trial.

(4) Certain Actions Involving Real Property

If the party seeking attorneys' fees is a defendant in an action brought under Code, Real Property Article, Title 8, Subtitle 4; Title 8A, Subtitle 17; or §14-132 who has complied with section (c) of this Rule and prevailed in the action, the court shall set a schedule for written submissions in support of and in opposition to the right to such fees and the reasonableness of the requested fees, or shall schedule a hearing, or both, as the court deems appropriate.

(e) Determination of Award

(1) Generally

If the court concludes that an award of attorneys' fees is permitted but not required, the court shall determine whether an award should be made and, if so, the amount thereof. If the court concludes that an award is required, it shall determine the amount thereof.

(2) Amount

Except as provided in subsection (e) (3) of this Rule:

(A) if the claimed right to attorneys' fees is based on law, the court shall apply the standards set forth in Rule 2-703 (f) (3);

(B) if the claimed right is based on a contract, the court shall apply the standards set forth in Rule 2-704 (e) (2) or 2-705 (f) (1), as applicable.

(3) Exception

If the claim for an award of attorneys' fees does not

exceed the lesser of 15% of the principal amount found to be due or \$4,500, the court need not require evidence on all of the factors set forth in Rule 2-703 (f) (3) if the party claiming the award produces evidence otherwise sufficient to demonstrate that the amount claimed is reasonable and does not exceed the amount that the claiming party has agreed to pay that party's attorney. The evidence shall include at a minimum:

(A) a detailed description of the work performed, broken down by hours or fractions thereof expended on each task;

(B) the amount or rate charged or agreed to in writing by the requesting party and the attorney; and

(C) the attorney's customary fee for similar legal services.

Committee note: Subsection (e) (2) (B) of this Rule follows the approach set forth in *Monmouth Meadows v. Hamilton*, 416 Md. 325 (2010), for contractual fee-shifting cases generally. Subsection (e) (3) of this Rule is intended to permit the court to excuse the need to consider all of the Rule 2-703 (f) (3) factors where the claim for attorneys' fees does not exceed the lesser of 15% of the amount due or \$4,500. Fees in those limited amounts are common in consumer transactions and have been found reasonable by the General Assembly in some of those settings. See Code, Commercial Law Article, §§12-307.1 (Consumer Loans) and 12-623 (Retail Instalment Sales).

(f) Judgment

An award of attorneys' fees shall be included in the judgment on the underlying cause of action but shall be separately stated.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-262 by correcting an internal reference in the cross reference after section (b), by rewriting subsection (d) (2) (B) to clarify that the State is required to provide the names of certain witnesses under certain circumstances, and by adding a requirement that the State provide the telephone numbers of witnesses under certain circumstances, as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

. . .

(b) Definitions

In this Rule, the terms "defense," "defense witness," "oral statement," "provide," "State's witness," and "written statement" have the meanings stated in Rule 4-263 (b).

Cross reference: For the definition of "State's Attorney," see Rule 4-102 ~~(*)~~ (1).

. . .

(d) Disclosure by the State's Attorney

(1) Without Request

Without the necessity of a request, the State's Attorney shall provide to the defense all material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged and all material or

information in any form, whether or not admissible, that tends to impeach a State's witness.

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); *U.S. v. Agurs*, 427 U.S. 97 (1976); *Thomas v. State*, 372 Md. 342 (2002); *Goldsmith v. State*, 337 Md. 112 (1995); and *Lyba v. State*, 321 Md. 564 (1991).

(2) On Request

On written request of the defense, the State's Attorney shall provide to the defense:

(A) Statements of Defendant and Co-defendant

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

(B) Written Statements, Identity, and Telephone Numbers of State's Witnesses

As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony, ~~those written statements of the witness that relate to the offense charged and are (i) signed by or adopted by the witness or (ii) contained in a police or investigative report, together with the name and, except as provided under Code, Criminal Procedure Article, §11-205 or Rule 16-1009 (b), the address of the witness~~ : (i) the name of the witness; (ii) except as provided under Code, Criminal Procedure Article, §11-205 or Rule 16-1009 (b), the address and, if known to the State's Attorney, the telephone number of the witness, and (iii) the

statements of the witness relating to the offense charged that are in a writing signed or adopted by the witness or are in a police or investigative report;

(C) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(i) specific searches and seizures, eavesdropping, or electronic surveillance including wiretaps; and

(ii) pretrial identification of the defendant by a State's witness;

(D) Reports or Statements of Experts

As to each State's witness the State's Attorney intends to call to testify as an expert witness other than at a preliminary hearing:

(i) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

(ii) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(iii) the substance of any oral report and conclusion by the expert;

(E) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all

documents, computer-generated evidence as defined in Rule 2-504.3

(a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; and

(F) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at trial.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-263 by conforming an internal reference in the cross reference after subsection (b) (5) to the relettering of Rule 4-102, by adding a requirement that the State provide the telephone numbers of witnesses under certain circumstances, and by making stylistic changes to subsection (d) (3), as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

. . .

(b) Definitions

In this Rule, the following definitions apply:

(1) Defense

"Defense" means an attorney for the defendant or a defendant who is acting without an attorney.

(2) Defense Witness

"Defense witness" means a witness whom the defense intends to call at a hearing or at trial.

(3) Oral Statement

"Oral statement" of a person means the substance of a statement of any kind by that person, whether or not reflected in an existing writing or recording.

(4) Provide

Unless otherwise agreed by the parties or required by

Rule or order of court, "provide" information or material means (A) to send or deliver it by mail, e-mail, facsimile transmission, or hand-delivery, or (B) to make the information or material available at a specified location for purposes of inspection if sending or delivering it would be impracticable because of the nature of the information or material.

(5) State's Witness

"State's witness" means a witness whom the State's Attorney intends to call at a hearing or at trial.

Cross reference: For the definition of "State's Attorney," see Rule 4-102 ~~(*)~~ (1).

(6) Written Statement

"Written statement" of a person:

(A) includes a statement in writing that is made, signed, or adopted by that person;

(B) includes the substance of a statement of any kind made by that person that is embodied or summarized in a writing or recording, whether or not signed or adopted by the person;

(C) includes a statement contained in a police or investigative report; but

(D) does not include attorney work product.

. . .

(d) Disclosure by the State's Attorney

. . .

(3) State's Witnesses

~~The name and,~~ As to each State's witness the State's

Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: (A) the name of the witness; (B) except as provided under Code, Criminal Procedure Article, §11-205 or Rule 16-1009 (b), the address of each State's witness whom the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony, together with and, if known to the State's Attorney, the telephone number of the witness; and (C) all written statements of the ~~person~~ witness that relate to the offense charged;

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-326 to delete current section (d) and add a new section (d) specifying certain duties of judges, clerks, and other court officials and employees concerning written and oral communications from the jury, as follows:

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

(a) Jurors' Notes

The court may, and 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 notes after the trial. Notes may not be reviewed or relied upon for any purpose by any person other than the 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

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 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 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 jury.

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

(c) Jury Request to Review Evidence

The court, after notice to the parties, may make available to the jury testimony or other evidence requested by it. In order that undue prominence not be given to the evidence requested, the court may also make available additional evidence relating to the same factual issue.

(d) Communications with Jury

~~The court shall notify the defendant and the State's Attorney of the receipt of any communication from the jury pertaining to the action as promptly as practicable and in any event before responding to the communication. All such communications between the court and the jury shall be on the record in open court or shall be in writing and filed in the action. The clerk or the court shall note on a written communication the date and time it was received from the jury.~~

(1) Notification of Judge; Duty of Judge

A court official or employee who receives any written or oral communication from the jury shall immediately notify the

presiding judge of the communication. If the communication pertains to the action, the judge shall promptly, and before responding to the communication, direct that the parties be notified of the communication and invite and consider, on the record, the parties' position on any response. The judge may respond to the communication (A) in writing, or (B) orally in open court on the record.

(2) Duty of Clerk

The clerk shall (A) record on any written communication the date and time it was received by the judge, and (B) enter on the docket (i) any written communication and the nature of any oral communication, (ii) the date and time the communication was received by the judge, (iii) that the parties were notified and had an opportunity on the record to state their position on any response, (iv) how the communication was addressed by the judge, and (v) any written response by the judge to the communication.

Source: This Rule is derived as follows:

Section (a) is new.

Section (b) is derived from former Rule 758 a and b and 757 e.

Section (c) is derived from former Rule 758 c.

Section (d) is derived in part from former Rule 758 d and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-205 by deleting a reference to a prehearing conference; by adding a reference to Alternative Dispute Resolution under Title 17, Chapter 400; and by adding a cross reference, as follows:

Rule 8-205. INFORMATION REPORTS

. . .

(f) Confidentiality

Information contained in an information report or a supplemental report shall not (1) be treated as admissions, (2) limit the disclosing party in presenting or arguing that party's case, or (3) be referred to except at a ~~prehearing or~~ scheduling conference or during ADR under Title 17, Chapter 400 of these Rules.

Cross reference: See Rule 17-102 (a) for the definition of ADR and Rule 17-401 concerning the use of information reports by the CSA ADR Division.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-206 to change the title of the Rule, to change the time for the initial determination under section (a) from 20 days to 30 days, to delete provisions pertaining to a prehearing conference, to add certain provisions pertaining to alternative dispute resolution, and to make stylistic changes, as follows:

Rule 8-206. ~~PREHEARING AND~~ ADR AND SCHEDULING ~~PROCEDURE~~
CONFERENCES

(a) Initial Determination by Court

Within ~~20~~ 30 days after the filing of appellant's information report, the Chief Judge of the Court of Special Appeals shall enter an order or a judge of the Court designated by the Chief Judge shall consider any recommendation of the CSA ADR Division made pursuant to Rule 17-401 (b) (4) and enter an order:

(1) that the appeal proceed without ~~a prehearing~~ ADR under Title 17, Chapter 400 of these Rules or a scheduling conference;

~~or~~

(2) that the parties, their attorneys, or both the parties and their attorneys appear ~~before the Chief Judge or a judge of the Court designated by the Chief Judge at a designated time and~~

place for a prehearing conference or a scheduling conference at a designated time and place for one mediation session or one settlement conference session in accordance with the applicable provisions of Rule 17-402;

(3) that the parties, their attorneys, or both the parties and their attorneys appear before the Chief Judge or a judge of the Court designated by the Chief Judge at a designated time and place for a scheduling conference in accordance with section (b) of this Rule; or

(4) upon the written request of the parties, that proceedings be stayed for a period of time stated in the order so that the parties, their attorneys, or both the parties and their attorneys may participate in a form of ADR other than a court-ordered mediation session or settlement conference.

Cross reference: For the definition of "ADR," see Rule 17-102 (a) and for the definition of "CSA ADR Division," see Rule 17-401 (a) (2).

~~(b) Prehearing Conference~~

~~The purpose of a prehearing conference is to discuss settlement, dismissal of the appeal, limitation of the issues, contents of the record and record extract, continuance of the appeal, the time or times for filing the record and briefs, and other pertinent matters. Information disclosed at a prehearing conference shall be regarded as disclosed solely for purposes of settlement negotiations and shall not (1) be treated as admissions, (2) limit the disclosing party in presenting or arguing that party's case, or (3) be referred to except at a~~

~~prehearing conference.~~

~~(e)~~ (b) Scheduling Conference

(1) Purpose and Order to Attend

On its own initiative pursuant to subsection (a) (3) of this Rule or on written request of a party, the court may enter an order setting a scheduling conference. The purpose of a scheduling conference is to discuss the contents of the record and record extract, the time or times for filing the record and briefs, and other administrative matters that do not relate to the merits of the case.

~~(d)~~ (2) Order upon Completion of Scheduling Conference

On completion of ~~any conference conducted under this Rule~~ a scheduling conference, the judge shall enter an order reciting the actions taken and any agreements reached by the parties. The judge may order additional conferences and may enter an order of remand pursuant to Rule 8-602 (e). The Clerk shall serve a copy of the order on each party pursuant to Rule 1-321.

~~(e)~~ (c) Sanctions

Upon failure of a party or attorney to comply with Rule 8-205, this Rule, or an order under this Rule, the Court of Special Appeals may: (1) dismiss part or all of the appeal, (2) assess against the party or attorney the reasonable expenses caused by the failure, including attorney's fees, (3) assess against the party or attorney part or all of the appellate costs, or (4) impose any other appropriate sanction.

~~(f)~~ Recusal

~~A judge who conducts a prehearing conference shall not sit as a member of the panel assigned to hear the appeal in that case.~~

Source: This Rule is in part derived from former Rule 1024 and in part new.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-503 to correct an internal reference, as follows:

Rule 8-503. STYLE AND FORM OF BRIEFS

. . .

(d) Length

Except as otherwise provided in section (e) of this Rule or with permission of the Court, a brief of the appellant and appellee shall not exceed 35 pages in the Court of Special Appeals or 50 pages in the Court of Appeals. This limitation does not apply to (1) the table of contents and citations required by Rule 8-504 (a) (1); (2) the citation and text required by Rule 8-504 ~~(a) (7)~~ (a) (8); and a motion to dismiss and argument supporting or opposing the motion. Except with permission of the Court, any portion of a brief pertaining to a motion to dismiss shall not exceed an additional ten pages in the Court of Special Appeals or 25 pages in the Court of Appeals. Any reply brief filed by the appellant shall not exceed 15 pages in the Court of Special Appeals or 25 pages in the Court of Appeals.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 17-101 to correct a Committee note and to add section (e) pertaining to the applicability of Chapter 400, as follows:

Rule 17-101. APPLICABILITY

(a) General Applicability of Title

Except as provided in section (b) of this Rule, the Rules in this Title apply when a court refers all or part of a civil action or proceeding to ADR.

Committee note: The Rules ~~is~~ in this Title do not apply to an ADR process in which the parties participate without a court order of referral to that process.

(b) Exceptions

Except as otherwise provided by Rule, the Rules in this Title do not apply to:

(1) an action or order to enforce a contractual agreement to submit a dispute to ADR;

(2) an action to foreclose a lien against owner-occupied residential property subject to foreclosure mediation conducted by the Office of Administrative Hearings under Rule 14-209.1;

(3) an action pending in the Health Care Alternative Dispute Resolution Office under Code, Courts Article, Title 3, Subtitle 2A, unless otherwise provided by law; or

(4) a matter referred to a master, examiner, auditor, or parenting coordinator pursuant to Rule 2-541, 2-542, 2-543, or 9-205.2.

(c) Applicability of Chapter 200

The Rules in Chapter 200 apply to actions and proceedings pending in a circuit court.

(d) Applicability of Chapter 300

The Rules in Chapter 300 apply to actions and proceedings pending in the District Court.

(e) Applicability of Chapter 400

The Rules in Chapter 400 apply to civil appeals pending in the Court of Special Appeals.

Source: This Rule is derived from former Rule 17-101 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

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- (b) Mediation
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 - (2) If Full Settlement is Not Reached
 - (3) If Full or Partial Settlement Achieved
- (c) Settlement Conference
 - (1) Chair
 - (2) If Full Settlement is Not Achieved
 - (3) If Full or Partial Settlement Achieved
- (d) Consent Order
 - (1) Proposed Order
 - (2) Action of Chief Judge
 - (3) Action on Recommended Changes
 - (4) Duties of Clerk
- (e) Sanctions
- (f) Recusal

Rule 17-403. QUALIFICATIONS OF MEDIATORS AND SETTLEMENT
CONFERENCE CHAIRS

(a) Qualifications of Mediators

(b) Qualifications of Settlement Conference Chair

Rule 17-404. NO FEE FOR COURT-ORDERED ADR

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

ADD new Rule 17-401, as follows:

Rule 17-401. GENERAL PROVISIONS

(a) Definitions

The following definitions apply in this Chapter:

(1) Chief Judge

"Chief Judge" means the Chief Judge of the Court of Special Appeals.

(2) CSA ADR Division

"CSA ADR Division" means the Court of Special Appeals Office of ADR Programs, a unit within the Court of Special Appeals.

(3) Settlement Conference

"Settlement conference" means a conference at which the parties, their attorneys, or both appear before an impartial individual to discuss settlement, dismissal of the appeal, and methods of streamlining the appellate process, including limitation of issues, contents of and times for filing the record and record extract, consolidation of multiple appeals, consolidated briefs, prehearing motions, seeking certiorari in the Court of Appeals, and other procedures under Title 8 of these Rules.

(b) Administration of ADR Programs

(1) CSA ADR Division

Subject to supervision by the Chief Judge, the CSA ADR Division is responsible for performing the duties assigned to it by the Rules in this Chapter and generally administering the ADR programs of the Court of Special Appeals. The Chief Judge shall appoint a Director of the Division, who shall serve at the pleasure of the Chief Judge.

(2) Delegation by Chief Judge

The Chief Judge may delegate to another judge of the Court of Special Appeals any of the duties and authority assigned to the Chief Judge by the Rules in this Chapter.

(3) Judicial Function

Court-designated mediators, settlement conference chairs and all court employees involved in the ADR program when acting in their official capacity and within the scope of their authority shall be regarded as performing a judicial function. Cross reference: See 93 Opinions of the Attorney General 68 (2008).

(4) Screening of Information Reports

(A) Recommendation of CSA ADR Division

The CSA ADR Division shall screen all civil appeal information reports filed pursuant to Rule 8-205 and promptly make a recommendation to the Chief Judge as to whether the parties and their attorneys should be ordered to participate in mediation or a settlement conference in accordance with Rule 8-

206 and the Rules in this Chapter.

(B) Screening Communications

In the screening, the CSA ADR Division may communicate orally and in writing with any party's attorney and any self-represented party with respect to referral of the issues in the appeal to ADR. Such a communication is not a prohibited ex parte communication. Whether or not ADR is ordered, communications with the CSA ADR Division have the same status as mediation communications under Rule 17-105.

Cross reference: For the confidentiality of information reports and supplemental reports, see Rule 8-205 (f).

(5) Order by the Chief Judge

The Chief Judge shall consider the recommendation of the CSA ADR Division and, within 30 days after the filing of the appellant's information report, enter an order in accordance with Rule 8-206 (a).

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

ADD new Rule 17-402, as follows:

Rule 17-402. ADR PROCEEDINGS

(a) Applicability

This Rule applies to an ADR proceeding ordered pursuant to Rule 8-206.

(b) Mediation

(1) Selection of Mediator

If mediation is ordered, the CSA ADR Division shall select one or more mediators approved by the Chief Judge as having the qualifications prescribed by Rule 17-403 (a) to conduct the mediation. In selecting a mediator, the CSA ADR Division is not required to choose at random or in any particular order from among the qualified individuals and may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available mediators.

(2) If Full Settlement is Not Reached

If a full settlement of the issues in the appeal is not achieved, the mediator and the parties may discuss the prospect of (A) extending the mediation session, (B) further mediation sessions, (C) engaging in other forms of ADR, or (D) a settlement

conference to consider appropriate methods of streamlining the appellate process.

(3) If Full or Partial Settlement Achieved

If a full or partial settlement is achieved and an order is necessary, the parties shall proceed in accordance with section (d) of this Rule.

(c) Settlement Conference

(1) Chair

If a settlement conference is ordered, the Chief Judge shall select a judge having the qualifications prescribed by Rule 17-403 (b) to serve as the chair of the settlement conference.

(2) If Full Settlement is Not Achieved

If a full settlement of the issues in the appeal is not achieved, the settlement conference chair and the parties may discuss the prospect of (1) another settlement conference, (2) engaging in other forms of alternative dispute resolution, or (3) methods of streamlining the appellate process, including limitation of issues, contents of and times for filing the record and record extract, consolidation of multiple appeals, consolidated briefs, prehearing motions, seeking certiorari in the Court of Appeals, and other procedures under Title 8 of these Rules.

(3) If Full or Partial Settlement Achieved

If a full or partial settlement is achieved and an order is necessary, the parties shall proceed in accordance with section (d) of this Rule.

(d) Consent Order

(1) Proposed Order

Within 30 days after the conclusion of a Court-ordered ADR proceeding at which settlement or any other agreement was reached, if an order is necessary to implement their agreement, the parties shall file one or more proposed orders.

Committee note: The provisions of a proposed order may include dismissal of the appeal, proceeding with the appellate process, limiting issues, a remand pursuant to Rule 8-602 (e), and implementing other agreements reached by the parties with respect to the appeal.

(2) Action of Chief Judge

The Chief Judge shall sign the order as presented, reject it, or return it to the parties with recommended changes, but the Chief Judge may not preclude the appellant from dismissing the appeal as permitted by Rule 8-601 or preclude the parties from otherwise proceeding in a manner authorized under the Rules in Title 8.

(3) Action on Recommended Changes

Subject to subsection (d)(2) of this Rule, if the parties do not accept any recommended changes within 15 days after an order is returned to them, the appeal shall proceed as if no agreement had been reached. If the parties accept the recommended changes, the Chief Judge shall sign the order including those changes.

(4) Duties of Clerk

The clerk shall serve a copy of each signed order on each party pursuant to Rule 1-321 and transmit a copy to the CSA ADR

Division.

(e) Sanctions

Upon the failure of a party or attorney to comply with an order issued under this Rule, the court may (1) dismiss part or all of the appeal, (2) assess against the failing party or attorney any expenses caused by the failure, including attorney's fees or expenses incurred by the other party and part or all of the appellate costs, and (3) impose any other appropriate sanction.

(f) Recusal

A judge who conducts or participates in an ADR proceeding under this Rule shall not sit as a member of a panel, including an in banc panel, assigned to hear the appeal and shall not participate in any court conference regarding the judicial resolution of the appeal.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

ADD new Rule 17-403, as follows:

Rule 17-403. QUALIFICATIONS OF MEDIATORS AND SETTLEMENT
CONFERENCE CHAIRS

(a) Qualifications of Mediators

To be approved as a mediator by the Chief Judge, an individual shall:

(1) be (A) an incumbent judge of the Court of Special Appeals; (B) a retired judge of the Court of Appeals, the Court of Special Appeals, or a circuit court, approved for recall for service under Code, Courts Article, §1-302; or (C) a staff attorney from the Court of Special Appeals designated by the CSA ADR Division;

(2) have either completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104 or have conducted at least two Maryland appellate mediations prior to the adoption of this Rule;

(3) have completed advanced appellate mediation training approved by the CSA ADR Division;

(4) unless waived by the CSA ADR Division, have observed at least two Court of Special Appeals mediation sessions and have participated in a debriefing with a staff mediator from the CSA

ADR Division after the mediations;

(5) be familiar with the Rules in Titles 8 and 17 of the Maryland Rules;

(6) abide by any mediation standards adopted by the Court of Appeals;

(7) comply with mediation procedures and requirements established by the Court of Special Appeals;

(8) submit to periodic monitoring by the CSA ADR Division; and

(9) unless waived by the CSA ADR Division, complete in each calendar year four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104, or any other advanced mediation training approved by the CSA ADR Division.

(b) Qualifications of Settlement Conference Chair

To be designated by the Chief Judge to serve as the chair of a settlement conference, an individual shall be:

(1) a judge of the Court of Special Appeals; or

(2) a retired judge of the Court of Appeals or the Court of Special Appeals approved for recall for service under Code, Courts Article, §1-302.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

ADD new Rule 17-404, as follows:

Rule 17-404. NO FEE FOR COURT-ORDERED ADR

Court of Special Appeals litigants and their attorneys shall not be required to pay a fee or additional court costs for participating in a mediation or settlement conference ordered by the Court.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

APPENDIX: GUIDELINES REGARDING COMPENSABLE AND NON-COMPENSABLE
ATTORNEYS' FEES AND RELATED EXPENSES

ADD a new Appendix, as follows:

APPENDIX: GUIDELINES REGARDING COMPENSABLE AND NON-COMPENSABLE
ATTORNEYS' FEES AND RELATED EXPENSES

(a) Guidelines Regarding Compensable and Non-compensable
Attorneys' Fees

(1) Lead Attorney

If different attorneys represent plaintiffs with both common and conflicting interests, there should be a lead attorney for each task, such as preparing for and speaking at depositions on issues of common interest and preparing pleadings, motions, and memoranda. Attorneys other than the lead attorney should be compensated if they provide input into an activity that is directly related to their own client's interests.

(2) Deposition Attendance

Ordinarily, only one attorney for each separately represented party should be compensated for attending depositions.

Committee note: Compensation for more than one attorney may be allowed if a valid reason is shown for having more than one attorney at the deposition. For example, a less senior attorney's presence may be necessary because that attorney organized numerous documents important to the deposition, but the deposition is of a critical witness whom the more senior attorney should properly depose. Departure from this subsection also may be appropriate upon a showing that more than one attorney

representing an opposing party attended the deposition and charged the time for attending.

(3) Hearings Other Than Trial

Ordinarily, only one attorney for each party should be compensated for attending hearings other than trial.

Committee note: The same considerations discussed in the last Committee note concerning attendance by more than one attorney at a deposition apply to attendance by more than one attorney at a hearing.

There is no guideline as to whether more than one attorney for each party should be compensated for attending trial. This depends on the complexity of the case and the role of each attorney.

(4) Conferences

Ordinarily, only one attorney should be compensated for client, third party, and intra-office conferences, although if only one attorney is compensated, the time may be charged at the rate of the more senior attorney. Compensation may be paid for the attendance of more than one attorney if justified for specific purposes, such as periodic conferences of defined duration held for the purpose of work organization, strategy, and delegation of tasks when the conferences are reasonably necessary for the proper management of the litigation.

(5) Travel

(A) Substantive Work During Travel Time

Whenever possible, time spent in traveling should be devoted to doing substantive work for a client and should be billed at the usual rate to that client. A fee request should not include travel time during which the attorney works on a

matter other than the matter for which fees are sought. If the travel time is devoted to substantive work for the client whose representation is the subject of the fee request, the time should be billed for the substantive work, not travel time.

(B) No Substantive Work During Travel Time

Up to three hours of travel time each way and each day to and from a court appearance, deposition, witness interview, or similar proceeding or event that cannot be devoted to substantive work should ordinarily be charged at the attorney's hourly rate. Time spent above the three-hour limit should ordinarily be charged at one-half of the attorney's hourly rate.

(b) Guidelines Regarding Expenses Related to Attorneys' Fees

(1) Out-of-Pocket Expenses

Ordinarily, reasonable out-of-pocket expenses, including long-distance telephone calls, express and overnight delivery services, computerized on-line research, and faxes, are compensable at actual cost.

(2) Mileage

Mileage should be compensable at the rate of reimbursement for official State of Maryland government travel in effect at the time the expense was incurred.

(3) Copy Work

Copy work should be compensable at a reasonable commercial rate.

Source: These Guidelines are derived in part from Guidelines adopted by the U.S. District Court for the District of Maryland that appear in Appendix B to the Local Rules of that Court.