

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Ninety-Fourth Report to the Court of Appeals, transmitting thereby proposed new Title 15, Chapter 1400 (Liens for Unpaid Wages) and new Rules 10-106.1, 10-113, 10-205.1, 10-304.1; amendments to current Rules 2-508, 3-508, 4-202, 4-213.1, 4-342, 5-606, 10-101, 10-103, 10-106, 10-108, 10-111, 10-112, 10-202, 10-301, 10-702, 19-304.2, 19-304.4, and 20-101; and three Appendices to the Rules in Title 10 (Appendix: Maryland Guidelines for Court-Appointed Attorneys in Guardianship Proceedings, Appendix: Guidelines for Court-Appointed Guardians of the Person, and Appendix: Guidelines for Court Appointed Guardians of the Property) and the proposed rescission of Rule 4-343.

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

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before September 14, 2107 any written comments they may wish to make to:

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Bessie M. Decker
Clerk
Court of Appeals of Maryland

August 14, 2017

The Honorable Mary Ellen Barbera,
Chief Judge

The Honorable Clayton Greene, Jr.

The Honorable Sally D. Adkins

The Honorable Robert N. McDonald,

The Honorable Shirley M. Watts

The Honorable Michele D. Hotten

The Honorable Joseph M. Getty,
Judges

The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its One Hundred Ninety-Fourth Report, and recommends that the Court adopt the new Rules and amendments to existing Rules transmitted with this Report. The Report comprises six categories of suggested changes.

Category One consists of a new Chapter 1400 to Title 15 of the Maryland Rules (Liens for Unpaid Wages), comprising new Rules 15-1401 through 15-1406. The new Rules are intended to implement Title 3, Subtitle 11 of the Labor and Employment Article (LE) and regulations adopted by the Commissioner of Labor and Industry (Commissioner) pursuant to the statute.

The statute, enacted in 2013, was for the purpose of providing employees an additional remedy for what evidence presented to the General Assembly showed to be pervasive "wage theft" by unscrupulous employers - the failure to pay wages due and owing to those employees, sometimes accompanied by conduct designed to avoid the practical resort to other potential remedies by the employees. The thrust of the legislation was to permit an employee, after serving notice on the employer of unpaid wages due, to file a Wage Lien Statement establishing a

lien on designated property of the employer. The employer can contest the proposed lien and avoid the filing of the Wage Lien Statement by filing a complaint in the Circuit Court within 30 days after service of the notice but, upon the failure of the employer to do so, the filing of the Wage Lien Statement suffices to establish the lien. A copy of the statute and the regulations and forms adopted by the Commissioner is attached to this Report as **Appendix A**.

The Public Justice Center advised the Rules Committee of certain difficulties it was having in implementing the statute on behalf of its clients and requested the Committee to consider proposing Rules to deal with those problems. The Committee undertook an investigation, which included a review of the legislative files and conversations with the Assistant Attorneys General attached to the Commissioner's office, judicial officials, and experts in Maryland labor and employment law. The conclusions reached were that there were some deficiencies and ambiguities in the statute itself that should be addressed by the General Assembly but that Rules could be drafted to make the existing statute more workable in a manner consistent with the overall legislative intent. Most of the issues presented are rather specific, which requires more focused explanations.

Rule 15-1401 deals with the applicability of the Chapter and definitions. The Committee note attached to section (b) calls attention to the fact that, under the statutory definition of "employer" (LE §3-1101 (b)), more than one entity, as well as certain officers or supervisory employees of an entity, may be regarded as employers or additional employers for purposes of the unpaid wage lien law. Although the language leading to that result is found in other Maryland and Federal labor and employment statutes, those other statutes contain a fuller definition of the term, which is omitted from LE §3-1101 (b).

Rule 15-1402 concerns the notice to the employer. As the Reporter's note indicates, it largely copies the requirements listed in a regulation of the Commissioner or in the form of notice approved by the Commissioner and posted on the Commissioner's website. Although the text of the regulation does not require that the notice be under oath or accompanied by an affidavit, the form approved by the Commissioner does contain that requirement. An issue arose as to the form of oath.

The Committee concluded that, with one exception, the oath should be on knowledge, information, and belief, which is the more common form, but that averments regarding the amount of wages due be on personal knowledge - the kind of oath required for summary judgment affidavits. The reason for that is to provide a higher level of confidence in that averment, which would be within the employee's personal knowledge, particularly if the employer fails to file a timely complaint and the lien is established based solely on the employee's Wage Lien Statement or, if a complaint is filed, a hearing is waived and the court must decide the matter based on the notice and the complaint. The Committee was advised that the Commissioner has no objection to that approach.

Rule 15-1403 deals with the right of the employer to contest the proposed lien by filing a complaint in the Circuit Court. That approach -- of requiring the party being proceeded against to take the affirmative step of filing a judicial action to thwart that effort -- was borrowed by the Legislature from the Contract Lien Act (Code, Real Property Article, §§14-201 through 14-206). One significant difference between the Contract Lien Act and the Wage Lien Law - one of several - is the requirement in LE §3-1103 (d)(1) that, if a complaint is filed, the court "shall determine whether to issue an order establishing a lien for unpaid wages ... within 45 days after the date on which the complaint was *filed*." (Emphasis added). There is no such time limit in the Contract Lien Act.

That provision creates both Constitutional and practical issues. The statute fails to mention any consequence for failure of the court to meet that deadline, and the Committee could not envision an acceptable one. If there is any delay in service, the court may be required to decide the case before the employee is served with the complaint or, indeed, has any notice of it, which would raise obvious and significant due process issues. Apart from that, if a genuine dispute is raised, discovery may be required, and either party may request an evidentiary hearing, either of which could make a decision within 45 days after filing of the complaint impossible.

The Committee has endeavored to deal with those problems in several ways. First, although the Court is understandably reluctant to promulgate a Rule that is inconsistent with an existing statute, it does have the Constitutional authority to adopt Rules governing practice and procedure in the courts of

the State that have the force of law, and, in light of the peculiarity of commencing the time for making a judicial decision that may constitute a final judgment upon the *filing* of a complaint and the Legislature's omission to state a consequence for failure to comply with such a requirement, the Committee recommends that the Court commence the 45 days from *service* of the complaint, which would maintain the 45-day requirement for decision but avoid the clearly lurking due process issue.¹ See section (f) of the Rule. Second, Rule 15-1403 (d) shortens the time for the employee to respond to the complaint to ten days, and section (e) requires that a hearing be held, if one is requested, within 30 days after the *earlier* of service of the complaint or the filing of a timely request by the employee.

Finally, the Committee had to deal with the prospect that, either in the employer's complaint or in a response by the employee, issues collateral to whether unpaid wages are due may be raised. Section 3-1103 (d)(1) requires only that the court "determine whether to issue an order establishing a lien for unpaid wages" within the 45-day period. The employer may have a counterclaim against the employee that may or may not affect what, if any, wages are due², and the employee, in response to a complaint, may seek double or treble damages and attorneys' fees under the Wage and Hour and Wage Payment laws.

Section (g) of the Rule provides some guidance. If the court determines that the employee is not entitled to a lien in any amount, it will enter an order so stating and, if it

¹ The closest analogy to the 45-day requirement in LE §3-1103 (d)(1), of which the Committee is aware, is in Code, Real Property Article, §8-401, requiring trial of a summary ejectment action on the fourteenth day after the complaint is filed, but (1) if only repossession is requested, service of the complaint may be made by posting on the property, which may be accomplished quickly, and (2) money damages cannot be awarded unless personal service has been made.

² The employer may disclaim an ownership interest in one or more of the properties against which a lien is sought or assert a debt due and owing by the employee. The former defense, if proved, could affect the right to a lien on that property; the latter may not affect the right to a lien but could constitute a valid claim against the employee.

determines that the employee's effort to establish a lien was frivolous or made in bad faith, it may, in accordance with LE §3-1103 (e)(2), award court costs and attorneys' fees to the employer. If the court determines that the employee is entitled to a lien in some amount, it will enter an order establishing the lien, stating the amount, identifying the property subject to the lien, and awarding court costs and attorneys' fees and such other relief as the court finds appropriate, as permitted in LE §3-1103 (e)(1). If determination of the lien is not dispositive of all issues, subsection (g)(3) of the Rule provides that the court shall direct that those extraneous issues be resolved in accordance with the court's case management plan. That will allow the lien to be resolved within the 45-day period without prejudice to a later adjudication of any collateral issues.

Rule 15-1404 deals with the filing and recording of a Wage Lien Statement. It incorporates the provisions of LE §§3-1104 and 3-1105. Rule 15-1405, dealing with extinguishment and release of the lien, implements LE §3-1105 (d).

Rule 15-1406 provides for enforcement of a lien and addresses a gap in the statute. LE §3-1106 (a) provides that "[a]n order for a lien for unpaid wages shall be enforced in the same manner as any other judgment under State law." (Emphasis added). That does not present a problem when the employer files a complaint under LE §3-1103 and Rule 15-1403 and the court, finding for the employee, enters an order establishing the lien. The gap is where the employee fails to file a complaint and the lien is established when, upon that default, the employee records a Wage Lien Statement pursuant to LE §3-1105 (b) and Rules 15-1403 (h) and 15-1404 (a). In that situation, there is no "order for a lien." Coupled with that is the possibility that the employer failed to file a complaint because the notice was never properly served, notwithstanding the employee's allegation to the contrary, and thus was unaware of the claim or the lien.

The Committee was deeply concerned about the Constitutionality of enforcing a lien -- selling someone's property -- based solely on the recording of a Wage Lien Statement, which is not a judgment and which did not arise from any judicial proceeding. Yet, in order for the employee to recover the unpaid wage, the ability to enforce the lien is critical. The Committee undertook to deal with the problem by

providing a procedure in Rule 15-1406 (b) for the employee to file a petition in a Circuit Court having venue as set forth in the Rule to confirm the lien. The petition would be served on the employer, and, after a hearing, if one is requested, the court would determine whether the employee is entitled to enforcement of the lien. The employee could record a confirmatory order in any Circuit Court where enforcement of the lien is sought and thereafter invoke the collection procedures provided for by law.

Category Two consists of revisions to the Rules in Title 10 of the Maryland Rules dealing with guardianships, principally the Rules in Chapters 100 (General Provisions), 200 (Guardian of Person), and 300 (Guardian of Property), and Rule 10-702 dealing with bonds in fiduciary estates. These revisions are intended to implement recommendations crafted by the Guardianship Work Group of the Domestic Law Committee of the Judicial Council that were ultimately approved by the Council. A copy of the Work Group's Final Report and Recommendations is attached as **Appendix B**. The Committee worked closely with members of the Work Group and the Domestic Law Committee in the development of the proposed changes to the Rules.

The thrust of the Work Group's recommendations and the proposed Rules changes, apart from some updating and clarification, is to assure that persons appointed by a court as either a guardian or as an attorney for minors or disabled persons have a clear understanding of their roles, authority, obligations, and responsibilities and are competent to carry out their duties in a timely and proper manner. As this Court has made clear, "[i]n reality the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility." *Mack v. Mack*, 329 Md. 188, 201 (1993), quoting from *Kicherer v. Kicherer*, 285 Md. 114, 119 (1979). The court thus has a special interest and responsibility to assure that only qualified persons are appointed to these positions.

Rule 10-101 (Applicability of Title; Jurisdiction) is amended to make clear that the Rules apply not just to guardianships created in a circuit court but also to guardianships of minors created in an orphans' court. Code, Estates and Trusts Article, §13-105 permits an orphans' court to exercise jurisdiction over guardianship of the person of a minor if the presiding judge is a member of the Bar. Some orphans' courts do exercise that jurisdiction; others do not.

Rule 10-103 (b)(2) is amended to conform to a 2017 statute (Chapter 666, Laws of 2017).

Rule 10-106 is largely reorganized for style and clarification, but significant amendments are added to implement several of the Work Group's recommendations. The current Rule provides for the appointment of attorneys and investigators when a petition for guardianship is filed. By statute, an attorney must be appointed for an alleged disabled person; appointment of an attorney for a minor is discretionary. The reason for that is explained in a Committee note to subsection (a)(1). The attorney is to represent the minor or alleged disabled person; the investigator is to make an independent investigation of the facts and make a report to the court. Because their duties are quite different, the Committee recommends moving the provisions dealing with the investigator to a separate Rule (Rule 10-106.1) and limiting Rule 10-106 to the attorney.

The current Rule requires the court to appoint an attorney for an alleged disabled person who is not already represented by an attorney. The Committee has added a clarification that, to avoid appointment of an attorney by the court, any attorney currently representing the alleged disabled person must be an attorney of that person's own choice, which the Committee takes to mean free and informed choice. That qualification is required by statute (Code, Estates and Trusts Article (ET), §13-705 (d)) and is important.

A major change is in subsection (b)(1), dealing with eligibility for appointment as an attorney, which is intended to implement Recommendations 1, 2, and 3 of the Work Group. The current Rule contains no required qualifications for court appointment. The Committee has proposed three: first, that the attorney be a member in good standing of the Maryland Bar; second, that the attorney provide satisfactory evidence of financial responsibility; and third, unless waived by the court, the attorney have been trained in aspects of guardianship law and practice in conformance with Guidelines attached as an Appendix to the Rules in Chapter 100. Guidelines have been drafted by the Judicial Council Work Group, similar in format to those in place for court-appointed attorneys in CINA, TPR, adoption, and child access cases. In addition, subsection (b)(2), borrowing from the Rules governing the referral of civil cases to ADR, recommends that the courts fairly distribute

appointments among eligible attorneys, taking into account relevant experience and the complexity of the case.

In section (c), dealing with fees, the Rule directs that, in determining the reasonableness of a fee, the court shall apply the factors set forth in Rule 2-703 (f) (factors required to be considered in determining the reasonableness of a fee in fee-shifting cases) and the *Guidelines Regarding Compensable and Non-Compensable Attorneys' Fees and Related Expenses*, currently included in an Appendix to the Rules in Title 2, Chapter 700³. Subsection (c)(1) retains a provision in the current Rule requiring a fee for an attorney representing an alleged disabled person to be paid by the State if the person's estate is insufficient, which is required by statute, but notes that there is no similar statutory requirement where the attorney is appointed to represent a minor.

Finally, section (d) deals with the duration of an appointment. The role of the attorney at this stage is to represent the alleged disabled person (or minor) with respect to whether a guardianship should be created and, if so, whether it should be a guardianship of the person, the property, or both, who should be appointed as a guardian, and whether there should be any special limitations on the guardian's authority. In most instances, once those issues are determined and a guardian is appointed, the guardian will represent the best interests of the disabled person or minor, and there is no need for a court-appointed attorney. The current Rule provides for termination of the appointment in that situation.

With the support of the Judicial Council Work Group, the Committee has added two provisions. First, subsection (d)(2) requires an appointed attorney to inform the court immediately of any present or impending conflict of interest or other inability to continue serving in that capacity. That is likely required in any event by the Code of Professional Responsibility but, because the representation resulted from appointment of the attorney by the court, rather than employment of the attorney by the client, the Committee believes it is useful to make that duty clear as well in the guardianship Rules. Second, subsection (d)(4) permits the court to continue the appointment, or make a new appointment or reappointment after a guardianship has been established, if the court finds that to be in the

³The Appendix is placed correctly in the West publication of the Rules, and it is located in Volume 2, pp. 1160-1161 of the Michie publication.

minor's or disabled person's best interest, but, in that instance, the court must state the scope of the representation to avoid unnecessary conflicts with the guardian.

Rule 10-106.1 deals with the appointment of independent investigators. It defines more clearly than the current Rule the role of the investigator, both before and after the establishment of a guardianship.

Some of the amendments to Rule 10-108, dealing with the order establishing the guardianship, are clarifying or matters of style, but there are two that are more substantive. A new subsection (a)(1)(H), with two exceptions, requires the guardian to complete an orientation program and training in conformance with applicable *Guidelines for Court-Appointed Guardians*, attached as an Appendix to the Title 10 Rules. The training program and the *Guidelines* have been developed or approved by the Judicial Council Workgroup. The second substantive change is in subsection (a)(2), which confirms that information in the order and papers filed by the guardian that are shielded from public access by the Rules in Title 16, Chapter 900 shall remain confidential but allows the court to permit the guardian to disclose that information when necessary to the administration of the guardianship. A Committee note following that subsection notes the reason for that provision.

Finally, section (b) calls attention to the fact that the Code speaks of "letters of guardianship," which is an antiquated term that courts have not been using. They issue guardianship orders. To avoid any confusion, section (b) simply provides that an order appointing a guardian constitutes "letters of guardianship."

Several amendments are proposed to Rules 10-111 and 10-112 - the forms required for guardianship petitions. They are clarifying in nature.

Rule 10-113 is new. It sets forth guidelines for determining when an individual who has been convicted of an offense listed in Code, ET §11-114 that ordinarily would disqualify the individual from serving as a guardian may nonetheless be appointed.

Rule 10-202 (a) is amended to delete the mandated contents of the certificates required to be filed with the guardianship petition. The law permits certificates to be signed by

physicians, psychologists, and certified clinical social workers, and some of the contents relating to the professional qualifications of the certifier and the nature of their examination of the alleged disabled person will differ as a result. The Judicial Council Work Group is developing forms of certificate for each of those professions and, at their request, the Rule is amended to require that the certificate be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the clerks' offices.

New Rules 10-205.1 and 10-304.1 are proposed to fill a gap in the current Rules. The Code (ET §13-705) sets forth criteria for determining whether a guardianship of the person should be established. ET §13-201 contains criteria for determining whether a guardianship of the property should be established. Section (a) of the two new Rules requires the court to apply those respective criteria. The Code (ET §§13-707 and 13-207) sets forth criteria for determining whom to appoint as a guardian of the person and of the property; section (b) of the new Rules directs the court to apply those criteria and, with respect to an individual, to give preference to an individual who has completed or commits to complete the training program in conformance with the applicable *Guidelines*.

In Rule 10-301, dealing with a petition for appointment of a guardian of the property, a Committee note is added calling attention to the amendment to Rule 10-202 regarding the required certificates.

Rule 10-702, dealing with the bond to be filed by a fiduciary, is amended to provide factors for the court to consider in determining whether a bond should be required when one is not required by law or by the instrument creating the fiduciary estate and to revise a standard for determining the amount of a bond. In that regard, the current Rule requires that the amount of the bond shall not exceed the aggregate value of the property in the estate, less the value of securities, money on deposit that requires a court order for removal, and real property that the fiduciary lacks the power to sell without a court order. The amendment broadens that provision to require that the amount of the bond be set based on the value of the property in the estate that is or will be under the fiduciary's control and that the fiduciary will have authority to expend, encumber, or convey without further order of the court but moves

the current language to a Committee note as examples. The Committee saw no need to require the bond to include the value of any property that the fiduciary cannot convey or spend without a court order.

Finally, in this Category, the Committee proposes including as Appendices to the guardianship Rules the three sets of Guidelines developed by the Judicial Council Work Group - *Maryland Guidelines for Court-Appointed Attorneys in Guardianship Proceedings*, *Guidelines for Court-Appointed Guardians of the Person*, and *Guidelines for Court-Appointed Guardians of the Property*.

Category Three consists of amendments to Rules 4-202 and 4-213.1, to implement Chapter 606 of the Laws of 2017. That Act shifts responsibility for determining indigence for purposes of representation by the Office of the Public Defender from that Office to District Court commissioners, at least with respect to criminal proceedings. Current Rule 4-202 requires charging documents to advise defendants that, if they want representation by the Public Defender, the clerk will explain how to contact the Public Defender. The amendment informs the defendant to contact a District Court commissioner. Rule 4-213.1 (d) is amended to provide that the affidavit to be completed by the defendant is on a form approved by the Chief Judge of the District Court, rather than the Public Defender, and section (g) is amended to reflect that the commissioner makes the determination of indigence.

Category Four comprises amendments to Rules 4-342 and 5-606 and the deletion of Rule 4-343 to take account of the Court's decision in *Bellard v. State*, 452 Md. 467 (2017), that defendants facing a possible sentence of life without parole are not entitled to a jury trial with respect that issue.

Category Five consists of amendments to Rules 19-304.2 and 19-304.4. Prior to April 1, 2017, Rule 19-304.4 (Respect for Rights of Third Persons) contained a provision that, in communicating with third persons, an attorney representing a client in a matter shall not seek information that the attorney knows or should know is protected from disclosure unless the protection has been waived. In its 191st Report, the Committee proposed amendments to the Rule dealing with other matters to bring it in closer alignment with the American Bar Association's

Ethics 2000 recommendations and, in the course of doing so, proposed the deletion of that language. The Court adopted the recommendation. The Committee has since been informed that several cases have referred to that language and that it has significance. The Committee proposes to restore it and to make a conforming amendment to Rule 19-304.2.

Category Six consists of "housekeeping" amendments to three recently amended Rules. The amendments correct internal references in Rules 2-508, 3-508, and 20-101.

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

Respectfully submitted,

Alan M. Wilner
Chair

AMW:cdc
cc: Bessie M. Decker, Clerk

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1400 - LIENS FOR UNPAID WAGES

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MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1401, as follows:

Rule 15-1401. APPLICABILITY; DEFINITIONS

(a) Applicability

This Chapter applies to the establishment of liens for unpaid wages governed by Code, Labor and Employment Article, Title 3, Subtitle 11. To the extent that the Commissioner of Labor and Industry, acting pursuant to Code, Labor and Employment Article, §3-1109, acts on behalf of an employee, the Commissioner shall be regarded as the employee for purposes of filing, sending, and serving notices, pleadings, and other papers.

(b) Definitions

In this Chapter, (1) the definitions in Code, Labor and Employment Article, §3-1101 apply except as expressly otherwise provided or as necessary implication requires, and (2) "LE" means the Labor and Employment Article of the Maryland Code.

Committee note: LE §3-1101 (b) defines "employer" as "includ[ing] a person who acts directly or indirectly in the interest of another employer with an employee." That language also appears in the definition of "employer" in the Federal Fair Labor Standards Act (29 U.S.C. §203 (d)), the Maryland Wage and Hour Law (LE §3-401 (b)), the Maryland Equal Pay Act (LE §3-301

(b)(2)), and the Maryland adoption, medical, and parental leave laws (LE §§3-801, 3-802, and 3-1201). The scope of that provision is defined, with respect to both multiple employers and corporate officers and supervisory personnel, in Federal and Maryland case law and regulations. See, for example, *McFeeley v. Jackson Street Entertainment*, 825 F.3d 235 (4th Cir. 2016); *Perez v. Sanford-Orlando Kennel Club*, 515 F.3d 1150 (11th Cir. 2008); *Newell v. Runnels*, 407 Md. 578 (2009); 29 C.F.R. §825.104. Under those interpretations, depending on the facts, it is possible that more than one entity as well as certain officers or supervisory employees of an entity may be regarded as employers or additional employers for purposes of the unpaid wages lien law. Each such person against whom a lien is sought must be separately identified in, and served with, all notices, pleadings, and other papers affecting the person.

Source: This Rule is new.

REPORTER'S NOTE

The Public Justice Center ("Center" or "PJC") requested Rules to assist in the implementation of the Maryland Unpaid Wage Lien Law ("WLL") Code, Labor and Employment Article, Title 3, Subtitle 11, which was passed as Chapter 541 of the 2013 session. The Center requested that Rules be adopted to address its two main concerns: (1) the inability of plaintiffs to enforce liens that arose by operation of law under the WLL and (2) the need to fill gaps in the statute as to hearing procedures when a wage lien has been contested.

Under the Wage Lien Law, an employee who believes that he or she is owed wages may provide a written notice to his or her employer of the wages claimed and the property, real or personal, against which a lien for unpaid wages is sought. LE §3-1102. If the employer wishes to dispute the lien for unpaid wages, the employer must file a complaint in the circuit court where the employer's property is located within 30 days after a notice is served on the employer. LE §3-1103 (b). If the employer does not timely file a complaint, a lien for unpaid wages is established. LE §3-1104 (2). The employee may then record the lien for unpaid wages by filing a wage lien statement in one of two ways. A lien against real property may be recorded on a form prescribed by the Commissioner of Labor and Industry with the clerk of the circuit court for the county where any portion of the property is located. LE §3-1105 (c)(1). A lien against personal property is recorded by filing

a wage lien statement with the State Department of Assessments and Taxation in the same manner and form as a financing statement under Title 9, Subtitle 5 of the Commercial Law Article. LE §3-1105 (c)(2). In the words of the Center, these are the liens that arise "by operation of law."

If the lien is contested by the employer filing a complaint, "the circuit court shall determine whether to issue an order establishing a lien for unpaid wages (1) within 45 days after the date on which the complaint was filed; and (2) based on a preponderance of the evidence on which the employee has the burden of proof to establish a lien for unpaid wages." LE §3-1103 (d). Either party may request an evidentiary hearing. LE §3-1103 (c).

After passage of the statute, the Center was unsuccessful in having writs of garnishment entered against the employer by the District Court based on liens that arose by operation of law. At the request of Chief Judge Morrissey of the District Court, a special subcommittee reviewed the statute and concluded that when the lien arose by operation of law, there was nothing for the District Court to enforce. There was no order or case number, and no judgment had been entered. The statute - §3-1106 (a) - says that "An order for a lien for unpaid wages shall be enforced in the same manner as any other judgment under State law." (Emphasis added).

The Center then wrote to the Rules Committee, which assigned the inquiry to the Specific Remedies Subcommittee. The Subcommittee agreed with the District Court that when there has been no court order, the mere recordation of a lien that arises by operation of law does not create an enforceable judgment. The Subcommittee concluded that it was within the Rulemaking authority of the Court of Appeals to create a process whereby an employee lienholder could petition a court for an order confirming a lien that arose by operation of law, and made a proposal to that effect to the Rules Committee.

The proposed Rules in this Chapter flesh out the kernel of that idea, and they address gaps in the statute that hinder effective implementation. The Committee note to Rule 15-1401 recognizes the elasticity of the term "employer" as used in the statute, other statutes that are *in pari materia*, regulations, and case law, and therefore advises that "each such person against whom a lien is sought" as an employer "must be separately identified in, and served with, all notices, pleadings, and other papers affecting the person."

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1402, as follows:

Rule 15-1402. NOTICE TO EMPLOYER - REQUIREMENTS

(a) Generally

To establish a lien for unpaid wages due and owing to an employee under LE Title 3, Subtitle 11, the employee shall serve on the employer a Notice to Employer of Intent to Claim Lien for Unpaid Wages that (1) complies with the requirements of section (b) of this Rule and with regulations adopted by the Commissioner of Labor and Industry, and (2) is under oath or supported by an affidavit. The oath or affidavit shall be made to the best of the employee's knowledge, information, and belief, except that an oath or affidavit as to the amount of unpaid wages due and owing shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

(b) Contents

In addition to any other information required by regulations of the Commissioner of Labor and Industry, the

notice shall contain (1) the name, address, telephone number (if any), and e-mail address (if any) of the employee seeking the lien; (2) the name and address of the employer against whose property a lien is sought; (3) the dates of the employee's employment by the employer; (4) the dates for which wages are due and owing but were not paid; (5) the basis for the claim that wages were due and owing by the employer but were not paid; (6) the monetary amount of the lien sought; (7) a description of the real or personal property, or both, of the employer against which the lien is sought adequate to identify the property, the name of the owner, and the location of the property; and (8) notice to the employer of the employer's right to dispute the lien by filing a complaint in the circuit court for the county in which any of the listed property is located within 30 days after service of the notice.

Committee note: LE §3-1102 (3) requires that the notice to the employer contain "the information required by the Commissioner of Labor and Industry under §3-1110 of this Subtitle to provide the employer with adequate notice of the wages claimed and the property against which the lien for unpaid wages is sought." The list in section (b) is taken almost verbatim from COMAR 09.12.39.02B.

(c) Service

The notice shall be personally served in accordance with Rule 2-121.

Source: This Rule is new.

REPORTER'S NOTE

Code, Labor and Employment Article, §3-1102 requires that to establish a lien for unpaid wages, an employee first provides notice to the employer that:

(1) is served on the employer within the statute of limitations period under §5-101 of the Courts Article;

(2) is personally served in accordance with Maryland Rule 2-121; and

(3) contains the information required by the Commissioner under LE §3-1110 to provide the employer with adequate notice of the wages claimed and the property against which the lien for unpaid wages is sought.

The Rules Committee proposes that the statute be implemented in the following ways. First, the list contained in section (b) of Rule 15-1402 is taken almost verbatim from the regulations of the Commissioner of Labor and Industry. See COMAR 09.12.39.02B. Second, although the text of the Commissioner's regulations does not require that the notice be under oath, the form that the Commissioner adopted and that is on the Commissioner's website does require that the notice be under oath. Proposed Rule 15-1402 (a) expands upon that by requiring that the oath in the Notice take the form of a general oath pursuant to Rule 1-304 and be made "to the best of the employee's knowledge, information, and belief." However, an employee's affidavit with respect to the amount of wages due and owing should be similar to the affidavit required in support of a motion for summary judgment under Rule 2-501 (c); i.e., that the oath be made upon personal knowledge, set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. Rule 15-1402 (a).

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1403, as follows:

Rule 15-1403. RIGHT OF EMPLOYER TO CONTEST PROPOSED LIEN;
PROCEDURE; CONSEQUENCE OF FAILURE TO CONTEST

(a) Right to Contest Lien

Within 30 days after the employer is served with the notice pursuant to Rule 15-1402, the employer may contest the proposed lien by filing a complaint in the circuit court for any county in which any of the property identified in the employee's notice is located.

(b) Requirements of Complaint

A complaint shall include or be accompanied by:

(1) a copy of the notice that was served on the employer in accordance with Rule 15-1402;

(2) the date that the notice was served on the employer;

(3) the names and addresses of the employer and employee named in the Notice of Intent to Claim Lien for Unpaid Wages;

(4) an explanation of why the wages claimed by the employee are not due and owing by the employer;

(5) a statement of any other defense to the proposed lien for unpaid wages;

(6) a statement of whether the employer has an ownership interest in the property identified in the notice and the nature of the interest;

(7) an affidavit containing a statement of facts that support any defenses raised;

(8) a description of supporting documents with the supporting documents attached;

(9) if the employer wants a hearing, a separate request for hearing in bolded lettering at or near the caption of the complaint;

(10) a statement that, within 10 days after service of the complaint, the employee may file (A) an answer to the complaint, (B) a motion to dismiss the complaint, or (C) a withdrawal of the Notice of Intent to Claim Unpaid Wages, and may request a hearing as part of a response or in a separate document; and

(11) any other statement or information required by regulation of the Commissioner of Labor and Industry adopted pursuant to Code, LE §§3-1104 and 3-1110.

(c) Service

The complaint shall be served on the employee pursuant to Rule 2-121.

(d) Response by Employee

Within ten days after being served with the complaint, the employee may file (1) an answer to the complaint, (2) a motion to dismiss the complaint, or (3) a withdrawal of the Notice of Intent to Claim Lien for Unpaid Wages and may request a hearing as part of a response or in a separate document. A request for a hearing shall be made in bolded lettering at or near the caption of the response or document in which the hearing is requested. The court may not enter an order of default based upon an employee's failure to file a timely response to the complaint.

(e) Hearing

If a request for a hearing is filed by the employer or employee, the court shall hold a hearing no later than 30 days after the earlier of (1) service of a complaint that includes a request, or (2) the filing of a timely request by the employee.

(f) Determination

Within 45 days after service of the complaint, the circuit court shall determine whether to issue an order establishing a lien for unpaid wages in accordance with LE §3-1103. The employee has the burden of proof to establish the employee's right to the lien based a preponderance of the evidence. If there are any issues raised by either party the resolution of which is not necessary to the determination of

whether a lien should be established or the amount thereof, the court may defer determination of those issues.

(g) Order

(1) In Favor of Employer

If the court determines that the employee is not entitled to a lien in any amount for unpaid wages, it shall enter an order so stating. If the court determines that the employee's effort to establish a lien for unpaid wages was frivolous or made in bad faith, the court may award court costs and reasonable attorney's fees to the employer.

(2) In Favor of Employee

If the court determines that the employee is entitled to a lien in any amount, it shall enter an order (A) establishing the lien, (B) stating the amount of the lien and identifying each item of property that is subject to the lien, and (C) awarding such other relief as the court finds appropriate, including a stay of enforcement.

Cross reference: Rule 15-1403 (g)(2) is derived, in part, from LE §3-1103 (d)(2).

(3) Determination of Other Issues

If determination of the lien is not dispositive of all issues, the order shall direct that those issues be resolved in accordance with the court's case management plan.

(h) Consequence of Failure to File Timely Complaint

If the employer fails to file a timely complaint pursuant to section (a) of this Rule, the lien is established and the employee may record a Wage Lien Statement pursuant to Rule 15-1404.

Source: This Rule is new.

REPORTER'S NOTE

Code, LE §3-1103 (d) requires a decision by the court "within 45 days after the date on which the complaint was filed" but fails to indicate a consequence for failure to meet that deadline. A decision may not be possible or feasible within 45 days from the date of filing if there is any delay in serving the employee, especially if either party requests a hearing. There appear to be two ways to deal with this problem, each involving a departure from the statute. One is to have the 45 days date from service of the complaint, rather than from the date of its filing; the other is to allow the court to postpone a decision upon a showing of good cause.

Because a time requirement for a judicial decision involves practice and procedure in the courts, the Committee believes that the Court of Appeals has the power under Art. IV, §18 of the Md. Constitution to alter that deadline by Rule. The Court rarely exercises its power to supersede statutes, but there may be a need to do so in this instance. The prospect of the court ruling against an employee who was never served with the complaint and had no opportunity to contest it raises significant due process issues. The Committee's proposal is set forth in section (f) of the Rule -- a recommendation that the 45 days date from *service* of the complaint.

Proposed Rule 15-1403 also addresses gaps in the statute and implementing regulations. In addition to the information that is already required by the WLL and in regulations of the Commissioner of Labor and Industry, see COMAR 09.12.39.03B, proposed Rule 15-1403 requires that the complaint include or be accompanied by a copy of the notice that was served on the employer (Rule 15-1403 (b)(1)), the names of the employer and employee named in the Notice of Intent to Claim Lien for Unpaid Wages (Rule 15-1403 (b)(3)), a statement of any other defense to the proposed lien (beyond the required explanation of why the

wages claimed by the employee are not due and owing)(Rule 15-1403 (b)(5)), a statement whether the employer has an ownership interest in the property identified in the notice and the nature of the interest (Rule 15-1403 (b)(6)), if the employer wants a hearing, a separate request for a hearing in bolded lettering at or near the caption of the complaint (Rule 15-1403 (b)(9)), a statement that within 10 days after service of the complaint, the employee may file an answer to the complaint, a motion to dismiss the complaint, or a withdrawal of the Notice of Intent to Claim Unpaid Wages, and may request a hearing as part of a response (Rule 15-403 (b)(10)), and any other statement or information required by the Commissioner (Rule 15-1403 (b)(11)). Proposed Rule 15-1403 (c) requires that the complaint be served on the employee.

Proposed Rule 15-1403 (d) governs a response by an employee, and provides that within 10 days after being served with the complaint, the employee may file an answer to the complaint, a motion to dismiss the complaint, or a withdrawal of the Notice of Intent to Claim Unpaid Wages, and may request a hearing. The court may not enter an order of default based on an employee's not filing a timely response to the complaint.

Proposed Rule 15-1403 (e) provides that if a request for a hearing is filed by the employer or employee, the court shall hold a hearing no later than 30 days after the earlier of service of a complaint that includes a request or the filing of a timely request by the employee.

Proposed Rule 15-1403 (f) recognizes that there may be issues raised by either of the parties the resolution of which are not necessary to the determination of whether a lien should be established or the amount thereof. While the circuit court is required to determine whether to issue an order establishing a lien for unpaid wages within 45 days after service of the complaint, the court may defer determination of those other issues that are not necessary to that primary question. Proposed Rule 15-1403 (g)(3) provides that if determination of the lien is not dispositive of all issues, the court shall direct that those issues be resolved in accordance with the court's case management plan.

It was the Committee's objective to strike a balance between the statutory goal of providing a relatively fast process for resolving a contested proposed wage lien while

assuring fundamental fairness to the parties in the process, and to ensure that the court gets the necessary information for it to make its determination.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1404, as follows:

Rule 15-1404. FILING AND RECORDING OF WAGE LIEN STATEMENTS

(a) Generally

If the court issues an order pursuant to Rule 15-1403 establishing a lien or if the employer fails to file a complaint within 30 days after service of the notice served pursuant to Rule 15-1402, the employee may file for recording a Wage Lien Statement as prescribed in this Rule.

(b) Time for Filing

A Wage Lien Statement shall be filed within 180 days after (1) entry of an order issued pursuant to Rule 15-1403 (g)(2), or (2) if the employer failed to file a timely complaint pursuant to Rule 15-1403 (h), the time for employer response has elapsed.

(c) Lien Against Real Property

A Wage Lien Statement that includes a lien against real property shall be in the form prescribed by the Commissioner of Labor and Industry and shall be filed with the Clerk of the Circuit Court for the county in which any portion of the property is located. The lien shall be recorded among the land

records of the county. The recording fee shall be equal to the fee for recording a District Court judgment as a lien.

Cross reference: See LE §3-1105 (c)(1) and COMAR 09.12.39.04.

(d) Lien Against Personal Property

A Wage Lien Statement that includes a lien against personal property shall be filed in the same manner, form, and place as a financing statement under Code, Commercial Law Article, Title 9, Subtitle 5.

Committee note: Code, Commercial Law Article, §9-501 requires financing statements to be filed with the State Department of Assessments and Taxation. Note §§9-509, 9-516, and 9-526 with respect to requirements that apply to the acceptance of financing statements.

(e) Priority

A lien for unpaid wages recorded under this Rule shall be considered a secured claim that has priority (1) if the lien was established by a court order pursuant to Rule 15-1403, from the date the order was docketed, or (2) if no complaint disputing the claim was filed, from the date the employee filed the Wage Lien Statement for recording.

Cross reference: See LE §3-1105 (f) providing constructive notice of an unpaid wage lien from the date the Wage Lien Statement is recorded.

REPORTER'S NOTE

Proposed Rule 15-1404 tracks the provisions of the Lien for Unpaid Wages law. Proposed Rule 15-1404 (c) adds that the fee charged for filing a wage lien statement against real property shall be the amount for recording a District Court judgment as a lien.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1405, as follows:

Rule 15-1405. EXTINGUISHMENT OR RELEASE OF LIEN

(a) Extinguishment

If an employee fails to record a Wage Lien Statement within 180 days after the lien for unpaid wages is established, the lien shall be extinguished without prejudice.

(b) Release

The employee shall file a release of the lien if (1) full payment of the amount of the lien is made, or (2) a bond or other security in that amount is filed in a manner consistent with the Rules in Title 1, Chapter 400.

Source: This Rule is new.

REPORTER'S NOTE

Proposed Rule 15-1405 implements, with clarifying and stylistic changes, Code, Labor and Employment Article, §3-1105 (d).

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1406, as follows:

Rule 15-1406. ENFORCEMENT OF LIEN

(a) Manner of Enforcement

Upon the entry of an order establishing a lien pursuant to Rule 15-1403 (g)(2) or a confirmatory order pursuant to section (b) of this Rule, the employee may enforce the lien in the manners set forth in Rules 2-641 through 2-647, except that the lien may be enforced only upon the property specified in the order and provided that the lien has not been extinguished pursuant to Rule 15-1404 (b)(2). Waiver of prepayment of costs for the enforcement proceeding is governed by Rule 1-325.

Cross reference: See LE §3-1106.

(b) Order Confirming Lien Established Pursuant to Rule 15-1403 (h)

(1) Generally

Upon the establishment and continued existence of a lien pursuant to Rule 15-1403 (h) through the timely filing of a Wage Lien Statement after the failure of the employer to file a timely complaint to contest the proposed lien, the employee may

enforce the lien in the manner provided in section (a) of this Rule after obtaining a confirmatory order pursuant to this section.

(2) Petition for Confirmatory Order

(A) Generally

The employee may seek an order confirming the lien by filing a petition for such an order. Unless prepayment of costs is waived pursuant to Rule 1-325, the petition shall be accompanied by a filing fee in an amount equal to the fee for filing a request for issuance of a writ of garnishment in the circuit court.

(B) Venue

If the petition seeks a confirmatory order enforcing the lien against real property, the petition shall be filed in the circuit court for the county where any part of the real property identified in the Wage Lien Statement is located. If the petition seeks a confirmatory order enforcing the lien against personal property, the petition shall be filed in the circuit court for the county where the property identified in the Wage Lien Statement is located. If the employee seeks to enforce the lien against both real and personal property, separate petitions may be filed, subject to transfer of the proceeding against personal property to the court where the proceeding against real property is pending.

(C) Contents

The petition shall be under oath or supported by affidavit and shall state or be accompanied by:

(i) the names and addresses of the employee and the employer;

(ii) the amount of the lien;

(iii) whether the lien remains in existence;

(iv) what, if any, payments have been made on the unpaid wages for which the lien was established;

(v) a copy of the Notice to Employer of Intent to Claim Lien for Unpaid Wages;

(vi) the date and manner of service of the Notice and proof of such service;

(vii) the failure of the employer to file a timely complaint to contest the proposed lien;

(viii) a copy of the Wage Lien Statement recorded pursuant to Rule 15-1404 and each place where that Statement was filed and recorded; and

(ix) an adequate description of each item of property against which the lien is sought to be enforced, including the nature of the item and where it is located.

(D) Service; Proof of Service

The petition shall be served on the employer in accordance with Rule 2-121. Proof of service shall be filed in accordance with Rule 2-126.

(3) Consolidation Upon Transfer

Upon any transfer pursuant to subsection (b)(2)(B) of this Rule, the cases shall be consolidated unless the court, for good cause, orders otherwise.

(4) Determination and Order

After an opportunity for a hearing if one is requested, the court shall determine whether the employee is entitled to enforcement of the lien. If the court determines that the employee is entitled to enforcement of the lien, the court shall enter an order confirming the lien. If the court determines that the employee is not entitled to enforcement of the lien, the court shall enter an appropriate order, which may include dissolving the lien.

(5) Recordation of Confirmatory Order

The employee may record a confirmatory order in any circuit court in which enforcement of the lien is sought.

Source: This Rule is new.

REPORTER'S NOTE

Proposed Rule 15-1406 establishes a process for an employee to obtain a court order confirming a lien arising by operation of law so that the employee may enforce the lien in the manners

set forth in Rules 2-641 through 2-647, and may record a confirmatory order in any circuit court in which enforcement of the lien is sought.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-101 by adding to section (a) language pertaining to proceedings for guardianship of the property of minors, language pertaining to proceedings for both guardianships of the person and the property, and language pertaining to proceedings whether in a circuit or an orphans' court; and by making stylistic changes, as follows:

Rule 10-101. APPLICABILITY OF TITLE; JURISDICTION

(a) Applicability

Except as otherwise provided by law, the rules in this Title apply to proceedings concerning: (1) the guardianship of minors, and their property, or both, whether in a circuit court or an orphans' court, (2) the guardianship of disabled persons, ~~or their property, or both;~~ ~~(2)~~ (3) a fiduciary estate; and ~~(3)~~ (4) the distribution of property belonging to an absent or unknown person.

(b) Scope of Jurisdiction

In proceedings under this Title, the court may exercise its jurisdiction generally or for a limited purpose. An investment in a common trust fund by a fiduciary administering

an estate subject to the jurisdiction of a court does not bring the administration of the common trust fund under the jurisdiction of the court.

Cross reference: For the definition of "common trust fund," see Code, Financial Institutions Article, §3-501 (b).

Committee note: The rules in this Title do not apply to a guardian with the right to consent to adoption (Code, Family Law Article, §5-301 *et seq.* and Title 9, Chapter 100 of these rules); a trustee appointed to foreclose a mortgage or deed of trust or to make a judicial sale (Title 14, Chapters 200 and 300 of these rules); a trustee of a recovery by a minor in tort (Code, Estates and Trusts Article, §13-401 *et seq.*); a custodian of property under the Maryland Uniform Transfers to Minors Act (Code, Estates and Trusts Article, §13-301 *et seq.*); or a receiver or assignee for the benefit of creditors (Title 13 of these Rules).

Source: This Rule is derived in part from former Rule V71 and is in part new.

REPORTER'S NOTE

The Guardianship Work Group of the Domestic Law Committee of the Judicial Council recommended amendments to the Guardianship Rules. Based upon those recommendations, the Rules Committee proposes numerous amendments to the Rules in Title 10.

Proposed amendments to Rule 10-101 (a) clarify that proceedings for guardianship of minors or their property or both can be held in a circuit or an orphans' court. Concurrent jurisdiction of guardianships of minors is provided for in Code, Estates and Trusts Article, §13-105. Stylistic changes to section (a) also are made.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-103 by deleting the word "confinement" from subsection (b)(2), as follows:

Rule 10-103. DEFINITIONS

. . .

(b) Disabled Person

(1) In connection with a guardianship of the person, "disabled person" means a person, other than a minor, who, because of mental disability, disease, habitual drunkenness, or addiction to drugs, has been adjudged by a court to lack sufficient understanding or capacity to make or communicate responsible decisions concerning himself or herself, such as provisions for health care, food, clothing, or shelter, and who, as a result of this inability, requires a guardian of the person.

(2) In connection with a guardianship of property, "disabled person" means a person, other than a minor, (A) who has been adjudged by a court to be unable to manage his or her property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs,

imprisonment, compulsory hospitalization, ~~confinement~~, detention by a foreign power, or disappearance, (B) who has or may be entitled to property or benefits that require proper management, and (C) who, as a result of this inability, requires a guardian of the property.

. . .

REPORTER'S NOTE

Chapter 666, Laws of 2017 (HB 81) repealed "confinement" as a condition of disability for purposes of guardianship proceedings to protect an individual's property. The proposed amendment to Rule 10-103 (b)(2) conforms the Rule to the statutory change.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-106 by changing the title, by deleting the second sentence in subsection (a)(1), by adding a Committee note after subsection (a)(1), by deleting language at the end of subsection (a)(2) pertaining to the deposit of money into the court registry or the appointed attorney's escrow account, by adding a Committee note at the end of section (a), by adding a new section (b) pertaining to an attorney's eligibility for appointment, by adding a new section (c) pertaining to fees; by adding a cross reference after subsection (c)(3), by adding a new subsection (d)(2) pertaining to other reasons for termination of an attorney's appointment, by adding a new subsection (d)(4) pertaining to an attorney's appointment after a guardianship is established, by deleting current section (c) pertaining to appointment of an investigator, and by making stylistic changes, as follows:

Rule 10-106. ~~APPOINTMENT OF ATTORNEY OR INVESTIGATOR~~ FOR MINOR OR DISABLED PERSON

(a) ~~Appointment of Attorney by the Court~~ Authority and Duty to Appoint

(1) Minor Persons

Upon the filing of a petition for guardianship of the person, ~~or the property, or both,~~ of a minor who is not represented by an attorney, the court may appoint an attorney for the minor. ~~The fee of an appointed attorney shall be fixed by the court and shall be paid out of the fiduciary estate or as the court shall direct.~~

Committee note: Appointment of an attorney for a minor is discretionary because, in many cases involving minors, the guardian is a parent or other close family member and the circumstances do not indicate a need for an attorney for the minor. The court should scrutinize the petition, however, for circumstances that may warrant the appointment of an attorney for the minor.

(2) Alleged Disabled Persons

Upon the filing of a petition for guardianship of the person, ~~or the property, or both,~~ of a an alleged disabled person who is not represented by an attorney of the alleged disabled person's own choice, the court shall promptly appoint an attorney for the alleged disabled person ~~and may require the deposit of an appropriate sum into the court registry or the appointed attorney's escrow account within 30 days after the order of appointment has been entered, subject to further order of the court. If the person is indigent, the State shall pay a reasonable attorney's fee. The court may not require the deposit of an appropriate sum into the court registry or the appointed attorney's escrow account under this section if~~

~~payment for the services of the court appointed attorney for the alleged disabled person is the responsibility of (A) a government agency paying benefits to the disabled person, (B) a local department of Social Services, or (C) an agency eligible to serve as the guardian of the disabled person under Code, Estates and Trusts Article, §13-707.~~

Cross reference: Code, Estates and Trusts Article, §§13-211 (b) and 13-705 (d). See also Rule 19-301.14 of the Maryland Attorneys' Rules of Professional Conduct with respect to the attorney's role and obligations.

Committee note: This Rule applies to the appointment and payment of an attorney for a minor or alleged disabled person in proceedings to establish a guardianship for the minor or alleged disabled person, or their property, or both. Attorneys may be appointed in other capacities in guardianship proceedings - as an investigator pursuant to Rule 10-106.1 or as a guardian pursuant to Rule 10-108.

(b) Eligibility for Appointment

(1) To be eligible for appointment, an attorney shall:

(A) be a member in good standing of the Maryland Bar;

(B) provide evidence satisfactory to the court of

financial responsibility; and

Committee note: Methods of complying with subsection (b)(1)(B) include maintaining appropriate insurance, providing an attestation of financial circumstances, or filing a bond.

(C) unless waived by the court for good cause, have been trained in aspects of guardianship law and practice in conformance with the *Maryland Guidelines for Court-Appointed Attorneys In Guardianship Proceedings* attached as an Appendix to

the Rules in this Title.

(2) Exercise of Discretion

Except in an action in which the selection of a court-
appointed attorney is governed by Code, Estates and Trusts
Article, §13-705 (d)(2), the court should fairly distribute
appointments among eligible attorneys, taking into account the
attorney's relevant experience and availability and the
complexity of the case.

(c) Fees

(1) Generally

The court shall order payment of reasonable and
necessary fees of an appointed attorney. Fees may be paid from
the estate of the alleged disabled person or as the court
otherwise directs. To the extent the estate is insufficient,
the fee of an attorney for an alleged disabled person shall be
paid by the State.

Cross reference: See Code, Estates and Trusts Article, §13-705
(d)(1), requiring the State to pay a reasonable attorneys' fee
where the alleged disabled person is indigent. There is no
similar statutory requirement with respect to attorneys
appointed for a minor.

(2) Determination of Fee

Unless the attorney has agreed to serve on a pro bono
basis or is serving under a contract with the Department of
Human Services, the court, in determining the reasonableness of
the attorney's fee, shall apply the factors set forth in Rule 2-

703 (f)(3) and in the Guidelines Regarding Compensable and Non-Compensable Attorneys' Fees and Related Expenses, contained in an Appendix to the Rules in Title 2, Chapter 700.

(3) Disabled Person - Security for Payment of Fee

(A) Except as provided in subsection (c)(3)(B) of this Rule, in a proceeding for guardianship of the person, the property, or both, of an alleged disabled person, upon the appointment of an attorney for an alleged disabled person, the court may require the deposit of an appropriate sum into the court registry or the appointed attorney's escrow account within 30 days after the order of appointment, subject to further order of the court.

(B) The court shall not exercise its authority under subsection (c)(3)(A) of this Rule if payment for the services of the appointed attorney is the responsibility of (i) a government agency paying benefits to the alleged disabled person, (ii) a local Department of Social Services, or (iii) an agency eligible to serve as the guardian of the alleged disabled person under Code, Estates and Trusts Article, §13-707.

Cross reference: See Code, Estates and Trusts Article, §13-705 (d)(1).

~~(b) (d) Automatic Termination or Continuation of Appointment; Continuation of Representation if Public Guardian Appointed~~

(1) Generally

If no appeal is taken from a judgment dismissing the petition or appointing a guardian other than a public guardian, the attorney's appointment shall terminate automatically upon expiration of the time for filing an appeal unless the court orders otherwise.

(2) Other Reason for Termination

A court-appointed attorney who perceives a present or impending conflict of interest or other inability to continue serving as attorney for the minor or disabled person shall immediately notify the court in writing and request that the court take appropriate action with respect to the appointment.

(3) Representation if Public Guardian Appointed

If a public guardian has been appointed for ~~the~~ a disabled person, the court shall either continue the attorney's appointment or appoint another attorney to represent the disabled person before the Adult Public Guardianship Review Board.

Cross reference: Code, Family Law Article, §14-404 (c)(2).

(4) Appointment After Establishment of Guardianship

Nothing in this section precludes a court from appointing, reappointing, or continuing the appointment of an attorney for a minor or disabled person after a guardianship has been established if the court finds that such appointment or continuation is in the best interest of the minor or disabled

person. An order of appointment after a guardianship has been established shall state the scope of the representation and may include specific duties the attorney is directed to perform.

~~(c) Investigator~~

~~The court may appoint an independent investigator to investigate the facts of the case and report written findings to the court. The fee of an appointed investigator shall be fixed by the court and shall be paid out of the fiduciary estate or as the court shall direct. To the extent the estate is insufficient, the fee of an independent investigator appointed by the court shall be paid by the State.~~

Source: This Rule is derived in part from former Rules R76 and V71 and is in part new.

REPORTER'S NOTE

As suggested by the Guardianship Work Group of the Domestic Law Committee of the Judicial Council, the Rules Committee recommends separating out the section pertaining to investigators from Rule 10-106. Current section (c) is deleted from the Rule, and its provisions are transferred to proposed new Rule 10-106.1.

In Rule 10-106, the Committee recommends the addition of a Committee note after subsection (a)(1), stating that the appointment of an attorney for a minor is discretionary, because often the guardian is a parent or close family member, and the circumstances do not indicate a need for an attorney for the minor. It also recommends the addition of a Committee note after subsection (a)(2) noting that attorneys may be appointed in other capacities, such as investigators or guardians, in guardianship proceedings.

The Work Group suggested adding language to Rule 10-106 that would be similar to the language in the Comment after

section (b) of Rule 9-205.1, Appointment of Child's Attorney, which provides that a court should only appoint attorneys who have agreed to serve in child custody and child access cases and have been trained in accordance with Guideline 4 of the Maryland Guidelines for Practice for Court-Appointed Attorneys Representing Children in Cases involving Child Custody or Child Access. Subsection (b)(1) of Rule 10-106 is based on this and adds basic requirements for eligibility of a court-appointed attorney. Subsection (b)(1)(B), requiring evidence of financial responsibility, is new. Subsection (b)(2) also is based on language in the Comment after section (b) of Rule 9-205.1.

Subsection (c)(1) is derived from the language of former section (c) of Rule 10-106 pertaining to investigators, but the Work Group suggested that the language be revised to provide that, rather than fixing the fee, the court shall order payment of reasonable and necessary fees that may be paid from the estate of the alleged disabled person. Subsection (c)(2) requires the use of the factors set forth in Rule 2-703 and the Guidelines Regarding Compensable and Non-compensable Attorneys' Fees and Related Expenses in determining the reasonableness of a fee set by the court. Subsection (c)(3) is derived from the language that had been in section (a) pertaining to the court requiring a deposit of an appropriate sum into the court's registry or the attorney's escrow account. This is taken from Code, Estates and Trusts Article, §13-705 (d)(1), and a cross reference to that provision is added after subsection (c)(3).

Subsection (d)(2) is added because of a suggestion by the Work Group that Rule 10-106 should address what happens when there is a conflict of interest on the part of the attorney. The Committee proposes the addition of new subsection (d)(4). In a public agency guardianship, the appointment of an attorney for the disabled person can be automatically renewed. The thought is that it would be helpful to indicate in the Rule that the court may appoint, reappoint, or continue the appointment of an attorney for a disabled person after a private guardianship has been established if the court finds that this is in the best interest of the disabled person.

MARYLAND RULES OF PROCEDURE
TITLE 10- GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 10-106.1, as follows:

Rule 10-106.1. APPOINTMENT OF INVESTIGATOR

(a) In Connection with Petition to Establish Guardianship

The court may appoint an independent investigator in connection with a petition to establish a guardianship of the person, the property, or both of an alleged disabled person to (1) investigate specific matters relevant to whether a guardianship should be established and, if so, the suitability of one or more proposed guardians and whether there should be any limitations on the authority of the guardian and (2) report written findings to the court.

(b) After Guardianship Established

The court may appoint an independent investigator after a guardianship has been established to investigate specific issues or concerns regarding the manner in which the guardianship is being administered and to report written findings to the court.

(c) Selection of Investigator

If the court concludes that it is appropriate to appoint an independent investigator, it shall appoint an individual

particularly qualified to perform the tasks to be assigned. If there is an issue as to abuse, neglect, or exploitation of the disabled person, the court may refer the matter to an appropriate public agency to conduct the investigation.

(d) Fee

The court shall fix the fee of an appointed independent investigator, which shall be paid from the estate unless the court directs otherwise.

Source: This Rule is new. It is derived from former Rule 10-106 (c)(2016).

REPORTER'S NOTE

Proposed new Rule 10-601.1 is derived from section (c) of current Rule 10-106, which provides for the court to be able to appoint an independent investigator, who is not the attorney for the alleged disabled person, to investigate the facts of the case and report written findings to the court. Section (c) has been a source of confusion with respect to who can serve as an investigator, what the investigator's role is, and how the investigator is paid. The Guardianship Work Group suggested that section (c) be put into a separate rule. The Work Group also suggested that it would be helpful to clarify that courts have latitude as to who may be appointed, and it would be helpful if the courts included in the orders appointing an independent investigator parameters for what questions the investigator is to answer in his or her written findings to the court. Also, how the investigators are to be paid needs clarification. New Rule 10-106.1 has been rewritten to address these concerns. A new section (b) pertaining to the appointment of an investigator after a guardianship is established, permits the court to appoint an independent investigator to investigate specific issues or concerns regarding the manner in which the guardianship is being administered.

MARYLAND RULES OF PROCEDURE

TITLE 10- GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-108 by adding the language "e-mail address, if available" to subsection (a)(1)(C); by adding the language "date by which proof of bond shall be filed with the court" to subsection (a)(1)(E); by adding a cross reference after subsection (a)(1)(E); by adding a cross reference after subsection (a)(1)(F); in subsection (a)(1)(G), by deleting language referring to the order reciting the powers and duties of the guardian; by adding a new section (a)(1)(H) providing that, with certain exceptions, the order shall direct a guardian other than a public guardian to complete certain orientation and training programs; by adding a Committee note after subsection (a)(1)(H); by adding to a cross reference after subsection (a)(1); by adding a new subsection (a)(2) pertaining to confidential information; by adding a cross reference after subsection (a)(2); by adding a Committee note after subsection (a)(2); by deleting the language of section (b) providing that the court may issue letters of guardianship and by adding in its place language providing that an order constitutes letters of guardianship as it is used by certain Code provisions; by adding

to the cross reference after section (b); and by making stylistic changes, as follows:

Rule 10-108. ORDERS

(a) Order Appointing Guardian

(1) Generally

An order appointing a guardian shall ~~state~~:

~~(1)~~ (A) Whether state whether the guardianship is of the property, ~~or~~ the person, or both;

~~(2)~~ (B) The state the name, sex, and date of birth of the minor or disabled person;

~~(3)~~ (C) The state the name, address, ~~and~~ telephone number, and e-mail address, if available, of the guardian;

~~(4)~~ (D) Whether state whether ~~or not~~ the appointment of a guardian is solely ~~as a result of~~ due to a physical disability, and if not, the reason for the guardianship;

~~(5)~~ (E) The state (i) the amount of the guardian's bond, ~~or that the~~ a bond is waived and (ii) the date by which proof of any bond shall be filed with the court;

Cross reference: See Rule 10-702 (a), requiring the bond to be filed before the guardian commences the performance of any fiduciary duties.

~~(6)~~ (F) The state the date ~~upon~~ by which any annual report of the guardian shall be filed; and

Cross reference: See Rule 10-706 (b).

~~(7)~~ (G) The state the specific powers and duties of the guardian and any limitations on those powers or duties. The order shall recite the powers and duties of the guardian either expressly or by referring to the specific paragraphs sections or subsections of an applicable statute containing those powers and duties; and

(H) except as to a public guardian, unless the guardian has already satisfied the requirement or the court orders otherwise, direct the guardian to complete an orientation program and training in conformance with the applicable Guidelines for Court-Appointed Guardians attached as an Appendix to the Rules in this Title.

Committee note: An example of an appointment as to which waiver of the orientation and training requirements of subsection (a)(1)(H) may be appropriate is the appointment of a temporary guardian for a limited purpose or specific transaction.

Cross reference: Code, Estates and Trusts Article, §§13-201 (b) and (c), 13-213, 13-214, ~~15-102~~, 13-705 (b), ~~and~~ 13-708, and 15-102 and Title 15, Subtitle 6 (Maryland Fiduciary Access to Digital Assets Act).

(2) Confidential Information

Information in the order or in papers filed by the guardian that is subject to being shielded pursuant to the Rules in Title 16, Chapter 900 shall remain confidential, but, in its order, the court may permit the guardian to disclose that information when necessary to the administration of the guardianship, subject to a requirement that the information not

be further disclosed without the consent of the guardian or the court.

Committee note: Disclosure of identifying information to financial institutions and health care providers, for example, may be necessary to further the purposes of the guardianship.

Cross reference: See Rule 16-907 (f) and (j) and Rule 16-908 (d).

(b) Letters of Guardianship

~~A court may issue letters of guardianship of the property which shall contain a list of any restrictions on the powers of the guardian.~~ An order appointing a guardian entered under this Rule constitutes "letters of guardianship" as that term is used in Code, Estates and Trusts Article.

Cross reference: Code, Estates and Trusts Article, §§13-215 and 13-217, and 13-219.

(c) Orders Assuming Jurisdiction over a Fiduciary Estate
Other than a Guardianship

An order assuming jurisdiction over a fiduciary estate other than a guardianship shall state whether the court has assumed full jurisdiction over the estate. If it has not assumed full jurisdiction over the estate or if jurisdiction is contrary to the provisions in the instrument, the order shall state the extent of the jurisdiction assumed. The order shall state the amount of the fiduciary's bond or that the bond is waived.

(d) Modifications

The court may modify any order of a continuing nature in a guardianship or fiduciary estate upon the petition of an interested person or on its own initiative, and after notice and opportunity for hearing.

Source: This Rule is derived as follows:

Section (a) is derived in part from Code, Estates and Trusts Article, §§13-208 and 13-708 and is in part new.

Section (b) is ~~derived from former Rule V77 e 3~~ new.

Section (c) is derived from former Rules V71 f 1 and f 2.

Section (d) is derived in part from former Rule R78 b and is in part new.

REPORTER'S NOTE

In Rule 10-108, subsection (a)(1)(C) is proposed to be amended so that the order appointing the guardian contains the guardian's e-mail address. This is important in counties in which MDEC is operating and is helpful in other counties as well. In subsection (a)(1)(D), the words "as a result of" are replaced by "due to." Language requiring the date by which proof of bond must be filed is added to subsection (a)(1)(E). A cross reference pertaining to the bond requirement is added after the subsection. Language that is duplicative or obsolete is deleted from subsection (a)(1)(G). Subsection (a)(1)(H) is added to comply with the proposed new Guidelines for Court-Appointed Guardians of the Person and Guidelines for Court-Appointed Guardians of the Property. A reference to the Maryland Fiduciary Access to Digital Assets Act is added to the cross reference after subsection (a)(1).

Subsection (a)(2) is added to conform to the Rules in Title 16, Chapter 900, with the addition of a provision permitting disclosure by the guardian when necessary, subject to a prohibition against further disclosure by the recipient of the information without permission of the guardian or the court. The Committee note after subsection (a)(2) is added to address the Work Group's concern that being unable to disclose identifying information would interfere with the guardian's ability to administer the guardianship.

There had been a suggestion to delete section (b), because courts do not use letters of guardianship, but the Committee

believes that since "letters of guardianship" are still referred to in the Code, it would be better to provide in the Rule that an order appointing a guardian constitutes "letters of guardianship."

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-111 by changing the word "jurisdiction" to the word "county" in Section 2. and by adding a "NOTE" pertaining to the use of the word "county"; by adding language and boxes to check pertaining to a minor who may be a beneficiary of the Veterans Administration; by adding language to Section 6. pertaining to a request for certain information about a conviction of a crime; by changing the word "an" to the word "any" in Section 7.; in Section 8., by adding the words "and e-mail addresses, if known" and by updating a cross reference; by deleting the requirement at the end of the form that a facsimile number be provided; and by making stylistic changes, as follows:

Rule 10-111. PETITION FOR GUARDIANSHIP OF MINOR

A petition for guardianship of a minor shall be in substantially the following form:

[CAPTION]

In the Matter of

(Name of minor)

In the _____ Court for

(County)

(docket reference)

PETITION FOR GUARDIANSHIP OF MINOR

Note: This form is to be used where the only ground for the petition is minority.

Guardianship of Person Guardianship of Property Guardianship of Person and Property

The petitioner, _____, _____ whose address is
(name) (age)

_____, and whose telephone number is

_____, represents to the court that:

1. The minor _____, age _____,
born on the _____ day of _____, _____,
(month) (year)

a male or female child of _____

and _____, resides at

_____. A birth certificate of the
minor is attached.

2. If the minor does not reside in the ~~jurisdiction~~ county in
which this petition is filed, ~~then~~ state the place in this
~~jurisdiction~~ county where the minor is currently located _____

NOTE: For purposes of this Form, "county" includes Baltimore City.

3. The relationship of petitioner to the minor is _____

4. The minor

is a beneficiary of the Veterans Administration and the guardian may expect to receive benefits from that Administration.

is not a beneficiary of the Veterans Administration.

~~4.~~ 5. Complete Section ~~4.~~ 5. if the petitioner is asking the court to appoint the petitioner as the guardian.

(Check only one of the following boxes)

I have not been convicted of a crime listed in Code, Estates and Trusts Article, §11-114.

I was convicted of such a crime, namely _____

The conviction occurred in _____, in _____,
(year)

in the _____, but
(Name of court)

the following good cause exists for me to be appointed as guardian: _____

~~5.~~ 6. Complete Section ~~5.~~ 6. if the petitioner is asking the court to appoint an individual other than the petitioner as the guardian.

The name of the prospective guardian is _____

and that individual's age is _____. The relationship of that individual to the minor is _____.

(Check only one of the following boxes)

[] _____ has not been convicted of a crime
(Name of prospective guardian)

listed in Code, Estates and Trusts Article, §11-114.

[] _____ was convicted of such a crime,
(Name of prospective guardian)

namely _____.

The conviction occurred in _____ in the _____
(year)

_____, ~~in~~ _____, but the
(Name of court)

following good cause exists for the individual to be appointed as guardian: _____

_____.

~~6.~~ 7. State the name and address of ~~an~~ any additional person on whom service shall be made on behalf of the minor, including a minor who is at least ten years of age: _____

_____.

~~7.~~ 8. The following is a list of the names, addresses, ~~and~~ telephone numbers, and e-mail addresses, if known, of all interested persons (see Code, Estates and Trusts Article, §13-101 ~~(j)~~ (k)).

List of Interested Persons

	Name	Address	Telephone Number	<u>E-mail Address</u> (if known)
Parents:	_____	_____	_____	_____
	_____	_____	_____	_____
Siblings:	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
Any Other Heirs at Law:	_____	_____	_____	_____
Guardian (if appointed):	_____	_____	_____	_____
Any Person Holding a Power of Attorney of the Minor:	_____	_____	_____	_____
Minor's Attorney:	_____	_____	_____	_____
Any Other Person Having Assumed Responsibility for the Minor:	_____	_____	_____	_____
Any Government Agency Paying Benefits to or for the Minor:	_____	_____	_____	_____

Any Person Having an Interest in the Property of the Minor: _____

All Other Persons Exercising Control over the Minor or the Minor's Property: _____

A Person or Agency Eligible to Serve as Guardian of the Person of the Minor: _____

~~8.~~ 9. The names and addresses of the persons with whom the minor resided over the past five years, and the ~~length of time~~ approximate dates of the minor's residence with each person are, as follows:

<u>Names</u>	<u>Addresses</u>	<u>State Time Frame</u> <u>Approximate Dates</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

~~9.~~ 10. Guardianship is sought for the following reason(s):

~~10.~~ 11. If this Petition is for Guardianship of the Property, the following is the list of all the property in which the minor

has any interest including an absolute interest, a joint interest, or an interest less than absolute (e.g. trust, life estate).

<u>Property</u>	<u>Location</u>	<u>Value</u>	Sole Owner, Joint Owner (specific type), Life Tenant, Trustee, Custodian, Agent, <u>Co-Tenant, etc.</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

~~11.~~ 12. The petitioner's interest in the property of the minor listed in ~~10.~~ 11. is

_____.

~~12.~~ 13. (a) All other proceedings regarding the minor (including any proceedings in juvenile court) are, as follows:

_____.

(b) All proceedings regarding the petitioner and prospective guardian filed in this court or any other court are, as follows:

_____.

~~13.~~ 14. All exhibits required by the Instructions below are attached.

WHEREFORE, Petitioner requests that this court issue an order to direct all interested persons to show cause why a guardian of the [] person [] property [] person and property of the minor should not be appointed, and (if applicable) _____
(Name of prospective guardian)

should not be appointed as the guardian.

Attorney's Signature

Petitioner's Name

Attorney's Name

Address

Telephone Number

~~Facsimile Number~~

E-mail Address

Petitioner solemnly affirms under the penalties of perjury that the contents of this document are true to the best of Petitioner's knowledge, information, and belief.

Petitioner's Name

Petitioner's Signature

INSTRUCTIONS

1. The required exhibits are as follows:
 - (a) A copy of any instrument nominating a guardian [Code, Estates and Trusts Article, §13-701 and Maryland Rule 10-301 (d)];
 - (b) If the petition is for the appointment of a guardian for a minor who is a beneficiary of the Department of Veterans Affairs, a certificate of the Administrator or the Administrator's authorized representative, setting forth the age of the minor as shown by the records of the Veterans Administration, and the fact that appointment of a guardian is a condition precedent to the payment of any moneys due the minor from the Veterans Administration shall be prima facie evidence of the necessity for the appointment [Code, Estates and Trusts Article, §13-802 and Maryland Rule 10-301 (d)].
2. Attached additional sheets to answer all the information requested in this petition, if necessary.

Source: This Rule is new.

REPORTER'S NOTE

Several changes to the Petition for Guardianship of a Minor form set forth in Rule 10-111 are proposed. In Section 2., the word "jurisdiction" is changed to the word "county" for clarity. A "NOTE" is added to inform petitioners, many of whom may be *pro se*, that for purposes of the Form, "county" includes Baltimore City. A new Section 4. is added, requiring the petitioner to indicate by checking boxes whether the minor is a beneficiary of the Veterans Administration and noting that, if so, the guardian may expect to receive benefits. This is added to alert the clerk and all parties that the requirements of Code, Estates and Trusts Article, §13-801 may need to be complied with. Language is added to Sections 5. and 6. pertaining to a request for the year and the name of the court if the individual requested by the petitioner to be the guardian has been convicted of a crime. This provides more information for the court in making the

decision as to the appointment of the guardian. A request for the e-mail addresses, if known, of the interested persons is added to Section 8. The requirement at the end of the form that a facsimile number be provided is deleted as unnecessary.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-112 by changing the word "jurisdiction" to the word "county" in Section 2. and by adding a "NOTE" pertaining to the use of the word "county"; by adding language and boxes to check pertaining to an alleged disabled person who may be a beneficiary of the Veterans Administration; by adding language to Section 6. pertaining to a request for certain information about a conviction of a crime; by changing the word "an" to the word "any" in Section 7.; in Section 8., by adding the words "and e-mail addresses, if known," by updating a cross reference, and by changing the term "Local Commission on Aging and Retirement Education" to "Director of the Local Area Agency on Aging"; by deleting the word "confinement" from Section 12.; by deleting the requirement at the end of the form that a facsimile number be provided; and by making stylistic changes, as follows:

Rule 10-112. PETITION FOR GUARDIANSHIP OF ALLEGED DISABLED PERSON

A petition for guardianship of an alleged disabled person shall be substantially in the following form:

[CAPTION]

In the Matter of

In the Circuit Court for

(Name of Alleged
Disabled Individual)

(County)

(docket reference)

PETITION FOR GUARDIANSHIP OF
ALLEGED DISABLED PERSON

Note: This form is to be used where the subject of the petition is an individual, regardless of the individual's age, who has a disability other than minority.

Guardianship of
Person

Guardianship of
Property

Guardianship of
Person and
Property

The petitioner, _____, _____, whose
(name) (age)

address is _____, and whose

telephone number is _____, represents to

the court that:

1. The alleged disabled person _____,
age _____, born on the _____ day of _____,
(month) (year)

a male or female resides at _____

2. If the alleged disabled person does not reside in the

~~jurisdiction~~ county in which this petition is filed, ~~then~~ state the place in this ~~jurisdiction~~ county where the alleged disabled person is currently located _____

NOTE: For purposes of this Form, "county" includes Baltimore City.

3. The relationship of petitioner to the alleged disabled person is _____.

4. The alleged disabled person

is a beneficiary of the Veterans Administration and the guardian may expect to receive benefits from that Administration.

is not a beneficiary of the Veterans Administration.

~~4.~~ 5. Complete Section 4- 5. if the petitioner is asking the court to appoint the petitioner as the guardian.

(Check only one of the following boxes)

I have not been convicted of a crime listed in Code, Estates and Trusts Article, §11-114, ~~or~~.

I was convicted of such a crime, namely _____

_____:
The conviction occurred in _____ in the _____
(year)

_____, but the following good cause
(name of court)

exists for me to be appointed as guardian: _____

~~5.~~ 6. Complete Section ~~5.~~ 6. if the petitioner is asking the court to appoint an individual other than the petitioner as the guardian.

The name of the prospective guardian is _____
_____ and that individual's age is _____.
The relationship of that individual to the alleged disabled person is _____.

(Check only one of the following boxes)

_____ has not been convicted
(Name of prospective guardian)
of a crime listed in Code, Estates and Trusts Article, §11-114.

_____ was convicted of such a crime, namely _____
_____. The conviction occurred in _____
(year) in the _____, but the
(Name of court)

following good cause exists for the individual to be appointed as guardian: _____
_____.

~~6.~~ 7. If the alleged disabled person resides with petitioner, then state the name and address of ~~an~~ any additional person on whom initial service shall be made: _____

7. 8. The following is a list of the names, addresses, and telephone numbers, and e-mail addresses, if known of all interested persons (see Code, Estates and Trusts Article, §13-101 ~~(j)~~ (k)):

	<u>Name</u>	<u>Address</u>	<u>Telephone Number</u>	<u>E-mail Address (if known)</u>
Person or Health Care Agent Designated in Writing by Alleged Disabled Person:	_____	_____	_____	_____
Spouse:	_____	_____	_____	_____
Parents:	_____	_____	_____	_____
	_____	_____	_____	_____
Adult Children:	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
Adult Grandchildren*:	_____	_____	_____	_____
	_____	_____	_____	_____

Siblings*: _____

Any Other Heirs
at Law: _____

Guardian
(If appointed): _____

Any Person
Holding a Power
of Attorney of
the Alleged Disabled
Person: _____

Alleged
Disabled
Person's
Attorney: _____

Any Other Person
Having Assumed
Responsibility for
the Alleged Disabled
Person: _____

Any Government
Agency Paying Benefits
to or for the Alleged
Disabled Person: _____

Any Person Having an
Interest in the Property
of the Alleged Disabled
Person: _____

All Other Persons
Exercising Control over
the Alleged Disabled
Person or the Person's
Property: _____

A Person or Agency Eligible to Serve as Guardian of the Person
of the Alleged Disabled Person (Choose A or B below):

~~A. Local Commission on
Aging and Retirement
Education Director of the
Local Area Agency on Aging~~
(if Alleged Disabled Person
is Age 65 or over): _____

B. Local Department of
Social Services (if
Alleged Disabled
Person is Under Age 65):

* Note: Adult grandchildren and siblings need not be listed
unless there is no spouse and there are no parents or adult
children.

~~8.~~ 9. The names and addresses of the persons with whom the
alleged disabled person resides or has resided over the past
five years and the ~~length of time~~ approximate dates of the
alleged disabled person's residence with each person are as
follows:

<u>Name</u>	<u>Address</u>	<u>Approximate Dates</u>
_____	_____	_____
_____	_____	_____

~~9.~~ 10. A brief description of the alleged disability and how it affects the alleged disabled person's ability to function is as follows:

_____.

~~10.~~ 11. (a) Guardianship of the Person is sought because

(Name of Alleged Disabled Person)

cannot make or communicate responsible decisions concerning health care, food, clothing, or shelter, because of mental disability, disease, habitual drunkenness, addiction to drugs, or other addictions. State the relevant facts:

_____.

(b) Describe less restrictive alternatives that have been attempted and have failed (see Code, Estates and Trusts Article, §13-705 (b)):

_____.

~~11.~~ 12. (a) Guardianship of the Property is sought because

_____ cannot manage property
(Name of Alleged Disabled Person)

and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs or other addictions, imprisonment, compulsory hospitalization, ~~confinement~~, detention by a foreign power, or disappearance.

State the relevant facts:

_____.

(b) Describe less restrictive alternatives that have been attempted and have failed (see Code, Estates and Trusts Article, §13-201):

_____.

~~12.~~ 13. If this Petition is for Guardianship of the Property, the following is the list of all the property in which the alleged disabled person has any interest including an absolute interest, a joint interest, or an interest less than absolute (e.g. trust, life estate):

<u>Property</u>	<u>Location</u>	<u>Value</u>	<u>Sole Owner, Joint Owner (specific type), Life Tenant, Trustee, Custodian, Agent, etc.</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

~~13.~~ 14. The petitioner's interest in the property of the alleged disabled person listed in ~~12.~~ 13. is _____
_____.

~~14.~~ 15. If a guardian or conservator has been appointed for the alleged disabled person in another proceeding, the name and address of the guardian or conservator and the court that appointed the guardian or conservator are as follows:

_____	_____
Name	Address

Court	

~~15.~~ 16. All other proceedings regarding the alleged disabled person (including criminal) are as follows:

_____.

~~16.~~ 17. All exhibits required by the Instructions below are attached.

WHEREFORE, Petitioner requests that this court issue an order to direct all interested persons to show cause why a guardian of the

person property person and property of the alleged disabled person should not be appointed, and (if applicable) _____ should not
(Name of prospective guardian)

be appointed as the guardian.

Attorney's Signature

Petitioner's Name

Attorney's Name

Address

Telephone Number

~~Facsimile Number~~

E-mail Address

Petitioner solemnly affirms under the penalties of perjury that the contents of this document are true to the best of Petitioner's knowledge, information, and belief.

Petitioner's Name

Petitioner's Signature

INSTRUCTIONS

1. The required exhibits are as follows:
 - (a) A copy of any instrument nominating a guardian;
 - (b) A copy of any power of attorney (including a durable power of attorney for health care) which the alleged disabled person has given to someone;
 - (c) Signed and verified certificates of two physicians licensed to practice medicine in the United States who have examined the alleged disabled person, or of one licensed physician, who has examined the alleged disabled person, and one licensed psychologist or certified clinical social worker, who has seen and evaluated the alleged disabled person. An examination or evaluation by at least one of the health care professionals must have occurred within 21 days before the filing of the petition (see Code, Estates and Trusts Article, § 13-103 and §1-102 (a) and (b)).
 - (d) If the petition is for the appointment of a guardian of an alleged disabled person who is a beneficiary of the Department of Veterans Affairs, then in lieu of the certificates required by (c) above, a certificate of the Secretary of that Department or an authorized representative of the Secretary setting forth the fact that the person has been rated as disabled by the Department.
2. Attach additional sheets to answer all the information requested in this petition, if necessary.

Source: This Rule is new.

REPORTER'S NOTE

Several changes to the Petition for Guardianship of an Alleged Disabled Person form set forth in Rule 10-112 are proposed. The changes track the changes to Rule 10-111, Petition for Guardianship of a Minor, and are proposed for the

reasons stated in the Reporter's note to that Rule. In addition, in Section 8., the name of the "Local Commission on Aging and Retirement Education" is corrected to "Director of the Local Area Agency on Aging." In Section 12., deletion of the word "confinement" conforms the Rule to Chapter 666, Laws of 2017 (HB 81).

MARYLAND RULES OF PROCEDURE
TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 100 - GENERAL PROVISIONS

ADD New Rule 10-113, as follows:

Rule 10-113. DISQUALIFYING OFFENSES; WAIVER

(a) Opportunity to Show Good Cause

Upon request, a proposed guardian who has been convicted of a disqualifying offense under Code, Estates and Trusts Article, §11-114 shall be given an opportunity to show good cause why he or she should be appointed guardian notwithstanding the conviction.

(b) Factors for Court to Consider

In determining whether good cause exists to appoint the proposed guardian notwithstanding the conviction, the court shall consider, among other relevant factors:

- (1) the nature of the offense;
- (2) the time elapsed since the conviction;
- (3) the conduct of the proposed guardian since the conviction;
- (4) the relationship, if any, between the proposed guardian and the minor or disabled person; and

(5) any special vulnerability of the minor or disabled person.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 10-113 was created as a result of a suggestion of the Guardianship Work Group of the Domestic Law Committee to draft a Rule that provides factors for the court to consider in determining whether good cause exists to appoint a guardian who has been convicted of a crime listed in Code, Estates and Trusts Article, §11-114. The statute provides for a showing of good cause but does not explain what would constitute it.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-202 (a) to delete language pertaining to the contents of certain certificates, to add a requirement that each certificate be substantially in the form approved by the State Court Administrator, and to add certain requirements pertaining to posting and availability of forms, as follows:

Rule 10-202. CERTIFICATES AND CONSENTS

(a) Certificates

(1) Generally Required

Except as provided in subsection (a)(4) of this Rule, if guardianship of the person of a disabled person is sought, the petitioner shall file with the petition signed and verified certificates of (A) two physicians licensed to practice medicine in the United States who have examined the disabled person, or (B) one licensed physician who has examined the disabled person and one licensed psychologist or certified clinical social worker who has seen and evaluated the disabled person. An examination or evaluation by at least one of the health care professionals shall have been within 21 days before the filing of the petition.

(2) ~~Contents~~ Form

Each certificate required by subsection (a)(1) of this Rule shall state: ~~(A) the name, address, and qualifications of the person who performed the examination or evaluation, (B) a brief history of the person's involvement with the disabled person, (C) the date of the last examination or evaluation of the disabled person, and (D) the person's opinion as to: (i) the cause, nature, extent, and probable duration of the disability, (ii) whether institutional care is required, and (iii) whether the disabled person has sufficient mental capacity to understand the nature of and consent to the appointment of a guardian~~ be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts.

(3) Absence of Certificates

(A) Refusal to Permit Examination

If the petition is not accompanied by the required certificate and the petition alleges that the disabled person is residing with or under the control of a person who has refused to permit examination by a physician or evaluation by a psychologist or certified clinical social worker, and that the disabled person may be at risk unless a guardian is appointed, the court shall defer issuance of a show cause order. The court shall instead issue an order requiring that the person who has

refused to permit the disabled person to be examined or evaluated appear personally on a date specified in the order and show cause why the disabled person should not be examined or evaluated. The order shall be personally served on that person and on the disabled person.

(B) Appointment of Health Care Professionals by Court

If the court finds after a hearing that examinations are necessary, it shall appoint two physicians or one physician and one psychologist or certified clinical social worker to conduct the examinations or the examination and evaluation and file their reports with the court. If both health care professionals find the person to be disabled, the court shall issue a show cause order requiring the alleged disabled person to answer the petition for guardianship and shall require the petitioner to give notice pursuant to Rule 10-203. Otherwise, the petition shall be dismissed.

(4) Beneficiary of the Department of Veterans Affairs

If guardianship of the person of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought, the petitioner shall file with the petition, in lieu of the two certificates required by subsection (a)(1) of this Rule, a certificate of the Secretary of that Department or an authorized representative of the Secretary stating that the person has been rated as disabled by the

Department in accordance with the laws and regulations governing the Department of Veterans Affairs. The certificate shall be prima facie evidence of the necessity for the appointment.

. . .

REPORTER'S NOTE

To enhance uniformity of practice and to provide judges with specific, detailed information pertaining to examinations and evaluations of alleged disabled persons, the Guardianship Work Group of the Domestic Law Committee of the Judicial Council is developing standardized forms for the certificates required by subsection (a)(1) of Rule 10-202. Because the professional credentials, the nature of the examination or evaluation the individual is licensed to perform, etc. are different as to each type of professional [physician, psychologist, or social worker] authorized to perform the examination or evaluation, three separate forms are being developed.

A proposed amendment to subsection (a)(2) of the Rule replaces language pertaining to the contents of the certificate with the requirement that each certificate be "substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts." The proposed language follows the format of a recently adopted amendment to Rule 4-504 (b).

Rule 10-301 refers to the certificates required by Rule 10-202. In conjunction with the proposed amendment to Rule 10-202, a Committee note following Rule 10-301 (d) also is proposed.

MARYLAND RULES OF PROCEDURE
TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 200 - GUARDIAN OF PERSON

ADD New Rule 10-205.1, as follows:

Rule 10-205.1. APPOINTMENT OF GUARDIAN - CRITERIA; ORDER

(a) Whether to Appoint Guardian

In determining whether to appoint a guardian of the person of a minor or disabled person, the court shall apply the criteria set forth in Code, Estates and Trusts Article, §13-705.

(b) Whom to Appoint

In determining whom to appoint as a guardian, the court shall apply the criteria set forth in Code, Estates and Trusts Article, §13-707 and, with respect to an individual, give preference to an individual who has completed or commits to complete within 120 days or such other time that the court directs a training program in conformance with the *Guidelines for Court-Appointed Guardians of the Person* attached as an Appendix to the Rules in this Title.

(c) Order

An order appointing a guardian of the person shall comply with the requirements of Rule 10-108.

Cross reference: Note the requirement in Rule 10-108 (a)(1)(H) requiring the guardian to complete certain orientation and

training programs.

Source: This Rule is new.

REPORTER'S NOTE

New Rules 10-205.1 and 10-304.1 are proposed to fill a gap that had previously not been addressed in the Rules -- what criteria are to be used for the court to determine (1) whether to appoint a guardian of the person or property of a minor or an alleged disabled person, and (2) whom to appoint, if a guardian is to be appointed? The Rules refer to the appropriate statute that provides the criteria for the court to use in making the determination. The Rules provide that preference will be given to an individual who has completed or commits to complete the training provided for in the "Guidelines for Court-Appointed Guardians of the Person" or "Guidelines for Court-Appointed Guardians of the Property," as appropriate. The Guidelines are proposed to be attached as appendices to the Rules in Title 10. Rules 10-205.1 and 10-304.1 also refer to Rule 10-108, which states what the order appointing the guardian is required to contain.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 300 - GUARDIAN OF PROPERTY

AMEND Rule 10-301 by adding a Committee note following section (d), as follows:

Rule 10-301. PETITION FOR APPOINTMENT OF A GUARDIAN OF PROPERTY

. . .

(d) Required Exhibits

The petitioner shall attach to the petition as exhibits (1) a copy of any instrument nominating a guardian; (2) (A) the certificates required by Rule 10-202, or (B) if guardianship of the property of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought, in lieu of the requirements of Rule 10-202, a certificate of the Secretary of that Department or an authorized representative of the Secretary stating that the person has been rated as disabled by the Department in accordance with the laws and regulations governing the Department of Veterans Affairs; and (3) if the petition is for the appointment of a guardian for a minor who is a beneficiary of the Department of Veterans Affairs, a certificate of the Secretary of that Department or any

authorized representative of the Secretary, in accordance with Code, Estates and Trusts Article, §13-802.

Committee note: Rule 10-202 (a)(1) requires that a certificate of a physician, psychologist, or social worker be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 10-202.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 300 - GUARDIAN OF PROPERTY

ADD New Rule 10-304.1, as follows:

Rule 10-304.1. APPOINTMENT OF GUARDIAN - CRITERIA; ORDER

(a) Whether to Appoint Guardian

In determining whether to appoint a guardian of the property of a minor or disabled person, the court shall apply the criteria set forth in Code, Estates and Trusts Article, §13-201.

(b) Whom to Appoint

In determining whom to appoint as a guardian, the court shall apply the criteria set forth in Code, Estates and Trusts Article, §13-207 and, with respect to an individual, give preference to an individual who has completed or commits to complete within 60 days or such other time as the court directs a training program in conformance with the *Guidelines for Court-Appointed Guardians of the Property* attached as an Appendix to the Rules in this Title.

(c) Order

An order appointing a guardian of the property shall comply with the requirements of Rule 10-108.

Cross reference: Note the requirement in Rule 10-108 (a)(1)(H) that the guardian complete certain orientation and training programs.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 10-205.1.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 700 - FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS

OF THE PROPERTY

AMEND Rule 10-702 by adding a new section (b) pertaining to factors for the court to consider when determining whether to require a guardian of the property to post a bond; by adding the words "or increase" to subsection (c)(1); in subsection (e)(1), by deleting language from subsection (e)(1)(A) and by adding language providing that the amount of a fiduciary bond shall be based on the value of the property of the estate that is or will be under the fiduciary's control and that the fiduciary has or will have authority to expend, encumber, or convey without further order of court; by adding a Committee note after subsection (e)(1)(A) explaining the intent of that subsection and containing some of the language of current section (d); and by making stylistic changes, as follows:

Rule 10-702. BOND - FIDUCIARY ESTATE

(a) When Required or Excused

(1) Required by Instrument

If the instrument nominating the fiduciary or creating the estate requires the fiduciary to give bond, the fiduciary,

whether corporate or non-corporate, shall file a bond before commencing the performance of any fiduciary duties unless excused pursuant to subsection (5) of this section.

(2) Excused by Instrument

If the instrument nominating the fiduciary or creating the estate excuses a noncorporate fiduciary from furnishing bond, the court shall not require a bond unless the court finds that, notwithstanding the provisions of the instrument, exceptional circumstances make a bond necessary for the protection of interested persons.

(3) Corporate Fiduciary

Except as provided in subsection (1) of this section, a corporate fiduciary shall not be required to furnish a bond.

(4) Noncorporate Fiduciary - Bond not Mentioned in Instrument - Court Appointment

The court may require a non-corporate fiduciary, appointed by the court or nominated under an instrument that is silent as to bond, to file a bond if the court finds that exceptional circumstances make a bond necessary for the protection of interested persons.

(5) Fiduciary Estate not Exceeding \$10,000

Unless the court finds that exceptional circumstances make a bond necessary for the protection of interested persons, the court shall not require a fiduciary to furnish or continue

in effect a bond if the assets of the estate (A) do not exceed \$10,000 in value, (B) cannot be transferred by the fiduciary without approval of the court, and (C) consist only of cash deposited in a restricted account pursuant to Rule 10-705, securities, or real property.

(b) Factors for Court to Consider

In determining whether to require a guardian of the property to post a bond, where one is not required by law or the instrument creating the fiduciary estate, the court shall consider:

(1) the value, liquidity, annual gross income, and other receipts of the estate;

(2) whether a restricted account pursuant to Code, Estates and Trusts Article, §13-209.1 and Rule 10-705 can be established;

(3) the extent to which the income or receipts are payable to a facility responsible for the minor's or disabled person's care and custody;

(4) the guardian's criminal history, if any;

(5) the potential burden on the estate;

(6) the guardian's credit history;

(7) evidence satisfactory to the court of financial responsibility;

(8) if the guardian is an attorney, whether the guardian is

a member in good standing of the Maryland Bar and is in compliance with Rule 19-605; and

(9) any impediments to obtaining a bond.

~~(b)~~ (c) Petition to Require or Change Amount of Bond

(1) Who May File

Subject to the provisions of section (a), any interested person may file a petition to require the fiduciary to file a bond if a bond has not previously been filed or to reduce or increase any bond that has been filed.

(2) Where Filed

If a court has assumed jurisdiction over the estate, the petition shall be filed in that court. Otherwise, it shall be filed in the county in which the fiduciary resides, is regularly employed, or maintains a place of business.

(3) Notice

Unless the court orders otherwise, the fiduciary shall mail by ~~ordinary~~ first-class mail to all interested persons and all others exercising control of any of the fiduciary estate a copy of the petition and a show cause order issued pursuant to Rule 10-104.

~~(e)~~ (d) Where Bond to be Filed

(1) Required by Court

If a court requires a bond, the bond shall be filed in that court, unless the court directs otherwise.

(2) Required by Instrument

If a bond is required by the instrument that creates the fiduciary estate or nominates a fiduciary, the bond shall be filed in the following place:

(A) If the instrument specifies the county where the bond is to be filed, the bond shall be filed in the circuit court specified in the instrument;

(B) If the instrument does not specify a place or provide for a place to be selected, the bond shall be filed in the circuit court for the county where the instrument is recorded. If the instrument is not recorded, the bond shall be filed in the circuit court for the county where the estate will be administered.

~~(d)~~ (e) Amount of Bond - Other Security

(1) Generally

(A) The amount of a fiduciary bond shall ~~not be greater than the aggregate value of the property of the estate in the fiduciary's control, less the value of (A) securities, (B) money deposited in a financial institution as defined in Code, Estates and Trusts Article, §13-301 (h) under arrangements requiring an order of court for their removal, and (C) real property which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization~~ be set based on the value of the property of the estate that is or will be under the

fiduciary's control and that the fiduciary has or will have authority to expend, encumber, or convey without further order of the court.

Committee note: The intent of subsection (e)(1)(A) is that, ordinarily, property that cannot be spent, encumbered, or conveyed by the fiduciary without specific approval by the court not be considered in determining the amount of the bond. This would include funds deposited in a financial institution as defined in Code, Estates and Trusts Article, §13-301 (h) under arrangements requiring an order of court for their removal and real property that the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization.

(B) In lieu of sureties on a bond, the court may accept other security for the performance of the bond, including a pledge of securities or a mortgage of real property.

(C) The court may at any time, subject to the maximum amount provided by this section, require the amount of the bond, or the type or value of security, to be changed. The approval of a new bond shall not discharge any liability that may have accrued under the existing bond before such approval.

(2) Specified by Instrument

If the instrument creating the estate requires that the fiduciary file a bond in a specific amount, the bond shall be in the lesser of that amount or the maximum amount provided in subsection (1).

~~(e)~~ (f) Terms of Bond

A fiduciary bond shall be to the State of Maryland and

shall be conditioned upon the faithful discharge of the duties of the fiduciary as follows:

The condition of the above obligation is such, that if _____ shall well and truly perform the office of fiduciary as designated by the _____ and shall discharge the duties required by law as fiduciary without any injury or damage to any person interested in the faithful performance of the office, then the above obligation shall be void; it shall otherwise remain in full force and effect.

~~(f)~~ (g) Payment of Bond Premium from Income

A fiduciary who is required to file a bond shall be entitled to pay and be allowed the cost of the premium out of the income of the estate, unless the court otherwise directs.

Cross reference: Code, Estates and Trusts Article, §13-208.

Source: This Rule is derived from former Rule V73, except for subsection ~~(b)(3)~~ (c)(3) which is in part derived from former Rule V71 d and is in part new.

REPORTER'S NOTE

The Guardianship Work Group recommended that Rule 10-702 be amended to provide factors for the court to consider when determining whether to require a guardian of the property to post a bond. In addition to factors suggested by the Work Group, the Rules Committee added two more factors. One is evidence satisfactory to the court of financial responsibility. Another is whether a guardian who is an attorney is a member in good standing of the Maryland Bar and is in compliance with Rule 19-605.

A proposed amendment to subsection (c)(1) permits an interested person to file a petition to require the fiduciary to increase the amount of a previously filed bond.

Subsection (e)(1)(A) is amended and clarified to provide that the amount of a fiduciary bond is to be set based on the value of the property of the estate that is or will be under the fiduciary's control and that the fiduciary has or will have authority to expend, encumber, or convey without further order of court. An explanatory Committee note, which, in part, uses language from the text of current section (d) is added following the subsection.

Stylistic changes also are made.

**APPENDIX: MARYLAND GUIDELINES FOR COURT-APPOINTED ATTORNEYS IN
GUARDIANSHIP PROCEEDINGS**

INTRODUCTION AND SCOPE

These Guidelines are intended to promote good practice and consistency in the appointment and performance of attorneys appointed to represent minors and alleged disabled persons in guardianship proceedings in orphans' and circuit courts. However, the failure to follow a Guideline does not itself give rise to a cause of action against an attorney, nor does it create any presumption that a legal duty has been breached. These Guidelines apply to guardianship of the person and property cases where the court may be called upon to decide whether a minor or alleged disabled person needs a guardian and whether a proposed guardian is appropriate. Nothing contained in these Guidelines is intended to alter the duty an attorney owes to a client pursuant to the Maryland Attorneys' Rules of Professional Conduct.

1. RESPONSIBILITIES

It is the responsibility of court-appointed attorneys in guardianship proceedings to protect the due process rights of minors and alleged disabled persons. This role is distinct from the role of an investigator appointed under Rule 10-106.1.

As clients in guardianship proceedings may have diminished capacity due to minority, mental impairment, or some other reason, the court-appointed attorney should be mindful of the obligation, as far as reasonably possible, to maintain a normal client-attorney relationship as prescribed by the Maryland Attorneys' Rules of Professional Conduct. The court-appointed attorney's role is to advocate for the client's position even if that position conflicts with the attorney's judgment as to what the best interest of the client, except where the attorney reasonably believes that a client with diminished capacity is at risk of substantial physical, financial, or other harm. In that instance the attorney may take reasonably necessary protective action.

In guardianship proceedings, it is the role of court-appointed attorneys to:

- (a) explain the proceedings to the client;

- (b) advise the client of his or her rights;
- (c) keep the client's confidences;
- (d) advocate for the client's position; and
- (e) protect the client's interests.

Given the significant loss of rights and liberties imposed on individuals under guardianship, the court-appointed attorney is to ensure that:

- (a) proper procedures are followed by the court;
- (b) guardianship is imposed only if the petitioner proves by clear and convincing evidence that guardianship is necessary as required under Code, Estates and Trusts Article, §13-705 (b);
- (c) guardianship remains no more restrictive than is warranted;
- (d) there is no collusion between an investigator appointed pursuant to Md. Rule 10-106.1 and the petitioner; and
- (e) the client's right to appeal is exercised, if appropriate.

The attorney's appointment terminates as prescribed under Md. Rule 10-106 (d).

2. TRAINING

Training for court-appointed attorneys in guardianship proceedings should include the following topics:

(a) OVERVIEW OF GUARDIANSHIP

What a guardianship is and when it is necessary; alternatives to guardianship; the types of guardianship; the general role, responsibilities, limitations, and basic competencies required of guardians; parties to a guardianship; and guardianship law and procedures.

(b) UNDERSTANDING DISABILITIES AND DIMINISHED CAPACITY

The manifestation of mental health issues; distinguishing between temporary and permanent conditions; assessing capacity; interacting with people with disabilities or diminished capacity; and types and signs of abuse (physical, sexual, and emotional), neglect (including

self-neglect), and exploitation to which vulnerable persons are susceptible and how to respond to and prevent abuse, neglect, and exploitation.

(c) THE ROLE OF COURT-APPOINTED ATTORNEY

How attorneys are appointed in guardianship proceedings; the role of the attorney; meeting with the minor or alleged disabled person and interested persons; assessing physicians', psychologists', and social workers' certificates and reviewing records; filing answers and motions; and waivers, assessing the appropriateness of the proposed guardian, identification of assets, and less restrictive alternatives.

(d) ETHICS

Applicable Maryland Attorneys' Rules of Professional Conduct, including Rules 19-301.14 (Client with Diminished Capacity), 19-301.4 (Communication), 19-301.6 (Confidentiality of Information), 19-301.2 (Scope of Representation and Allocation of Authority Between Client and Attorney), 19-301.3 (Diligence), and 19-301.7 (Conflict of Interest — General Rule).

(e) FEES

Guardianship-specific fee issues including billing practices, determining indigence, and working with state agencies.

Attorneys should complete the training before appointment in a guardianship proceeding. If a court finds a reason to appoint an attorney who has not completed the training, the attorney should complete it before the first hearing in the case.

Courts may waive the training requirement for attorneys with relevant guardianship experience or training.

3. QUALIFICATIONS

When evaluating relevant experience of an attorney eligible for appointment under Rule 10-106 (b), courts may consider the attorney's experience in litigation, social work, mental health, health care, elder care, disability issues, and other related fields. While courts may not require attorneys to represent a minor or disabled person on a *pro bono* basis, they may take into account a particular attorney's willingness to accept or past history of accepting *pro bono* appointments.

Courts should encourage attorneys seeking appointments in guardianship proceedings to maintain their knowledge of current guardianship law and practice and take advantage of available continuing education opportunities.

APPENDIX: GUIDELINES FOR COURT-APPOINTED GUARDIANS OF THE PERSON

INTRODUCTION AND SCOPE

These Guidelines are intended to promote good practice and consistency in the appointment and performance of individuals appointed as guardians of the person of minors or disabled persons pursuant to Title 13 of the Maryland Code, Estates and Trusts Article and Title 10 of the Maryland Rules of Procedure. These Guidelines apply to guardianships of the person in both the circuit and Orphans' courts. The failure to follow a Guideline does not itself give rise to a cause of action against a guardian, nor does it create any presumption that a legal duty has been breached. Nothing contained in these Guidelines is intended to alter the obligations a guardian owes to a minor or disabled person pursuant to the Maryland Code or Maryland Rules of Procedure.

1. ORIENTATION PROGRAM AND TRAINING

1.1 ORIENTATION PROGRAM

An orientation program that provides an overview of the role and responsibilities of guardians will be developed and provided by the court. Unless waived by the court, guardians of the person must complete the program and file a certificate of completion with the court before exercising any powers or performing any duties as guardian. Guardians of the person need complete the orientation program only once, but must file a certificate of completion of the requirement in conjunction with any subsequent appointment.

1.2 TRAINING

Training for guardians of the person will be developed and provided by the court. Unless waived by the court, guardians of the person must complete the training within 120 days of appointment and file a certificate of completion with the court. Guardians of the person need complete the training only once, but must file a certificate of completion of the requirement in conjunction with any subsequent appointment.

The training should include the following topics:

(a) an overview of guardianship that includes common guardianship terms, court processes, and the relationship between the guardian and the court, the minor or disabled person, interested persons, and other parties to the guardianship;

(b) the role, powers, and duties of guardians of the person, including obligations to ensure the proper care of the minor or disabled person, limits to a guardian's authority, and filing and reporting requirements;

(c) the decision-making process for guardians of the person including decision-making standards, ethical considerations, medical decisions, and access to community resources;

(d) types and signs of abuse (physical, sexual, and emotional), neglect (including self-neglect), and exploitation to which persons under guardianship are susceptible and how to respond to and prevent abuse, neglect, and exploitation; and

(e) changes to the guardianship, including termination and the resignation or removal of the guardian.

2. ATTORNEYS AS GUARDIAN

The court will develop and provide training on the Maryland Attorneys' Rules of Professional Conduct applicable to attorneys appointed as guardians of the person. Unless waived by the court, active Maryland attorneys with no prior relationship to the minor or disabled person who are appointed as guardian of the person must complete the training in addition to the orientation program and training requirements set forth in Guidelines 1.1 and 1.2.

APPENDIX: GUIDELINES FOR COURT-APPOINTED GUARDIANS OF THE PROPERTY

INTRODUCTION AND SCOPE

These Guidelines are intended to promote good practice and consistency in the appointment and performance of individuals appointed as guardians of the property of minors or disabled persons pursuant to Title 13 of the Maryland Code, Estates and Trusts Article and Title 10 of the Maryland Rules of Procedure. These Guidelines apply to guardianships of the property in both the circuit and Orphans' courts. The failure to follow a Guideline does not itself give rise to a cause of action against a guardian, nor does it create any presumption that a legal duty has been breached. Nothing contained in these Guidelines is intended to alter the obligations a guardian owes to a minor or disabled person pursuant to the Maryland Code or Maryland Rules of Procedure.

1. ORIENTATION PROGRAM AND TRAINING

1.1. ORIENTATION PROGRAM

An orientation program that provides an overview of the role and responsibilities of guardians will be developed and provided by the court. Unless waived by the court, guardians of the property must complete the program and file a certificate of completion with the court before exercising any powers or performing any duties as guardian. Guardians of the property need complete the orientation program only once, but must file a certificate of completion of the requirement in conjunction with any subsequent appointment.

1.2. TRAINING

Training for guardians of the property will be developed and provided by the court. Unless waived by the court, guardians of the property must complete the training as soon as practicable, and in any event before the initial inventory is due pursuant to Rule 10-707, and file a certificate of completion with the court. Guardians of the property need complete the training only once, but must file a certificate of completion requirement in conjunction with any subsequent appointment.

The training should include the following topics:

(a) an overview of guardianship that includes common guardianship terms, court processes, and the relationships between the guardian and the court, the minor or disabled person, interested persons, and other parties to the guardianship;

(b) the role, powers, and duties of guardians of the property including fiduciary obligations, decision-making standards, filing and reporting requirements, and eligible commissions and expenses;

(c) how to apply for and maintain government benefits on behalf of the minor or disabled person;

(d) types and signs of abuse (physical, sexual, and emotional), neglect (including self-neglect), and exploitation to which persons under guardianship are susceptible and how to respond to and prevent abuse, neglect, and exploitation; and

(e) changes to the guardianship, including termination and the resignation or removal of the guardian.

2. ATTORNEYS AS GUARDIAN

The court will develop and provide training on the Maryland Attorneys' Rules of Professional Conduct applicable to attorneys appointed as guardians of the property. Unless waived by the court, active Maryland attorneys with no prior relationship to the minor or disabled person who are appointed as guardians of the property must complete the training in addition to the orientation program and training requirements set forth in Guidelines 1.1 and 1.2.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-202 by correcting a Rule reference and by revising the notice contained in a charging document to direct a defendant who seeks Public Defender representation to contact a District Court commissioner, as follows:

Rule 4-202. CHARGING DOCUMENT - CONTENT

(a) General Requirements

A charging document shall contain the name of the defendant or any name or description by which the defendant can be identified with reasonable certainty, except that the defendant need not be named or described in a citation for a parking violation. It shall contain a concise and definite statement of the essential facts of the offense with which the defendant is charged and, with reasonable particularity, the time and place the offense occurred. An allegation made in one count may be incorporated by reference in another count. The statute or other authority for each count shall be cited at the end of the count, but error in or omission of the citation of authority is not grounds for dismissal of the charging document or for reversal of a conviction.

A charging document also shall contain a notice to the defendant in the following form:

TO THE PERSON CHARGED:

1. This paper charges you with committing a crime.
2. If you have been arrested and remain in custody, you have the right to have a judicial officer decide whether you should be released from jail until your trial.
3. If you have been served with a citation or summons directing you to appear before a judicial officer for a preliminary inquiry at a date and time designated or within five days of service if no time is designated, a judicial officer will advise you of your rights, the charges against you, and penalties. The preliminary inquiry will be cancelled if a lawyer has entered an appearance to represent you.
4. You have the right to have a lawyer.
5. A lawyer can be helpful to you by:
 - (A) explaining the charges in this paper;
 - (B) telling you the possible penalties;
 - (C) explaining any potential collateral consequences of a conviction, including immigration consequences;
 - (D) helping you at trial;
 - (E) helping you protect your constitutional rights; and
 - (F) helping you to get a fair penalty if convicted.

6. Even if you plan to plead guilty, a lawyer can be helpful.

7. If you are eligible, the Public Defender or a court-appointed attorney will represent you at any initial appearance before a judicial officer and at any proceeding under Rule ~~4-216.1~~ 4-216.2 to review an order of a District Court commissioner regarding pretrial release. If you want a lawyer for any further proceeding, including trial, but do not have the money to hire one, the Public Defender may provide a lawyer for you. ~~The court clerk will tell you how to contact the~~ To apply for Public Defender representation, contact a District Court commissioner.

8. If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.

9. DO NOT WAIT UNTIL THE DATE OF YOUR TRIAL TO GET A LAWYER. If you do not have a lawyer before the trial date, you may have to go to trial without one.

. . .

REPORTER'S NOTE

Amendments to Rules 4-202 and 4-213.1 are proposed in conjunction with implementation of Chapter 606, Laws of 2017 (SB 714). Under the new statute, a District Court commissioner -- rather than the Office of the Public Defender -- determines whether an individual qualifies as indigent and eligible for representation provided by the Public Defender.

In Rule 4-202 (a), an amendment to the Notice contained on a charging document is revised to direct a defendant who seeks Public Defender representation to contact a District Court commissioner. A reference to Rule 4-216.1 in paragraph 7. of the Notice is corrected to read "Rule 4-216.2."

In Rule 4-213.1, subsection (d)(1)(A) is amended to reflect that the request and affidavit form used by a defendant seeking representation by the Public Defender is a form approved by Chief Judge of the District Court, rather than a form used by the Public Defender. Subsection (g)(1) is amended to reflect that District Court commissioners will make determinations of eligibility for provisional representation and final determinations of indigence.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-213.1 by deleting a reference to certain forms used by the Public Defender, by adding a reference to certain forms approved by the Chief Judge of the District Court, by adding a reference to a final determination of indigence made by a District Court commissioner, by deleting a reference to a determination of eligibility for provisional representation made by the Public Defender, and by adding a reference to a determination of eligibility for provisional representation made by a District Court commissioner, as follows:

Rule 4-213.1. APPOINTMENT, APPEARANCE, OR WAIVER OF ATTORNEY AT INITIAL APPEARANCE

(a) Right to Representation by Attorney

(1) Generally

A defendant has the right to be represented by an attorney at an initial appearance before a judicial officer.

(2) Attorney

Unless the defendant waives that right in accordance with section (e) of this Rule or another attorney has entered an

appearance, if the defendant is indigent within the meaning of Code, Criminal Procedure Article, §16-210 (b) and (c):

(A) the defendant shall be represented by the Public Defender if the initial appearance is before a judge; and

(B) the defendant shall be represented by an attorney appointed by the court in accordance with section (b) of this Rule if the initial appearance is before a District Court commissioner, unless the Public Defender enters an appearance for the defendant.

(b) Appointment of Attorneys for Initial Appearance Before Commissioner

(1) Appointment

After consultation with the State and local bar associations and the Public Defender, the District Administrative Judges shall develop lists of attorneys willing to accept appointment to represent indigent defendants at initial appearances before District Court commissioners in the district on a pro bono basis or at fees equivalent to those paid by the Public Defender to panel attorneys. Attorneys shall be appointed from the lists as needed for specific proceedings or to be available for blocks of time.

(2) Processing of Invoices

Invoices for fees due to court-appointed attorneys shall be processed in accordance with procedures adopted by the State Court Administrator.

(c) General Advice by Judicial Officer

If the defendant appears at an initial appearance without an attorney, the judicial officer shall advise the defendant that the defendant has a right to an attorney at the initial appearance, of the importance of having an attorney, and that, if the defendant is indigent, (1) the Public Defender will provide representation if the proceeding is before a judge, or (2) a court-appointed attorney will provide representation if the proceeding is before a commissioner.

(d) Proceeding Before Commissioner

(1) Determination of Indigence

(A) If the defendant claims indigence and desires a court-appointed attorney for the proceeding, the defendant shall complete a request and affidavit substantially in the form ~~used by the Public Defender~~ approved by the Chief Judge of the District Court and, from those documents and in accordance with the criteria set forth in Code, Criminal Procedure Article, §16-210 (b) and (c), the commissioner shall determine whether the defendant qualifies for an appointed attorney.

(B) If the commissioner determines that the defendant is indigent, the commissioner shall provide a reasonable

opportunity for the defendant and a court-appointed attorney to consult in confidence.

(C) If the commissioner determines that the defendant is not indigent, the commissioner shall advise the defendant of the right to a privately retained attorney and provide a reasonable opportunity for the defendant to obtain the services of, and consult in confidence with, a private attorney.

(2) Inability of Attorney to Appear Promptly

The commissioner shall further advise the defendant that, unless the attorney, whether court appointed or privately retained, is able to participate, either in person or by electronic means or telecommunication, within a reasonable period of time, the initial appearance may need to be continued, in which event, subject to subsection (d)(3) of this Rule, the defendant will be temporarily committed until the earliest opportunity that the defendant can be presented to the next available judicial officer with an attorney present.

(3) If Initial Appearance Continued

If pursuant to subsection (d)(2) of this Rule, the initial appearance needs to be continued, the commissioner, before recessing the proceeding, shall proceed in accordance with this subsection.

(A) Arrest Without Warrant - Determination of Probable Cause

If the defendant was arrested without a warrant, the commissioner shall determine whether there was probable cause for the charges and the arrest pursuant to Rule 4-216 (a). If the commissioner finds no probable cause for the charges or for the arrest, the commissioner shall release the defendant on personal recognizance, with no other conditions of release. If the defendant is released pursuant to subsection (d)(3)(A) of this Rule, the Commissioner shall not make the determination otherwise required by subsection (d)(3)(B) of this Rule, but shall provide the advice required by subsection (d)(3)(C) of this Rule.

(B) Preliminary Determination Regarding Release on Personal Recognizance

Regardless of whether the defendant was arrested with or without a warrant, the commissioner shall make a preliminary determination regarding the commissioner's authority to release the defendant on personal recognizance and the appropriateness of such a release pursuant to Rules 4-216 and 4-216.1. If the commissioner's preliminary determination is that release on personal recognizance with no other conditions of release is authorized and appropriate, the commissioner shall release the defendant on that basis.

(C) Required Compliance Before Release of Defendant

Before releasing the defendant pursuant to subsection (d)(3)(A) or (B) of this Rule, the commissioner shall comply with the applicable provisions of Rules 4-213 and 4-216 (g).

(D) Preliminary Determination Not to Release

Upon a preliminary determination by the commissioner not to release the defendant on personal recognizance, the commissioner shall comply with the applicable provisions of Rule 4-216 (f) and (g) and recess the proceeding. The commissioner's preliminary determination is without prejudice to the right of the defendant to seek release on personal recognizance when the proceeding resumes with the attorney present. If the proceeding resumes before the commissioner who made the preliminary determination not to release the defendant on personal recognizance, the commissioner, upon request of the defendant, shall recuse, and the proceeding shall be before another judicial officer.

(e) Waiver - Initial Appearance Before Judge or Commissioner

(1) If the defendant indicates a desire to waive the right to an attorney, the judicial officer shall advise the defendant (A) that an attorney can be helpful in explaining the procedure and in advocating that the defendant should be released immediately on recognizance or on bail with minimal conditions, (B) that it may be possible for the attorney to participate electronically or by telecommunication, and (C) that any waiver

would be effective only for the initial appearance and not for any subsequent proceedings.

(2) If, upon this advice, the defendant still wishes to waive the right to an attorney and the judicial officer finds that the waiver is knowing and voluntary, the judicial officer shall announce and record that finding.

(3) A waiver pursuant to section (e) of this Rule is effective only for the initial appearance and not for any subsequent proceeding.

(4) Notwithstanding an initial decision not to waive the right to an attorney, a defendant may waive that right at any time during the proceeding, provided that no attorney has already entered an appearance.

(f) Participation by Attorney by Electronic or Telecommunication Means

(1) By State's Attorney

The State's Attorney may participate in the proceeding, but is not required to do so. When the physical presence of the State's Attorney is impracticable, the State's Attorney may participate electronically or by telecommunication if the equipment at the judicial officer's location and the State's Attorney's location provides adequate opportunity for the State's Attorney to participate meaningfully in the proceeding.

(2) By Defense Attorney

When the physical presence of a defense attorney is impracticable, the attorney may consult with the defendant and participate in the proceeding electronically or by telecommunication if the equipment is at the judicial officer's location and the defense attorney's location provides adequate opportunity for the attorney to consult privately with the defendant and participate meaningfully in the proceeding.

(g) Provisional and Limited Appearance

(1) Provisional Representation by Public Defender

Unless a District Court commissioner has made a final determination of indigence and the Public Defender has entered a general appearance pursuant to Rule 4-214, any appearance entered by the Public Defender at an initial appearance shall be provisional. For purposes of this section, eligibility for provisional representation shall be determined by ~~the Public Defender~~ a District Court commissioner prior to or at the time of the proceeding.

(2) Limited Appearance

Unless a general appearance has been entered pursuant to Rule 4-214, an appearance by a court-appointed or privately retained attorney shall be limited to the initial appearance before the judicial officer and shall terminate automatically upon the conclusion of that stage of the criminal action.

(3) Inconsistency with Rule 4-214

Section (g) of this Rule prevails over any inconsistent provision in Rule 4-214.

Source: This Rule is new but is derived, in part, from amendments proposed to Rule 4-216 in the 181st Report of the Standing Committee on Rules of Practice and Procedure.

REPORTER'S NOTE

See the Reporter's note to Rule 4-202.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 by changing the title of the Rule, by deleting section (a), by moving the cross reference following section (a) to the end of the Rule, by deleting language from new section (a), by deleting a part of a cross reference after new section (a), by making a stylistic correction in section (b), and by relettering the Rule, as follows:

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

~~(a) Applicability~~

~~This Rule applies to all cases except those governed by Rule 4-343.~~

~~Cross reference: For procedures pertaining to collection of DNA samples from an individual convicted of a felony or a violation of Code, Criminal Law Article, §§6-205 or 6-206, see Code, Public Safety Article, §2-504.~~

~~(b)~~ (a) Statutory Sentencing Procedure

When a defendant has been found guilty of murder in the first degree and the State has given timely notice of intention to seek a sentence of imprisonment for life without the possibility of parole, ~~but has not given notice of intention to seek the death penalty,~~ the court shall conduct a sentencing proceeding, separate from the proceeding at which the

defendant's guilt was adjudicated, as soon as practicable after the trial to determine whether to impose a sentence of imprisonment for life or imprisonment for life without parole.

Cross reference: Code, Criminal Law Article, §§2-201, ~~2-202~~ ~~(b)(3)~~, 2-203, and 2-304.

~~(e)~~ (b) Judge

If the defendant's guilt is established after a trial has commenced, the judge who presided shall sentence the defendant. If a defendant enters a plea of guilty or nolo contendere before trial, any judge may sentence the defendant except that, the judge who directed entry of the plea shall sentence the defendant if that judge has received any matter, other than a statement of the mere facts of the offense, which would be relevant to determining the proper sentence. This section is subject to the provisions of Rule 4-361.

~~(d)~~ (c) Presentence Disclosures by the State's Attorney

Sufficiently in advance of sentencing to afford the defendant a reasonable opportunity to investigate, the State's Attorney shall disclose to the defendant or counsel any information that the State expects to present to the court for consideration in sentencing. If the court finds that the information was not timely provided, the court shall postpone sentencing.

~~(e)~~ (d) Notice and Right of Victim to Address the Court

(1) Notice and Determination

Notice to a victim or a victim's representative of proceedings under this Rule is governed by Code, Criminal Procedure Article, §11-104 (e). The court shall determine whether the requirements of that section have been satisfied.

(2) Right to Address the Court

The right of a victim or a victim's representative to address the court during a sentencing hearing under this Rule is governed by Code, Criminal Procedure Article, §11-403.

Cross reference: See Code, Criminal Procedure Article, §§11-103 (b) and 11-403 (e) concerning the right of a victim or victim's representative to file an application for leave to appeal under certain circumstances. See Code, Criminal Procedure Article, §11-103 (e) for the right of a victim to file a motion requesting restitution.

~~(f)~~ (e) Allocution and Information in Mitigation

Before imposing sentence, the court shall afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment.

~~(g)~~ (f) Reasons

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

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

see Code, Health General Article, §8-507. For procedures to be followed by the court to depart from a mandatory minimum sentence for certain drug-related offenses, see Code, Criminal Law Article, §5-609.1.

~~(h)~~ (g) Credit for Time Spent in Custody

Time spent in custody shall be credited against a sentence pursuant to Code, Criminal Procedure Article, §6-218.

~~(i)~~ (h) Advice to the Defendant

(1) At the time of imposing sentence, the court shall cause the defendant to be advised of: (A) any right of appeal, (B) any right of review of the sentence under the Review of Criminal Sentences Act, (C) any right to move for modification or reduction of the sentence, (D) any right to be represented by counsel, and (E) the time allowed for the exercise of these rights.

(2) At the time of imposing a sentence of incarceration for a violent crime as defined in Code, Correctional Services Article, §7-101 and for which a defendant will be eligible for parole as provided in §7-301 (c) or (d) of the Correctional Services Article, the court shall state in open court the minimum time the defendant must serve for the violent crime before becoming eligible for parole or for conditional release under mandatory supervision pursuant to Code, Correctional Services Article, §7-501.

(3) The circuit court shall cause the defendant who was sentenced in circuit court to be advised that within ten days after filing an appeal, the defendant must order in writing a transcript from the court reporter.

Cross reference: Code, Criminal Procedure Article, §§8-102 - 8-109.

Committee note: Code, Criminal Procedure Article, §6-217 provides that the court's statement of the minimum time the defendant must serve for the violent crime before becoming eligible for parole is for informational purposes only and may not be considered a part of the sentence, and the failure of a court to comply with this requirement does not affect the legality or efficacy of the sentence imposed.

~~(j)~~ (i) Terms for Release

On request of the defendant, the court shall determine the defendant's eligibility for release under Rule 4-349 and the terms for any release.

~~(k)~~ (j) Restitution from a Parent

If restitution from a parent of the defendant is sought pursuant to Code, Criminal Procedure Article, §11-604, the State shall serve the parent with notice of intention to seek restitution and file a copy of the notice with the court. The court may not enter a judgment of restitution against the parent unless the parent has been afforded a reasonable opportunity to be heard and to present evidence. The hearing on parental restitution may be part of the defendant's sentencing hearing.

~~(l)~~ (k) Recordation of Restitution

(1) Circuit Court

Recordation of a judgment of restitution in the circuit court is governed by Code, Criminal Procedure Article, §§11-608 and 11-609 and Rule 2-601.

(2) District Court

Upon the entry of a judgment of restitution in the District Court, the Clerk of the Court shall send the written notice required under Code, Criminal Procedure Article, §11-610 (e). Recordation of a judgment of restitution in the District Court is governed by Code, Criminal Procedure Article, §§11-610 and 11-612 and Rule 3-621.

Cross reference: For procedures pertaining to collection of DNA samples from an individual convicted of a felony or a violation of Code, Criminal Law Article, §§6-205 or 6-206, see Code, Public Safety Article, §2-504.

Source: This Rule is derived as follows:

~~Section (a) is derived from former Rule 772 a.~~

Section ~~(b)~~ (a) is new.

Section ~~(e)~~ (b) is derived from former Rule 772 b and M.D.R. 772 a.

Section ~~(d)~~ (c) is derived from former Rule 772 c and M.D.R. 772 b.

Section ~~(e)~~ (d) is new.

Section ~~(f)~~ (e) is derived from former Rule 772 d and M.D.R. 772 c.

Section ~~(g)~~ (f) is derived from former Rule 772 e and M.D.R. 772 d.

Section ~~(h)~~ (g) is derived from former Rule 772 f and M.D.R. 772 e.

Section ~~(i)~~ (h) is in part derived from former Rule 772 h and M.D.R. 772 g and in part new.

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

Section ~~(k)~~ (j) is new.

Section ~~(l)~~ (k) is new.

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death penalty. *Bellard v. State*, 452 Md. 467 (2017) has now resolved an ambiguity that had been created by Chapter 156. Rule 4-342 is proposed to be amended by deleting language referring to the death penalty and a reference to the Code that has been repealed. The language "in non-capital cases" is deleted from the title of the Rule.

Section (a) is deleted, because it states that Rule 4-342 applies to all cases except those governed by Rule 4-343, which is proposed for deletion in its entirety. A cross reference after section (a) is moved to the end of the Rule.

The newly relettered section (a) (former section (b)) is amended by deleting the language "but has not given notice of intention to seek the death penalty," because, under section 4. of Chapter 156, any existing notice to seek the death penalty is considered withdrawn and replaced with an intention to seek life without the possibility of parole.

A cross reference after the newly relettered section (a) (former section (b)) is amended by deleting a reference to former Code, Criminal Law Article, §2-202, which has been repealed.

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

DELETE Rule 4-343, as follows:

~~Rule 4-343. SENTENCING — BIFURCATED PROCEDURE IN CAPITAL CASES~~

~~(a) Applicability~~

~~_____~~

~~(b) Statutory Sentencing Procedure; Bifurcation of Proceeding~~

~~_____~~

~~(c) Presentence Disclosures by the State's Attorney~~

~~_____~~

~~(d) Reports of Defendant's Experts~~

~~_____~~

~~(e) Judge~~

~~_____~~

~~(f) Notice and Right of Victim's Representative to Address
the Court or Jury~~

~~_____~~

~~(g) Allocution~~

~~_____~~

~~(h) Phase I of Sentencing Proceeding~~

~~_____~~

~~(i) Phase II of Sentencing Proceeding~~

~~.....~~

~~(j) Deletions from Phase II Form~~

~~.....~~

~~(k) Advice of the Judge~~

~~.....~~

~~(l) Report of Judge~~

~~.....~~

~~Source: This Rule is derived in part from the 2008 version of former Rule 4-343 and is in part new.~~

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death penalty. *Bellard v. State*, 452 Md. 467 (2017) has now resolved an ambiguity that had been created by Chapter 156. Rule 4-343, which provides the sentencing procedure in capital cases, is proposed for deletion in its entirety.

MARYLAND RULES OF PROCEDURE

TITLE 5- EVIDENCE

CHAPTER 600 - WITNESSES

AMEND Rule 5-606 by deleting subsection (c)(2), as follows:

Rule 5-606. COMPETENCY OF JUROR AS WITNESS

. . .

(c) "Verdict" Defined

For purposes of this Rule, "verdict" means ~~(1) a verdict returned by a trial jury or (2) a sentence returned by a trial jury in a sentencing proceeding conducted pursuant to law.~~

. . .

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death penalty but created an ambiguity as to whether, after the State has given notice of intent to seek life imprisonment without the possibility of parole, a defendant who is convicted of first degree murder has the right to have a jury determine if that sentence is to be imposed. The Court of Appeals, in *Bellard v. State*, 452 Md. 467 (2017), resolved the ambiguity by holding that the defendant does not have such a right. As with all other criminal convictions under the laws of this State, the defendant's sentence is determined by the court, not by a jury.

With the resolution of the statutory ambiguity, the language of Rule 5-606 (c)(2) is superfluous and, therefore, is proposed to be deleted.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-304.4 by adding a new section (c) pertaining to obtaining information from third parties, by adding a Committee note following section (c), and by adding a new Comment [6], as follows:

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

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

(b) An attorney who receives a document, electronically stored information, or other property relating to the representation of the attorney's client and knows or reasonably should know that the document, electronically stored information, or other property was inadvertently sent shall promptly notify the sender.

(c) In communicating with third persons, an attorney representing a client in a matter shall not seek information relating to the matter that the attorney knows or reasonably

should know is protected from disclosure by statute or by an established evidentiary privilege, unless the protection has been waived. An attorney who receives information that is protected from disclosure shall (1) terminate the communication immediately and (2) give notice of the disclosure to any tribunal in which the matter is pending and to the person entitled to enforce the protection against disclosure.

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

COMMENT

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

[2] Section (b) recognizes that attorneys sometimes receive a document, electronically stored information, or other property that was inadvertently sent or produced by opposing parties or their attorneys. A document, electronically stored information, or other property is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document, electronically stored information, or other property is accidentally included with information that was intentionally transmitted. If an attorney knows or reasonably should know that such a document, electronically stored information, or other property was sent inadvertently, this Rule requires the attorney promptly to notify the sender in order to permit that person to take protective measures. Whether the attorney is required to take additional steps, such as returning the document, electronically stored information, or other property, is a matter of law beyond the scope of these Rules, as is the

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

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

[4] Third persons may possess information that is confidential to another person under an evidentiary privilege or under a law providing specific confidentiality protection, such as trademark, copyright, or patent law. For example, present or former organizational employees or agents may have information that is protected as a privileged attorney-client communication or as work product. An attorney may not knowingly seek to obtain confidential information from a person who has no authority to waive the privilege. Regarding current employees of a represented organization, see also Rule 19-304.2 (4.2).

Model Rules Comparison. - Sections (a) and (b) of Rule 19-304.4 is are substantially similar to the language of Model Rule 4.4 of the Ethics 2000 amendments to the ABA Model Rules of Professional Conduct. Section (c) substantially restores to the Rule Maryland language as it existed prior to a 2017 amendment.

REPORTER'S NOTE

Amendments to Rule 19-304.4, effective April 1, 2017, conformed it to Model Rule 4.4 of the Ethics 2000 amendments to the ABA Model Rules of Professional Conduct. The amendments deleted language from former section (b) that addressed certain responsibilities of an attorney when obtaining information from third persons, without adding comparable language elsewhere.

Proposed amendments to Rule 19-304.4 substantially restore the deleted language by adding a new section (c), a Committee note following section (c), and Comment [4].

A conforming amendment to Rule 19-304.2 also is proposed.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-304.2 to update a Rule reference in Comment [6], as follows:

Rule 19-304.2. COMMUNICATIONS WITH PERSONS REPRESENTED BY AN ATTORNEY (4.2)

(a) Except as provided in section (c) of this Rule, in representing a client, an attorney shall not communicate about the subject of the representation with a person who the attorney knows is represented in the matter by another attorney unless the attorney has the consent of the other attorney or is authorized by law or court order to do so.

(b) If the person represented by another attorney 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 attorneys concerning the matter or whose acts or omissions in the matter may bind the organization for civil or criminal liability. The attorney may not communicate with a current agent or employee of the organization unless the attorney first

has made inquiry to ensure that the agent or employee is not an individual with whom communication is prohibited by this section and has disclosed to the individual the attorney's identity and the fact that the attorney represents a client who has an interest adverse to the organization.

(c) An attorney 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 attorney's client and the attorney first makes the disclosures specified in section (b) of this Rule.

Committee note: The use of the word "person" for "party" in section (a) of this Rule is not intended to enlarge or restrict the extent of permissible law enforcement activities of government attorneys under applicable judicial precedent.

COMMENT

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

[2] This Rule does not prohibit communication with a person, or an employee or agent of the person, concerning matters outside the representation. For example, the existence of a controversy between two organizations does not prohibit an attorney for either from communicating with non-attorney representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and an attorney having independent justification or legal authorization for communicating with a represented person is permitted to do so.

[3] Communications authorized by law include communications in the course of investigative activities of attorneys 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 attorney who communicates with a represented criminal defendant must comply with this Rule.

[4] An attorney 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 attorney, the prosecutor may seek a court order appointing substitute an attorney to represent the defendant with respect to the communication.

[5] 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 an attorney concerning the matter to which the communication relates. The Rule applies even though the represented person initiates or consents to the communication. An attorney must immediately terminate communication with a person if, after commencing communication, the attorney learns that the person is one with whom communication is not permitted by this Rule.

[6] If an agent or employee of a represented person that is an organization is represented in the matter by his or her own attorney, the consent by that attorney to a communication will be sufficient for purposes of this Rule. Compare Rule 19-303.4 (f) (3.4). In communicating with a current agent or employee of an organization, an attorney must not seek to obtain information that the attorney knows or reasonably should know is subject to an evidentiary or other privilege of the organization. Regarding communications with former employees, see Rule 19-304.4 ~~(b)~~ (c) (4.4).

[7] The prohibition on communications with a represented person applies only if the attorney 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

attorney cannot evade the requirement of obtaining the consent of the opposing attorney by ignoring the obvious.

[8] Rule 19-304.3 (4.3) applies to a communication by an attorney with a person not known to be represented by an attorney.

[9] Section (c) of this Rule recognizes that special considerations come into play when an attorney 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 attorney representing the government in the matter. Section (c) of this Rule does not, however, permit an attorney to bypass attorneys representing the government on every issue that may arise in the course of disputes with the government. Rather, the section provides attorneys 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.

Model Rules Comparison. - This Rule substantially retains Maryland language as it existed prior to the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for dividing Rule 19-304.2 (b) (4.2) into Rule 19-304.2 (b) and (c) (4.2) with no change in wording.

REPORTER'S NOTE

See the Reporter's note to Rule 19-304.4 (4.4).

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

AMEND Rule 2-508 to correct an internal reference, as follows:

Rule 2-508. CONTINUANCE OR POSTPONEMENT

. . .

(d) Costs

When granting a continuance or postponement for a reason other than one stated in ~~section (d)~~ Rule 16-804 (e), the court may assess costs and expenses occasioned by the continuance or postponement.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 2-508 corrects an internal reference in section (d) of the Rule.

MARYLAND RULES OF PROCEDURE
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT
CHAPTER 500 - TRIAL

AMEND Rule 3-508 to correct an internal reference, as follows:

Rule 3-508. CONTINUANCE OR POSTPONEMENT

. . .

(c) Costs

When granting a continuance or postponement for a reason other than one stated in ~~section (e)~~ Rule 16-804 (e), the court may assess costs and expenses occasioned by the continuance or postponement.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 3-508 corrects an internal reference in section (c) of the Rule.

MARYLAND RULES OF PROCEDURE
TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-101 (n) to correct a Rule reference, as follows:

Rule 20-101. DEFINITIONS

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

. . .

(n) MDEC Action

"MDEC action" means an action to which this Title is made applicable by Rule ~~20-202~~ 20-102.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 20-101 corrects an internal reference in section (n) of the Rule.