

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its Two Hundred and Seventh Report to the Court of Appeals, recommending rescission of current Rules 5-702 and 5-902 of the Maryland Rules of procedure and replacement of them by revised Rules 5-702 and 5-902, respectively, and transmitting thereby proposed new Title 10, Chapter 800 (Revocable Trusts); proposed new Rules 2-807, 5-702, 5-902, and 16-309; and amendments to current Rules 1-326, 2-504, 2-504.1, 2-801, 4-345, 5-803, 5-901, 16-302, 16-803, 16-919, 18-405, 18-409.1, 18-411, 18-428, 18-433, 18-437, 18-438, 19-102, 19-305.4, 19-308.1, 19-308.5, 19-605, 19-606, 19-701, 19-702, 19-703, 19-704, 19-705, 19-706, 19-707, 19-708, 19-711, 19-712, 19-714, 19-715, 19-716, 19-717, 19-718, 19-719, 19-720, 19-721, 19-722, 19-723, 19-724, 19-725, 19-726, 19-727, 19-728, 19-731, 19-732, 19-733, 19-734, 19-735, 19-736, 19-737, 19-738, 19-739, 19-740, 19-741, 19-742, 19-743, 19-744, 19-751, 19-752, 19-802, 20-109, and 20-405.

The Committee's Two Hundred and Seventh 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 May 10, 2021 any written comments they may wish to make to:

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Reporter, Rules Committee
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Suzanne Johnson
Clerk
Court of Appeals of Maryland

April 8, 2021

The Honorable Mary Ellen Barbera,
Chief Judge
The Honorable Robert N. McDonald
The Honorable Shirley M. Watts
The Honorable Michele D. Hotten
The Honorable Joseph M. Getty
The Honorable Brynja M. Booth
The Honorable Jonathan Biran,
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 Two Hundred and Seventh Report, and recommends that the Court adopt the new Rules and amendments to existing Rules transmitted with this Report. The proposed changes fall into eight categories.

Category 1 consists of amendments to Rule 4-345, which deals with the revisory power of a court over criminal sentences imposed by the court.¹

¹ Compare Rule 4-331, which also provides revisory power and control over judgments in criminal cases. That Rule focuses on situations in which the conviction itself is challenged; the petitioner is not merely seeking relief from the unexpired term of a sentence.

Sections (a), (b), (c), and (d) of the current Rule permit the court (1) to correct an illegal sentence at any time, (2) to revise a sentence, without a specific time limitation, for fraud, mistake, or irregularity, (3) to correct an evident mistake in the announcement of a sentence if that is done before the defendant leaves the courtroom, and (4) to revise a sentence in a case involving desertion or non-support of a spouse, child, or destitute parent in favor of probation at any time prior to the expiration of the sentence. No changes are proposed to those sections.

Section (e) provides a general revisory power over other sentences, subject to three conditions or limitations: first, the court may not increase the sentence; second, a motion to revise must have been filed within 90 days after the sentence was imposed; and third, the revisory power may not be exercised after the expiration of five years from the imposition of the sentence. A Committee Note to section (e) permits the court, without regard to the latter two limitations, to suspend the unserved time remaining on a sentence and commit a defendant with a drug or alcohol dependency to a Department of Health treatment program pursuant to Code, Health-General Article, § 8-507.²

At one time, a trial court in Maryland had no power to strike or reduce a sentence after it had become "enrolled," which meant after the court's "term" had ended (other than for illegality, fraud, mistake, or irregularity). *Madison v. State*, 205 Md. 425, 431 (1954). That limitation was modified by Rule, however, initially by General Rule of Practice and Procedure, Part Four, I, Rule 10, which followed the Federal approach of permitting a trial court to reduce a sentence within 90 days after the sentence was imposed. After that period, the sentence could be revised only for illegality, fraud, mistake, or irregularity. See Rule 744 (1958) and Rule 774 (1983). The flat

² Note also the cross-reference at the end of the Rule calling attention to (1) Code, Criminal Procedure Article, § 8-302 that permits a court to vacate a judgment of conviction for certain "qualifying offenses" if the person's participation in the offense was the direct result of human trafficking if the motion to vacate was filed within a reasonable period of time after the conviction, and (2) Code, Criminal Law Article, § 5-609.1, permitting a court to modify a mandatory minimum sentence imposed for certain drug offenses prior to September 30, 2017, without regard to whether the defendant had filed a previous motion to modify or reduce the sentence.

90-day limit was deleted in 1984 when the criminal procedure Rules were generally revised. See Rule 4-345 (1984). From then until 2005, there was no time limit on the exercise of the general revisory power, provided a motion to revise had been filed within 90 days after imposition of the sentence. The court could hold the motion *sub curia* indefinitely.

The five-year limitation was added to the Rule in 2005. It was proposed by the Conference of Circuit Judges, along with a request that the 90 days allowed for a motion to revise be reduced to 30 days. The Rules Committee rejected both requests, the former by a close vote of 11 to 10, with four members not present. In light of the close vote, the Committee transmitted both proposals to the Court in a February 17, 2004 letter Report. The Court adopted the five-year limitation requested by the Conference but left the 90-day limit for filing the motion intact.

One of the functions assigned to the Rules Committee is to "keep abreast of emerging trends and new developments in the law that may affect practice and procedure in the Maryland Courts." Rule 16-701 (g). In doing so, the Committee has become aware of a national movement to permit trial courts in criminal cases to retain the power to revise long prison sentences imposed on persons (1) who were juveniles, or under 25, when they committed the crime(s) for which the sentence was imposed, or (2) who have served a significant part of the sentence and reached a certain age (60, 65, 70).

With respect to the younger criminal, this movement is based on medical evidence, accepted by the United States Supreme Court and the Court of Appeals, that the human brain is not fully developed until the age of 25 and that younger people have "a lack of maturity and an underdeveloped sense of responsibility leading to recklessness, impulsivity, and heedless risk-taking" and "lack the ability to extricate themselves from horrific, crime-producing settings." See (*Miller v. Alabama*, 567 U.S. 460, 479 (2012); *Graham v. Florida*, 560 U.S. 48 (2010); and *Carter v. State*, 461 Md. 295, 192 A.3d 695 (2018)). With respect to the ageing prison population, it is based on the conclusions of criminologists that the continued incarceration of many prisoners in their sixties, seventies, or eighties often serves no rational or public safety purpose.³

³ See *Quelling the Silver Tsunami: Compassionate Release of Elderly Offenders*, 70 Ohio St. L. Rev. 937 (2018); *A Little*

With the assistance of both the Attorney General's Office and the Public Defender's Office, the Committee examined the impact on those two populations of the 90-day motion requirement and the five-year limitation and concluded that, for those populations, they were unnecessary impediments to the circuit courts having the ability to consider whether those long sentences, which may have been entirely appropriate when imposed, continue to serve a useful societal purpose and, indeed, may be antithetical to sound judicial policy. After debating several alternative proposals, the Committee recommends approval of the amendments to Rule 4-345 submitted with this Report.

There are three main aspects to the amendments. New subsection (f)(1) puts in the Rule what is now a Committee Note permitting the court to implement § 8-507 of the Health-General Article by suspending the unserved part of a sentence of an inmate with a drug or alcohol dependence, putting the inmate on supervised probation, and, as a condition of the probation, committing the inmate to a State Health Department treatment program.

Subsection (f)(2) is the new provision. It first defines the members of the two target populations who may file a petition or motion for relief as inmates who have been sentenced to terms of 15 years or more and who (1) committed the last offense for which the sentence or any part of the sentence was

Child Shall Lead Them: Juvenile Justice, Aging Out, And The First Step, 87 Tenn. L. Rev. 569 (2021). See also *Recidivism Among Older Adults: Correlates of Prison Re-entry*, 15 Justice Pol'y J.9 (Spring 2018); *Special Report, 2018 Update on Prisoner Recidivism: A 9-Year Follow-Up Period*, NCJ 250975, Bureau of Justice Statistics, 8-9 (May 2018)); *Age of Gray Matters: Neuroprediction of Recidivism*, 19 Neuroimage Clinical, 813-23 (2018); *The Association of Age and Recidivism*, Correctional Service Canada (April 2018); *Minnesota Criminal History Score Recidivism Project*, Robina Inst. Of Crim. Law & Crim. Just. 12 (2018); *Growing Up Is Hard To Do: An Empirical Evaluation of Maturation and Desistance*, 1 J. Dev. Life Course Criminol. 350-84 (2015; Connecticut Statistical Analysis Ctr., *Incarceration History & Age* (Nov. 2010). The "see also" citations were provided by the Public Defender's Office.

imposed before reaching the age of 25 and has served the greater of 15 years or sixty percent of the sentence, or (2) has served at least 15 years of the sentence and has reached the age of 60. Because of the percentage-of-service requirement for the juvenile offenders, account needs to be taken of life sentences. The Committee proposes that, for purposes of that calculation, a sentence of life or of a term exceeding 40 years shall be considered a term of 40 years.

Attached to this Report as **APPENDIX A** are charts prepared by the Attorney General's Office showing how these proposals actually will work. The vertical columns take account of the length of the sentence. The horizontal columns take account of the age of the defendant when the crime was committed. Chart A shows, in the internal boxes, how many years the defendant must serve before being eligible to petition for relief. Chart B shows, in the internal boxes, how old the person will be when he or she first can petition for relief.

Subsection (f) (2) (B) is the provision that allows the court to grant relief, which may be in the form of modifying, reducing, or vacating the unexpired term of the sentence, or suspending all or part of the unexpired term and placing the defendant on probation.

Section (g) sets the procedure - where the petition is to be filed, what the petition must contain, service on the State's Attorney, notice to any victims and, if the defendant is unrepresented, notice to the district public defender, to see if that office may be interested in representing the defendant.⁴ Subsection (h) (3) requires generally that the court hold a hearing on the petition but requires that the court dismiss a petition under subsection (f) (2) without a hearing if it concludes that the petitioner does not qualify as an eligible petitioner under that subsection and may dismiss the petition without a hearing if an earlier petition under subsection (f) (2) was filed within the preceding six years and was dismissed after a hearing. That is to protect the court and victims from vexatious filings.

Subsection (h) (2) precludes a petitioner from waiving his or her right to be present at a hearing under subsection (f) (2) unless the petitioner is not capable of appearing and

⁴ See a comparable provision in Rule 4-403, dealing with post conviction procedure applications. The Public Defender's Office has approved the proposed amendment.

participating in a hearing. Subsection (h)(4) lists some factors relevant for the court to consider in deciding whether to grant a petition.

Subsection (f)(2) is not intended to displace or be in competition with the Executive Branch parole system. Paroles do not affect the sentence that was imposed but merely permit the defendant to serve part of that sentence outside the prison walls. Other than the Governor's Constitutional commutation power, the sentence itself remains within the control of the court that imposed it, subject only to limitations and conditions imposed by Rules of the Court of Appeals and appellate adjudications.

Category 2 consists of revisions to Title 19, Chapter 700 of the Maryland Rules - the Rules dealing with Bar Counsel, the Attorney Grievance Commission (AGC), and proceedings relating to complaints made against attorneys. Most of those changes were recommended by Bar Counsel, AGC, or attorneys who have represented client-attorneys in dealing with Bar Counsel or AGC; others were the product of a general review by the Rules Committee of the existing Rules, in part in light of changes recently made to the Rules regarding the Judicial Disabilities Commission and the processing of complaints charging a judge with sanctionable conduct, impairment, or permanent disability (JDC Rules).

The specific changes to the various Rules are described in the Reporter's Notes to those Rules. We do call the Court's attention to some of the more significant ones.

(1) At the request of several attorneys and with the concurrence of Bar Counsel, the Rules Committee proposes adding to Rule 19-703 (b) the authority of Bar Counsel to consult with the State and local bar associations, public and private support groups, and other appropriate persons in an effort to identify programs or services that can serve as a resource to assist attorneys who may come before Bar Counsel, AGC, or the Court and be considered when recommending or determining an appropriate disposition of a complaint made against an attorney.

The Rules Committee regards this as an important addition to the overall function of the disciplinary process. Attorneys are subject to the same stresses that plague people generally in our complex and increasingly divisive society, plus some that may be peculiar to the practice of law. An attorney's daily work often involves dealing with people in conflict, special and

strict ethical commands, constant and sometimes very short deadlines, and, for solo practitioners or attorneys in small firms, all the requirements of running a business operation. Attorneys are not immune from emotional crises in their lives or addictions or lapses of good judgment that can bring them before Bar Counsel, AGC, and ultimately the Court.

The Committee was advised that there are support groups of one kind or another that are available to assist attorneys in dealing with those kinds of issues. The proposed amendment allows Bar Counsel to identify those groups and services that may offer options to Bar Counsel, AGC, the attorney at risk, and the Court in dealing with certain kinds of complaints - options that are therapeutic and restorative more than punitive. The Court's attention is drawn as well to the Committee Note following subsection (b) (13).

(2) Current Rule 19-715 permits AGC, on a recommendation by Bar Counsel, to dismiss a complaint accompanied by a "warning," but only if the attorney does not object. If the attorney objects, AGC may not issue the warning. A proposed amendment substitutes for the "warning" two options: dismissal accompanied by a letter of **cautionary advice**, similar to what the Court approved in the JDC Rules, which AGC may issue without regard to any objection by the attorney, and a dismissal accompanied by an **admonition**, which the attorney can preclude by objecting. That is closer to the current dismissal with a warning.

Either of those dispositions would be based on a conclusion by AGC that the attorney's misconduct was not sufficiently serious to warrant formal discipline and, with the letter, is not likely to be repeated. The **cautionary advice** is appropriate when the attorney had not previously been sanctioned or received a previous warning, admonition, or cautionary advice. In the vernacular, it is "we recommend that you be more careful," as opposed to "don't do that again, and we mean it."

Neither constitutes discipline. One difference between the two is that the fact that a letter of **cautionary advice** was sent is not disclosed to the complainant, but the fact that an **admonition** was issued (but not the admonition itself) is disclosed to the complainant, and the facts underlying the admonition may be disclosed in a subsequent proceeding against the attorney when relevant to a complaint alleging similar conduct.

(3) Rule 19-726, dealing with discovery, is rewritten to provide greater specificity as to what must be disclosed by Bar Counsel and the attorney. As was done recently with the JDC Rules, the Rule would require that all exculpatory information possessed by Bar Counsel be disclosed. Subsection (d)(2) provides that the assertion by the attorney of the existence of a mental or physical condition or an addiction as a defense to a charge against the attorney constitutes a waiver of the attorney's medical privilege and permits Bar Counsel to obtain, by subpoena or other legitimate means, medical and psychological records of the attorney relevant to issues presented in the case. A similar provision appears in the JDC Rules. See Rule 18-441 (f).

Proposed new section (e) brings before the Court a change that was presented in the Committee's 195th Report but on which the Court deferred action, namely that AGC may not be subject to an organizational designee deposition pursuant to Rule 2-412 (d) in an attorney disciplinary matter. See Rules Order entered April 9, 2018. Technically, that proposal is still pending before the Court, but, to provide a more transparent record, the Committee has presented it again for the Court's consideration.

That provision was recommended by AGC, but there was opposition to it. AGC's position, which the Rules Committee found persuasive, was that, during the discovery phase, when such a deposition might be noted, AGC, as an entity, has little knowledge of the underlying facts. It is Bar Counsel who has conducted the investigation and, ordinarily, nothing of substance has yet been presented to AGC. There was no objection by AGC to the attorney deposing a member of AGC if the attorney believes that the member may have relevant disclosable information but contended that the Commission itself should not be put to appointing a designee to be deposed on its behalf. Because some attorneys are noting AGC organizational depositions in disciplinary cases, this is an issue that, at some point, will need to be resolved by the Court.

(4) Amendments are proposed to Rule 19-731, dealing with audits of an attorney's accounts and records, to set forth a procedure for enforcing a court order authorizing such an audit.

(5) An amendment is proposed to Rule 19-732, which allows injunctive relief when an attorney, through misconduct or incapacity, poses an immediate threat of substantial injury to particular persons or the public. A new section (d) deals with the situation in which the attorney, by reason of disability or

impairment, is unable to assist his or her defense. It allows a circuit court to appoint an attorney or a guardian *ad litem* for the attorney at risk. Similar provisions are proposed for Rule 19-739, which deals with the transfer of a disciplinary case to one for disability inactive status. A similar provision appears in the JDC Rules. See Rule 18-441 (d).

(6) An amendment is proposed to Rule 19-738 to provide a procedure for the temporary suspension of an attorney in a reciprocal discipline case.

(7) A new section (d) is proposed to Rule 19-740 to codify in the Rule a procedure when the Court orders the suspension of an attorney but suspends the execution of that Order and places the attorney on probation subject to such conditions as the Court may impose. A similar Rule was recently adopted for judges. See Rule 18-438.

(8) At the request of Bar Counsel, the Committee proposes to add to Rule 19-752, dealing with petitions for reinstatement, a provision prohibiting an attorney from filing more than three such petitions absent leave of Court. When a petition for reinstatement is filed, Bar Counsel must conduct an investigation and respond to the petition and is concerned about the burden of having to do that repeatedly when previous petitions have been denied.

(9) Conforming amendments were made to the following Rules: Rule 18-428 (Retirement as a Disposition), Rule 19-305.4 (Professional Independence of an Attorney (5.4)), Rule 19-308.1 (Bar Admission and Disciplinary Matters (8.1)), Rule 19-308.5 (Disciplinary Authority; Choice of Law (8.5)), Rule 19-605 (Obligation of Attorneys), Rule 19-606 (Enforcement of Obligations), Rule 19-802 (Registration), and Rule 20-405 (Appellate Review).

Category 3 consists of a rewriting of Rule 5-702, conforming amendments to Rules 5-803 and 5-901, and a rewriting of Rule 5-902.

The rewriting of Rule 5-702 is intended to codify the Court's decision in *Rochkind v. Stevenson*, 471 Md. 1 (2020), which overruled *Reed v. State*, 283 Md. 374 (1978) and adopted the principles enunciated in *Daubert v. Merrell Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). The Committee proposes adopting the language of Fed. Rule 702 and adding, as section (b), the factors a trial court must consider in determining the

reliability of anticipated expert testimony. Those factors are taken from the *Rochkind* and *Daubert* Opinions.

The Committee proposes to add a Committee Note recommending that, in considering those factors, the trial court also should take into account the potential impact they may have on people of color and members of underserved or other disadvantaged communities, mainly whether, in a given case, a *Daubert* analysis may unfairly deny a party of the benefit of expert testimony critical to the party's chance of success. That concern was raised by the Dissent in *Rochkind* and, although the Majority did not believe that that concern sufficed to bar the Court from judicially adopting the *Daubert* approach to determining the reliability of proposed expert testimony, the Committee did not see the Court's decision as precluding a trial court from considering whether strict application of the *Daubert* factors would, in fact, have a disparate and harmful impact upon a member of a disadvantaged community in a particular case. The Committee did not intend to suggest that a trial judge could ignore the Court's holding in *Rochkind*.

The rewriting of Rule 5-902 in part is stylistic but conforms paragraph 12 to Fed. R. Evid. 902 (12) and adds new paragraphs (13) and (14) to match the addition of those paragraphs to the Federal Rule.

Category 4 consists of amendments to Rules 19-702, 18-405, 18-409.1, 18-411, 18-433, 18-437, 18-438, and 19-102. The purpose of all of these amendments, some of which are merely conforming amendments, is to change the official job titles of the Executive Secretary to the Commission on Judicial Disabilities, the Executive Secretary to the Attorney Grievance Commission, and the Secretary to the State Board of Law to Examiners to be more consistent with the actual duties of those officials. Those changes were approved by the respective agencies and the Administrative Office of the Courts.

Category 5 consists of amendments to Rule 16-919 to clarify the authority and responsibility of judicial officials when asked to create new judicial records from existing electronic databases or to reformat existing judicial records, when that is not necessary for any judicial function. The amendments were recommended by the State Court Administrator.

The current Rule permits the custodian to deny such a request if granting it would impose a significant operational burden on the court or other judicial unit or agency that cannot

be overcome merely by requiring the requester to prepay any additional cost of granting the request. A new subsection (e) (1) (C) (v) permits a denial of the request if it is a repeated one by the same or affiliated person for the same records that were previously provided or that was properly denied. New subsections (e) (2) (E) and (F) would require the custodian to consider whether there is any practicable way to narrow the request to make it manageable and to confer with the requester in that regard.

Category 6 consists of amendments to Rules 1-326 and 20-109 to clarify the right of an attorney who enters an appearance for a victim or victim's representative in a criminal or juvenile delinquency case to notice of all proceedings in the case and to access all case records in the case that are not under seal, shielded by the Rules in Title 16, Chapter 900, or subject to a protective order.

Category 7 consists of new Rules 10-801, 10-802, and 10-803. These Rules deal with the situation in which some or all of a decedent's assets are in a trust that was revocable by the decedent at the time of the decedent's death. They are intended to implement two statutes - 2015 Md. Laws, Chapter 100 and 2019 Md. Laws, Chapter 435.

Rule 10-801 requires the trustee (1) to inform the personal representative of the decedent's estate of the existence of the trust within 30 days after the trustee acquires notice of the opening of the estate and (2) to give notice of the trust to the decedent's spouse within 60 days after the trustee acquires knowledge of the decedent's death. Those timely notices are important for purposes of the receipt and payment of claims and for implementing a spouse's election to claim a statutory share of the estate.

Rule 10-802 further implements the 2015 law by clarifying the procedure for receiving and paying claims when an estate has been opened and when an estate has not been opened. Rule 10-803 implements the 2019 law that makes the assets of a trust that is revocable upon the death of the settlor part of the augmented estate for purposes of calculating the value of the estate subject to election by a surviving spouse.

Category 8 consists of amendments to Rules 2-801, 16-302, 16-803, 2-504, and 2-504.1, and new Rules 2-807 and 16-309. All of these changes are for the purpose of putting in place certain procedures that will allow jury trials in civil cases to be

conducted by remote electronic means during and in the immediate aftermath of a public emergency such as we have been facing in the past year, when the normal procedures cannot be implemented. Hopefully, there will never again be a need for these Rules, but, if such a need should arise, the Committee believes it will be useful to have these Rules in place.

The term of art used in these Rules is the increasingly common one of "virtual jury trials," although these trials will be real, not virtual, ones. See the new definition proposed in Rule 2-801 (h).

The basic procedure is set forth in new Rule 2-807, one critically important aspect of which is that virtual jury trials are to be "a procedure of last resort." See the Committee Note that follows section (b) of the Rule. Virtual jury trials are limited to cases arising during a public emergency where (1) the parties agree to that procedure, or (2) the case falls within a category of cases that the county administrative judge, in the court's case management plan, has found suitable for a virtual jury trial. The amendment to Rule 16-302 requires the case management plan to include such categories.

Section (c) of Rule 2-807 provides for a scheduling conference to consider any objections to a virtual jury trial and a pretrial conference to deal with such things as (1) assuring the ability of the parties, attorneys, and witnesses to participate electronically, and (2) the handling of exhibits and other matters. Section (d) requires that subpoenas issued in a virtual jury trial case alert the recipient to that fact and provide instructions on how the recipient may respond to the subpoena. Section (e) deals with matters involving the jurors - jury selection, instructions, juror's notes, their review of the evidence, deliberations, taking the verdict, communications with the court, and the use of electronic devices. Section (f) deals with the electronic devices that may be used by the participants. Section (g) prohibits persons from recording, downloading, or transmitting audio, video, or still images of the proceeding.

New Rule 16-309 and the amendments to Rules 16-302, 16-803, 2-504, and 2-504.1 largely implement Rule 2-807. Rule 16-309 requires the county jury plan to inform prospective jurors that they may be called to participate in a virtual jury trial and what that may require of them. Some jurors may be unable to participate remotely. Rather than simply excuse them, which could have a negative impact on the diversity of the venire,

sections (b) and (c) require the court to create the ability of such jurors to participate safely from the court facility, with appropriate assistance of designated court personnel.

For the further guidance of the Court and the public, following the proposed new Rules and the proposed amendments to each of the existing Rules 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,

/s/

Alan M. Wilner
Chair

AMW:cls

Cc: Suzanne C. Johnson, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-345 by adding an exception to the five-year limitation on the court's revisory power set forth in section (e); by transferring the language of a Committee note following section (e) to new subsection (f)(1) and a cross reference following subsection (f)(1); by adding a Committee note after subsection (f)(1); by adding new subsection (f)(2), permitting a circuit court, under certain circumstances to modify a sentence by reason of length of confinement or age; by adding new subsection (g)(1), providing for where a motion or petition shall be filed; by adding new subsection (g)(2) requiring an attachment to a petition filed pursuant to subsection (f)(2); by adding new subsection (g)(3) requiring a petition by a pro se petitioner to be forwarded to the local Office of the Public Defender; by adding new subsection (g)(3) providing for service of a motion or petition filed under the Rule and permitting the State's Attorney to file a response within 30 days after service; by re-lettering current subsections (e)(2) and (e)(3) as subsections (g)(5) and (g)(6), respectively, and adding clarifying language to the subsections; by adding new subsection (h)(1) permitting the court to dismiss a petition filed under

subsection (f) (2) without a hearing under certain circumstances; by adding a Committee note following subsection (h) (1) clarifying that the court may hold a hearing to determine if a petitioner is eligible for relief under subsection (f) (2); by adding new subsection (h) (2) requiring the presence of a defendant seeking relief under subsection (f) (2) at a hearing, with exceptions, and permitting defendants seeking all other relief to waive the right to be present at the hearing; by transferring the provisions of section (f) to subsections (h) (2) and (h) (3), with certain modifications; by deleting the phrase "in open court" from subsection (h) (3); by deleting the word "ordinarily" from subsection (h) (3); by adding new subsection (h) (4) listing factors for the court to consider in determining whether to grant relief; and by making stylistic changes, as follows:

Rule 4-345. SENTENCING - REVISORY POWER OF COURT

(a) Illegal Sentence

The court may correct an illegal sentence at any time.

(b) Fraud, Mistake, or Irregularity

The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

(c) Correction of Mistake in Announcement

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

Cross reference: See State v. Brown, 464 Md. 237 (2019), concerning an evident mistake in the announcement of a sentence.

(d) Desertion and Non-Support Cases

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

(e) Modification Upon Motion - Generally

~~(1) Generally~~

Upon a motion filed within 90 days after imposition of a sentence ~~(A)~~(1) in the District Court, if an appeal has not been perfected or has been dismissed, and ~~(B)~~(2) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not increase the sentence and, unless the court finds the special circumstances set forth in subsection (f) (1) or (f) (2) of the Rule, it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant. ~~and it may not increase the sentence.~~

Cross reference: Rule 7-112 (b).

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

(f) Modification in Special Circumstances

(1) Commitment for Drug or Alcohol Dependency Treatment

The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Maryland Department of Health if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied.

Cross Reference: See Code, Health-General Article, § 8-507.

Committee note: In order to implement a commitment under section (f)(1), the court must suspend all of the sentence except the time served and place the defendant on supervised probation, a condition of which is the successful completion of the commitment.

(2) Modification by Reason of Length of Confinement and Age

(A) Subsection (f)(2) of this Rule applies to a defendant who was sentenced to an aggregate unsuspended term of imprisonment of more than 15 years and (i) committed the last offense for which that sentence or any part of it was imposed before reaching the age of 25 and has served the greater of 15 years or sixty percent of that sentence, or (ii) has served at

least 15 years of that sentence and has reached 60 years of age. For purposes of this subsection only, a life sentence or an aggregate unsuspended sentence of more than 40 years shall be regarded as a sentence for 40 years. A defendant who meets the criteria of this paragraph is an eligible petitioner under subsection (f) (2).

(B) Upon a petition filed by an eligible petitioner and compliance with the requirements of sections (g) and (h) of this Rule, the court may modify, reduce, or vacate the sentence or place the defendant on probation under the terms and conditions the court imposes. Failure to have filed a timely motion under section (e) of this Rule, or a previous grant or denial of a motion under that section, shall not bar relief under this subsection.

(g) Procedure

(1) Where Filed

A motion or petition filed under this Rule shall be filed in the circuit court that entered the sentence sought to be modified. If an aggregate sentence consists of two or more sentences imposed by different courts and the petitioner seeks relief from the aggregate sentence, separate petitions must be filed with each court. A court has revisory power under this Rule only with respect to a sentence that it imposed.

(2) Attachment

A petition seeking relief under subsection (f) (2) of this Rule shall be accompanied by a certified copy of the petitioner's Institutional Adjustment Record.

(3) Notice to Public Defender

If a petitioner seeking relief under subsection (f) (2) of this Rule is self-represented, the clerk promptly shall forward a copy of the petition to the local county or district Office of the Public Defender.

(4) Service; Response

The motion or petition shall be served on the State's Attorney for the county. The State's Attorney may file a response within 30 days after service of the motion or petition.

(5) Notice to Victims

Whether or not the States's Attorney files a response, ~~The~~ the State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, § 11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, § 11-503 that states (A) that a motion or petition to modify, vacate, or reduce a sentence has been filed; (B) that the motion or petition has been denied without a hearing or the date, time, and location of the hearing; and (C) if a hearing is to be held,

that each victim or victim's representative may attend and testify.

(6) Inquiry by Court

Except as provided in subsection (h) (1), Before before considering a motion or petition under this Rule, the court shall inquire if a victim or victim's representative is present. If one is present, the court shall allow the victim or victim's representative to be heard as allowed by law. If a victim or victim's representative is not present and the case is one in which there was a victim, the court shall inquire of the State's Attorney on the record regarding any justification for the victim or victim's representative not being present, as set forth in Code, Criminal Procedure Article, § 11-403 (e). If no justification is asserted or the court is not satisfied by an asserted justification, the court may postpone the hearing.

~~(f)~~ (h) Open Court Hearing

(1) Dismissal without a Hearing

The court shall dismiss a petition filed under subsection (f) (2) without a hearing if the court finds in a written order filed in the record that the petitioner does not qualify as an eligible petitioner. The court may dismiss a petition filed under subsection (f) (2) if, during the preceding six years, a motion or petition under this Rule was denied after a hearing.

Committee note: The court may hold a hearing on a petition filed under subsection (f) (2) if there is insufficient information to allow the court to determine whether the petitioner qualifies as an eligible petitioner.

(2) Presence of Defendant

A petitioner seeking relief under subsection (f) (2) of this Rule may not waive the right to be present at a hearing unless the petitioner is not capable of appearing and effectively participating at the hearing. A defendant seeking relief under any other section of this Rule may waive the right to be present at the hearing.

(3) Hearing Requirement

The court may modify, reduce, correct, or vacate a sentence only on the record ~~in open court~~, after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. ~~The defendant may waive the right to be present at the hearing.~~ No hearing shall be held on a motion or petition to modify or reduce the sentence until the court determines that the notice requirements in subsection ~~(e) (2)~~ (g) (5) of this Rule have been satisfied. If the court grants the motion or petition, the court ~~ordinarily~~ shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.

(4) Factors Relevant to Granting Relief on a Petition

In determining whether to grant relief under subsection (f) (2) of this Rule, the court shall consider (A) the Institutional Adjustment Record of the petitioner filed with the petition; (B) the petitioner's plans for housing, education, and employment if released; (C) whether, if the petitioner is released, there is a reasonable likelihood that the petitioner will be a danger to a victim, another person, or the community; (D) if the petitioner is to be released on probation, any conditions recommended by the Division of Parole and Probation, the State's Attorney, or a victim and (E) any other factor the court deems relevant.

Cross reference: See Code, Criminal Law Article, § 5-609.1 regarding an application to modify a mandatory minimum sentence imposed for certain drug offenses prior to October 1, 2017, and for procedures relating thereto.

Source: This Rule is derived in part from former Rule 774 and M.D.R. 774, and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 4-345 allow an incarcerated individual serving a lengthy sentence to ask the trial court to exercise its revisory power after a significant portion of the sentence has been served. The trial court's revisory power over its sentences is separate and distinct from powers of the Executive Branch to parole and pardon (see *State v. Schlick*, 465 Md. 566, n. 4 (2019)).

With certain exceptions, Rule 4-345 (e) currently restricts the time to revise a sentence to five years from the date the sentence was originally imposed. The Rules Committee has been advised that research has shown that individuals who committed serious crimes and served significant portions of long sentences can be safely released, either due to maturation while

incarcerated, if he or she was a young offender, or by "aging out" of criminality as an older inmate.

Proposed amendments to section (e) add an exception to the five-year restriction for special circumstances under subsections (f)(1) and (f)(2).

The Committee note following section (e) is deleted, and its text is moved to new subsection (f)(1).

New subsection (f)(1) provides for commitment to an approved treatment program if a defendant is found to have a drug or alcohol dependency. The text of the subsection and a cross reference are taken verbatim from the current Committee note following section (e).

New subsection (f)(2)(A) permits an individual to petition for modification of an aggregate unsuspended sentence of more than 15 years if the petitioner was younger than 25 years of age at the time of the offense(s) and has served the greater or 15 years or 60 percent of the aggregate sentence or if the petitioner is at least 60 years old and has served at least 15 years of the aggregate sentence. Under this subsection, a life sentence and a sentence of more than 40 years are each to be regarded as a sentence of 40 years. A defendant who meets the criteria of subsection (f)(2)(A) is an "eligible petitioner" under subsection (f)(2)(B).

New subsection (f)(2)(B) authorizes the court to modify, reduce, or vacate the sentence or place an "eligible petitioner" on probation if the requirements of sections (g) and (h) are met. Failure to file a timely motion for modification within 90 days after imposition of a sentence, as required by section (e), or the grant or denial of a motion that had been so filed, does not bar relief on a petition filed under subsection (f)(2).

New section (g) outlines the procedure for motions filed pursuant to section (e) and petitions filed pursuant to subsection (f)(2). If modification of an aggregate sentence is sought, a petition must be filed in each circuit court that entered a sentence that is part of the aggregate. A petition seeking relief under subsection (f)(2) must include a certified copy of the petitioner's institutional adjustment record as an attachment. If the petitioner is *pro se*, a copy of the petition is forwarded by the clerk to the local Office of the Public Defender. A copy of a petition or motion must also be served on the State's Attorney for the county.

Subsection (g) (5) contains provisions currently located in subsection (e) (2) pertaining to notification to victims. The language is amended to clarify that the State's Attorney must notify each victim whether or not the State files an answer to the motion or petition.

Subsection (g) (6) contains the text of current subsection (e) (3) but creates an exception if the court dismisses a petition pursuant to new subsection (h) (1).

Subsection (h) (1) requires the court to dismiss a petition filed under subsection (f) (2) by written order without a hearing if the court finds that the petitioner does not qualify for relief. The court may also dismiss a petition filed under subsection (f) (2) if, during the previous six years, a motion or petition under the Rule was denied after a hearing. A Committee note following subsection (h) (1) clarifies that the court may hold a hearing to determine if a petitioner is eligible for relief.

Subsection (h) (2) requires a petitioner seeking relief under subsection (f) (2) to be present for the hearing, with an exception for an individual who is not capable of appearing and participating. A defendant seeking relief under any other section may waive the right to be present.

Subsection (h) (3) contains the text of current section (f), with several amendments. The portion of the subsection governing the defendant's waiver of the right to be present has been moved to subsection (h) (2).

Subsection (h) (4) contains factors the court must consider in determining whether to grant relief under subsection (f) (2).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

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MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 19-701 by adding new definitions as sections (a), (f), (g), (i), and (j); by deleting the definitions in existing sections (e) and (p); by re-lettering existing sections (a), (b), (c), (d), (f), (g), (i), (j), (k), (l), (m), (n), and (o) respectively as proposed sections (b), (c), (d), (e), (h), (k), (l), (m), (n), (o), (p), (q), (r), and (s); and by modifying the definitions in proposed sections (k), (l), and (p), as follows:

Rule 19-701. DEFINITIONS

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

(a) Address of Record

"Address of Record" means the address maintained by the attorney with the Attorney Information System in accordance with Rule 19-802.

~~(a)~~(b) Attorney

"Attorney" means an individual admitted by the Court of Appeals to practice law in this State. For purposes of discipline or inactive status, the term also includes (1) an individual not admitted by the Court of Appeals but who engages in the practice of law in this State, holds himself or herself out as practicing law in this State, or who has the obligation of supervision or control over another attorney who engages in the practice of law in this State, and (2) an individual who is seeking reinstatement pursuant to Rules 19-751 or 19-752 following the imposition of discipline or inactive status.

Cross reference: See Rule 19-308.5 (8.5) of the Maryland Attorneys' Rules of Professional Conduct.

~~(b)~~ (c) Circuit

"Circuit" means Appellate Judicial Circuit.

~~(e)~~ (d) Client Protection Fund

"Client Protection Fund" means the Client Protection Fund of the Bar of Maryland created by Code, Business ~~and~~ Occupations and Professions Article, § 10-311 and administered pursuant to Rule 19-604.

~~(d)~~ (e) Commission

"Commission" means the Attorney Grievance Commission of Maryland.

~~(e)~~ (f) Conditional Diversion Agreement

"Conditional diversion agreement" means the agreement provided for in Rule 19-716.

(g) Complainant

"Complainant" means a person who has filed a written allegation of misconduct or incapacity.

(h) Disability

"Disability" means a mental or physical condition that seriously interferes with the performance of an attorney's duties, and is, or is likely to become, permanent.

(i) Disability Inactive Status

"Disability inactive status" means a status determined pursuant to Rule 19-739.

~~(f)~~ (j) Disbarment

"Disbarment" means the unconditional termination of any privilege to practice law in this State pursuant to Rule ~~19-742~~ 19-741 and, when applied to an attorney not admitted by the Court of Appeals to practice law, means the unconditional exclusion from the admission to or the exercise of any privilege to practice law in this State.

(k) E-mail Address of Record

"E-mail Address of Record" means the e-mail address(es) maintained by the attorney with the Attorney Information System in accordance with Rule 19-802.

(l) Impairment; Impaired

"Impairment" or "Impaired" means a mental or physical disability, including an addiction, that seriously interferes with the performance of an attorney's duties but may be remediable and, if remedied, is not likely to become permanent.

~~(g)~~ (m) Incapacity

"Incapacity" means the inability to render adequate legal service by reason of ~~mental or physical illness or infirmity, or addiction to or dependence upon alcohol or one or more drugs or other intoxicants~~ a disability or impairment.

~~(h)~~ (n) Office for the Practice of Law

"Office for the practice of law" means ~~an office~~ a location in which an attorney usually devotes a substantial part of the attorney's time to the practice of law during ordinary business hours in the traditional work week.

~~(i)~~ (o) Petition for Disciplinary or Remedial Action

"Petition for disciplinary or remedial action" means the petition filed by Bar Counsel pursuant to Rule 19-721.

~~(j)~~ (p) Professional Misconduct

"Professional misconduct" or "misconduct" has the meaning set forth in Rule 19-308.4 (8.4) of the Maryland Attorneys' Rules of Professional Conduct in Chapter 300 of this Title. The term includes the knowing failure to respond to a request for

information authorized by this Chapter without asserting, in writing, a privilege or other basis for such failure.

~~(k)~~ (g) Reinstatement

"Reinstatement" means the termination of disbarment, resignation, suspension, inactive status, or any exclusion to practice law in this State pursuant to an Order entered under Rule 19-751 or 19-752.

~~(l)~~ (r) Serious Crime

"Serious crime" means (1) a felony under Maryland law; (2) a crime committed in another state or under federal law that would have been a felony under Maryland law had the crime been committed in Maryland or in violation of Maryland law, ~~and~~ (3) a crime under federal law or the law of any state that is punishable by imprisonment for three years or more, or (4) any crime, a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy, or solicitation of another to commit a serious crime.

~~(m)~~ (s) State

"State" means (1) a state, possession, territory, or commonwealth of the United States or (2) the District of Columbia.

~~(n)~~ (t) Statement of Charges

"Statement of charges" means the document filed by Bar Counsel pursuant to Rule 19-718.

~~(o)~~ (u) Suspension

"Suspension" means the temporary termination of the privilege to practice law, either for a fixed period or indefinitely and, when applied to an attorney not admitted by the Court of Appeals to practice law, means the temporary or indefinite exclusion from the admission to or the exercise of any privilege to practice law in this State.

~~(p)~~ ~~Warning~~

~~"Warning" means a notice that warns an attorney about future misconduct.~~

~~future misconduct.~~

~~Source: This Rule is derived from former Rule 16-701 (2016).~~

Source: This Rule is derived as follows:

Sections (a), (g), (h), (i), (k), and (l) are new.

Sections (b), (c), (d), (e), (f), (j), (o), (p), (q), (s), (t), and (u) are derived from former Rule 16-701 (2016).

Sections (m), (n), and (r) are derived in part from former Rule 16-701 (2016) and are in part new.

REPORTER'S NOTE

Six new definitions are proposed to be added to Rule 19-701, two existing definitions are amended, and one definition, "warning," is deleted as it is replaced with a letter of admonition or a letter of cautionary advice.

A new definition, "address of record," is added as section (a).

A new definition, "complainant," is added as section (g).

A new definition, "disability," is added as section (h).

A new definition, "disability inactive status," is added as section (i) and is tied to the procedures set forth in the proposed amendments to Rule 19-739.

A new definition, "e-mail address of record," is added as section (k).

A new definition, "impairment; impaired," is added as section (l).

The definition "incapacity" in section (m) is revised so that it more broadly refers to any "disability or impairment."

The definition "serious crime" in section (r) is revised to add new subsection (r)(4) to include any crime that touches on honesty or interferes with the administration of justice.

The definition "warning" has been deleted, as the disposition formerly referred to as a warning has been replaced in Rule 19-715 with two new dispositions: 1) a letter of admonition; and 2) a letter of cautionary advice.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 19-702 by adding language to subsection (h) (6) clarifying the authority of the Attorney Grievance Commission to appoint special counsel and making stylistic changes; by deleting language in subsection (h) (7) requiring that a Peer Review Committee member must be removed for cause and replacing it with new language that permits a Peer Review Committee member to be removed for any reason; by deleting language from subsection (h) (9) pertaining to "a warning" and replacing it with new language "a letter of cautionary advice or a letter of admonition;" by adding language to subsection (h) (11) permitting the Attorney Grievance Commission to delegate authority to the chair to grant or deny requests from Bar Counsel for subpoenas; and by deleting the date "September 1" from subsection (h) (14) and replacing it with "October 15," as follows:

Rule 19-702. ATTORNEY GRIEVANCE COMMISSION

(a) Creation and Composition

There is an Attorney Grievance Commission which shall consist of 12 members appointed by the Court of Appeals. Nine

members shall be attorneys and three members shall not be attorneys.

(b) Term

Subject to section (f) of this Rule, the term of each member is three years. The terms of the members shall be staggered so that the terms of three attorney members and one non-attorney member expire each year.

(c) Compensation

A member of the Commission may not receive compensation for serving in that capacity but is entitled to reimbursement for expenses reasonably incurred in the performance of official duties in accordance with standard State travel regulations.

(d) Chair and Vice Chair

The Court of Appeals shall designate one attorney member as the Chair of the Commission and one attorney member as the Vice Chair. In the absence or disability of the Chair or upon an express delegation of authority by the Chair, the Vice Chair shall have the authority and perform the duties of the Chair.

(e) **[Executive Secretary] or [Executive Counsel and Director]**

The Commission may select an attorney as **[Executive Secretary] or [Executive Counsel and Director]**. The **[Executive Secretary] or [Executive Counsel and Director]** shall serve at the pleasure of the Commission and receive the compensation set

forth in the budget of the Commission. As directed by the Commission, the **[Executive Secretary]** or **[Executive Counsel and Director]** shall (1) receive documents that are filed with the Commission and maintain the records of the Commission, (2) prepare the agenda of meetings of the Commission and before each meeting send to each Commission member a copy of the agenda and meeting materials, (3) serve as in-house attorney to the Commission, (4) serve as liaison to the Chair of the Peer Review Committee, and (5) have such other administrative powers and duties assigned by the Commission.

(f) Removal of Commission Members

The Court of Appeals may remove a member of the Commission at any time.

(g) Quorum

The presence of seven members of the Commission constitutes a quorum for the transaction of business. The concurrence of seven members is required for all actions taken by the Commission other than adjournment of a meeting for lack of a quorum.

(h) Powers and Duties

The Commission has the powers and duties to:

(1) recommend to the Court of Appeals the adoption of procedural and administrative guidelines and policies consistent with these Rules;

(2) employ and prescribe the compensation of the **[Executive Secretary]** or **[Executive Counsel and Director]**;

(3) with the approval of the Court of Appeals, appoint Bar Counsel;

(4) supervise the activities of Bar Counsel;

(5) authorize Bar Counsel to employ attorneys, investigators, and staff personnel and to prescribe their compensation;

(6) appoint special counsel as the need arises, in a particular matter, or delegate to the Chair of the Commission the authority to appoint special counsel;

(7) appoint members of the Peer Review Committee, designate the Chair and one or more Vice Chairs, and remove any member ~~for~~ cause at any time;

(8) employ and prescribe the compensation of personnel to assist the Chair of the Peer Review Committee;

(9) exercise the authority granted in the Rules in this Chapter with respect to the approval or disapproval of (A) the dismissal of a complaint or Statement of Charges, (B) the termination of a complaint with or without ~~a warning~~ a letter of

cautionary advice or a letter of admonition, (C) a Conditional Diversion Agreement, (D) a reprimand, or (E) the filing of a Petition for Disciplinary or Remedial Action;

(10) grant or deny any requests for extensions of time permitted under the Rules of this Chapter or delegate to the Chair of the Commission the authority to grant or deny such requests;

(11) authorize the issuance of subpoenas in accordance with these Rules or delegate to the Chair of the Commission the authority to grant or deny such authorizations;

(12) perform the duties required by Title 19, Chapter 400 (Attorney Trust Accounts);

(13) administer the Disciplinary Fund;

(14) submit not later than ~~September 1~~ October 15 of each year a report to the Court of Appeals accounting for the Disciplinary Fund, evaluating the effectiveness of the disciplinary system, and recommending any changes; and

(15) submit annually to the State Court Administrator for review and approval by the Court of Appeals a proposed budget for the disciplinary system.

(i) Effect of Chair's Decisions

When a request for action under this Chapter is subject to the approval of the Chair of the Commission, the Chair's

approval of the request is final and shall be reported to the Commission. If the Chair denies the request or refers it to the Commission for action, the Commission shall act upon the request at its next meeting.

Source: This Rule is derived from former Rule 16-711 (2016).

REPORTER'S NOTE

Subsection (h) (6) of Rule 19-702 is proposed to be amended to clarify that the Attorney Grievance Commission has authority to appoint special counsel. The Commission is also permitted to delegate this authority to the Chair of the Commission.

Subsection (h) (7) is amended to permit the Commission to remove a member of a peer review panel for any reason. Previously, the Commission was required to show cause prior to removing a member of a peer review panel.

Subsection (h) (9) is amended to replace the term "warning" with "letter of cautionary advice" and "letter of admonition" as these dispositions are described in the proposed amendments to Rule 19-715.

Subsection (h) (11) is amended to permit the Commission to delegate authority to the Chair of the Commission to grant or deny requests from Bar Counsel for subpoenas.

Subsection (h) (14) is amended to extend the deadline to file the yearly report with the Court of Appeals accounting for the Disciplinary Fund from September 1 to October 15.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 19-703 by adding a conforming amendment to subsection (b) (3) to include a reference to a letter of admonition and by making stylistic changes; by adding new subsection (b) (13) permitting Bar Counsel to seek help for attorneys in certain situations such as issues with substance abuse, mental health, or practice management; and by renumbering former subsection (b) (13) as subsection (b) (14), as follows:

Rule 19-703. BAR COUNSEL

(a) Appointment

Subject to approval by the Court of Appeals, the Commission shall appoint an attorney as Bar Counsel. Before appointing Bar Counsel, the Commission shall notify bar associations and the general public of the vacancy and consider any recommendations that are timely submitted. Bar Counsel shall serve at the pleasure of the Commission and shall receive the compensation set forth in the budget of the Commission.

(b) Powers and Duties

Subject to the supervision and approval, if required, of the Commission, Bar Counsel has the powers and duties to:

(1) investigate professional misconduct or incapacity on the part of an attorney;

(2) issue subpoenas as provided by Rule 19-712;

(3) enter into and implement Conditional Diversion Agreements, issue notices, ~~and administer~~ recommend warnings letters of cautionary advice or letters of admonition, and propose reprimands;

(4) file statements of charges, participate in proceedings before Peer Review Panels, and prosecute all disciplinary and remedial proceedings;

(5) file and prosecute petitions for disciplinary and remedial actions in the name of the Commission;

(6) monitor and enforce compliance with all disciplinary and remedial orders of the Court of Appeals;

(7) investigate petitions for reinstatement and applications for resignation from the practice of law and represent the Commission in those proceedings;

(8) initiate, intervene in, and prosecute actions to enjoin the unauthorized practice of law;

(9) employ attorneys, investigators, and staff personnel as authorized by the Commission at the compensation set forth in the Commission's budget;

(10) discharge any employee;

(11) maintain dockets and records of all papers filed in disciplinary or remedial proceedings;

(12) make reports to the Commission;

(13) consult with the State and local bar associations, public and private support groups, and other appropriate persons in an effort to identify programs or services that can (A) serve as a resource to assist attorneys who may come before Bar Counsel, the Commission, or the Court of Appeals, and (B) be considered when recommending or determining an appropriate disposition of complaints or charges against those attorneys. Those resources may include (A) treatment for emotional distress, mental disorders or disability, or dependence on alcohol, drugs, or other intoxicants, (B) assistance in law office management, including mentoring, accounting, bookkeeping, financial, and other professional assistance relevant to the handling of client or third-party funds, calendaring events and time deadlines, and other professional or business requirements related to the practice of law, and (C) monitoring services when

required by Bar Counsel, the Commission, or the Court of Appeals; and

Committee Note: Subsection (b)(13) does not require Bar Counsel or the Commission to create or fund any of these programs or services or to require or recommend their use in any particular case. The Rules Committee is advised that programs and services of this kind do exist or can be created. The Committee believes that identifying those that are reliable and available may permit a more effective disposition in particular cases by Bar Counsel, the Commission, and the Court of Appeals.

~~(13)~~(14) perform other duties prescribed by the Commission, this Chapter, and the Rules in Title 19, Chapter 400 (Attorney Trust Accounts).

Source: This Rule is derived in part from former Rule 16-712 (2016) and is in part new.

REPORTER'S NOTE

Subsection (b)(3) of Rule 19-703 is proposed to be amended to conform to the proposed amendments to Rule 19-715 in which a "warning" is replaced with a "letter of admonition" and a "letter of cautionary advice."

New subsection (b)(13) is proposed at the request of several attorneys and with the consent of Bar Counsel. This subsection permits Bar Counsel to seek help for attorneys rather than pursue discipline in certain situations such as issues with substance abuse, mental health, or practice management. This would be accomplished by consulting with the State and local bar associations, public and private support groups, and other appropriate persons and agencies that may serve as a resource to assist attorneys who may come before Bar Counsel, the Attorney Grievance Commission, or the Court and be considered when recommending or determining an appropriate resolution of a complaint made against an attorney.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 19-704 by replacing the language "statement of charges" in subsection (c)(4) with the language "docketed complaint;" by deleting language in section (e) requiring the Attorney Grievance Commission to cause a certain notice to be provided to attorneys once a year and adding certain language requiring a certain notice to be posted on the Commission's website; by adding language to section (f) that specifies the Attorney Grievance Commission may reappoint members of the Peer Review Panel; and by deleting language in section (i) requiring a Peer Review Committee member to be removed "for cause" and adding language permitting the Commission to remove a Peer Review Committee member "at any time," as follows:

Rule 19-704. PEER REVIEW COMMITTEE

(a) Creation

There is a Peer Review Committee, the members of which are appointed to serve on Peer Review Panels pursuant to Rule 19-719.

(b) Composition

The Peer Review Committee consists of the number of individuals in each circuit that the Commission determines is necessary to conduct the volume of peer review proceedings. Of the number of members determined for each circuit, one-third shall be residents of that circuit who are not attorneys and the remainder shall be attorneys who maintain offices for the practice of law within that circuit.

(c) Individuals Ineligible for Appointment as an Attorney Member

The Commission may not appoint as an attorney member to the Peer Review Committee an individual who:

(1) is not admitted by the Court of Appeals to practice law in Maryland;

(2) has not actively and lawfully engaged in the practice of law in Maryland for at least five years;

(3) is a judge of a court of record;

(4) is the subject of a pending ~~statement of charges~~ docketed complaint or petition for disciplinary or remedial action; or

(5) was ever disbarred or suspended by the Court of Appeals or by a disciplinary body or court of the United States or any state.

(d) Individuals Ineligible for Appointment as a Non-attorney Member

The Commission may not appoint as a non-attorney member to the Peer Review Committee an individual who:

(1) has been convicted of a serious crime and the conviction has not been reversed or vacated; or

(2) is the complainant in a pending matter against an attorney under the Rules in this Chapter.

(e) Procedure for Appointment

Before appointing members of the Peer Review Committee, the Commission shall notify bar associations and the general public in the appropriate circuit and consider any applications and recommendations that are timely submitted. The Commission shall prepare a brief notice informing attorneys how they may apply to serve on the Peer Review Committee and ~~deliver the notice to the Trustees of the Client Protection Fund of the Bar of Maryland, who at least once a year shall send a copy of the notice to each attorney who is required to pay an annual fee to the Fund~~ post the notice on the Commission's website.

(f) Term

The term of each member is two years. The Commission may extend the term of any member assigned to a Peer Review Panel

until the completion of a pending matter. A member may be reappointed by the Commission.

(g) Chair and Vice Chair

The Commission shall designate one attorney member of the Peer Review Committee as Chair and one or more attorney members as Vice Chairs. In the absence or disability of the Chair or upon express delegation of authority by the Chair, the Vice Chair shall have the authority and perform the duties of the Chair.

(h) Compensation

A member of the Peer Review Committee may not receive compensation for serving in that capacity but is entitled to reimbursement for expenses reasonably incurred in the performance of official duties in accordance with standard State travel regulations.

(i) Removal

The Commission may remove a member of the Peer Review Committee ~~for cause~~ at any time.

Source: This Rule is derived from former Rule 16-713 (2016).

REPORTER'S NOTE

Subsection (c) (4) of Rule 19-704 is proposed to be amended so that an attorney may not serve on a peer review committee if that attorney has a "docketed complaint" pending against the

attorney. The language was changed from "pending statement of charges." A complaint is docketed at a further point during the Attorney Grievance process than a statement of charges, and in some cases, a statement of charges is as far as a proceeding under this Chapter of the Rules progresses. This change would permit more attorneys to be eligible to sit on a peer review panel than are currently permitted.

Section (e) is amended to permit the Attorney Grievance Commission to post the notice required in this section on the Commission's website rather than sending the notice to each attorney in the State who is required to pay the Client Protection Fund assessment.

Section (f) is amended to clarify that the Attorney Grievance Commission may reappoint members of the Peer Review Committee.

Section (i) is amended so that the Commission may remove a Peer Review Committee member at any time instead of for cause.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 19-705 by adding new language to section (a) concerning sources of income to the Disciplinary Fund and by making stylistic changes, as follows:

Rule 19-705. DISCIPLINARY FUND

(a) Establishment; Nature

There is a Disciplinary Fund. The Fund is created and administered pursuant to the Constitutional authority of the Court of Appeals to regulate the practice of law in the State of Maryland and to implement and enforce the Maryland Attorneys' Rules of Professional Conduct adopted by the Court. The Fund consists ~~entirely~~ of contributions made by attorneys pursuant to section (b) of this Rule, ~~and~~ income from those contributions, and costs recovered pursuant to law or court order. It is dedicated entirely to the purposes established by the Rules in this Title.

(b) Payment by Attorneys

As a condition precedent to the practice of law, each attorney shall pay annually an amount prescribed by the Court of

Appeals. The amount shall be in addition to and paid by the same date as other sums required to be paid to the Client Protection Fund pursuant to Rule 19-605.

(c) Collection and Disbursement

The treasurer of the Client Protection Fund of the Bar of Maryland shall collect and remit to the Commission the sums paid by attorneys to the Disciplinary Fund.

(d) Audit

The Commission shall direct annually an independent audit of the Disciplinary Fund. The expense of the audit shall be paid out of the Fund.

(e) Enforcement

Enforcement of payment of annual assessments of attorneys pursuant to this Rule is governed by the provisions of Rule 19-606.

Source: This Rule is derived from former Rule 16-714 (2016).

REPORTER'S NOTE

Rule 19-705 is proposed to be amended by adding new language to section (a) indicating that one of the sources of income to the Disciplinary Fund is costs recovered pursuant to law or court order. Stylistic changes are also made to section (a).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 19-706 by adding new subsection (a)(3) to permit probation as a sanction; by renumbering former subsection (a)(3) through (a)(5) as subsections (a)(4) through (a)(6) respectively; by deleting certain language and adding certain language to subsection (a)(6) permitting a complaint to be dismissed with a letter of cautionary advice or letter of admonition; by making stylistic changes to subsection (a)(6); by adding new subsection (a)(7) establishing a possible sanction of placement on permanent retired status; by deleting the language "placement on" in subsection (b)(1) and adding new language "transfer to disability" to the same subsection; and by deleting certain language in subsection (b)(3) pertaining to termination of a proceeding and adding new language pertaining to placement on permanent retirement status, as follows:

Rule 19-706. SANCTIONS AND REMEDIES

(a) For Professional Misconduct

An attorney who is found to have committed professional misconduct is subject to one or more of the following sanctions and remedies:

(1) disbarment by the Court of Appeals;

(2) suspension, for a fixed period or indefinitely, by the Court of Appeals;

(3) probation under terms and conditions as specified by the Court of Appeals;

~~(3)~~(4) reprimand by the Court of Appeals or, with the attorney's consent, by the Commission;

~~(4)~~(5) conditional diversion in accordance with a Conditional Diversion Agreement; ~~and~~

~~(5)~~(6) ~~termination of a disciplinary proceeding with or without a warning~~ dismissal of the complaint with or without a letter of cautionary advice or, with the attorney's consent, a letter of admonition; or

(7) placement on permanent retired status.

(b) For Incapacity

An attorney who is found to have an incapacity is subject to the following:

(1) ~~placement on~~ transfer to disability inactive status, subject to further order of the Court of Appeals;

(2) conditional diversion in accordance with a Conditional Diversion Agreement; or

(3) ~~termination of a remedial proceeding~~ placement on permanent retired status.

Source: This Rule is derived in part from former Rule 16-721 (2016) and is in part new.

REPORTER'S NOTE

Proposed new Subsection (a) (3) is added to Rule 19-706 to permit probation as a sanction.

Former subsections (a) (3) through (a) (5) are renumbered as subsections (a) (4) through (a) (6) respectively.

Subsection (a) (6) is amended to conform to the replacement of a "warning" with either a letter of "cautionary advice" or a "letter of admonition" as set forth in Rule 19-715. Stylistic changes are also made to this subsection.

New subsection (a) (7) is added, establishing a new remedy of placement on permanent retired status.

Subsection (b) (1) is amended by replacing the term "placement on" with "transfer to disability."

Subsection (b) (3) is amended by replacing the language "termination of a proceeding" with the language "placement on permanent retired status."

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 19-707 by changing the tagline of section (a) from "Peer Review Meetings" to "Peer Review Proceedings;" by changing the tagline of subsection (a)(1) from "Confidentiality" to "Generally;" by adding language to subsection (a)(1) providing that all records and proceedings of a Peer Review Panel are confidential; by making stylistic changes and adding certain language to subsection (a)(1); by adding the word "following" before "records and proceedings" and deleting certain language in section (b); by removing the subsection numbers in the first paragraph of section (b); by adding language to section (b) clarifying that the listed records and proceedings may not be disclosed by any member of the Peer Review Committee or an agent of the complainant; by renumbering the subsections of section (b); by deleting former subsection (b)(2)(B); by replacing a reference to subsection (b)(2)(D) in a Committee note with a reference to subsection (b)(3); by adding new language "a circuit court, and the Court of Appeals" to subsection (b)(3); by adding the word "prior" before "warning" in subsection (b)(4); by replacing the date of "October 1, 2020"

with "July 1, 2021" in subsection (b) (4); by adding language to subsection (b) (4) concerning the permitted disclosures of certain information about prior warnings issued by the Commission; by deleting a reference to Rule 19-715 (d) in subsection (b) (4); by adding new subsections (b) (5) and (b) (6) pertaining to the contents of letters of admonition and letters of cautionary advice issued by the Commission; by adding language to subsection (b) (7) explaining permitted disclosures by Bar Counsel to the complainant concerning the issuance of a reprimand as provided in Rule 19-716 (c) (3) (A) (ix); by adding new subsection (b) (9) pertaining to a motion filed pursuant to Rule 19-712 (f) or (h); by adding the phrase "the final order in" before "proceedings in the Court of appeals" in subsection (b) (10); by replacing a reference to subsection (b) (2) (H) in subsection (c) (1) with a reference to subsection (b) (10); by adding a reference to Rule 19-716 in subsection (c) (3); by adding certain language to subsection (c) (4); by deleting the reference to the Clerk of the Court of Appeals in subsection (d) (2); by adding the word "disability" before the words "inactive status" twice in subsection (e); by adding the word "written" before "request" in subsection (f) (3); by separating subsection (f) (4) into additional subsections; by replacing the phrase "requesting entity" in subsection (f) (4) with the

language "members or staff of the entity who require the information in order for the entity to perform its authorized function;" by adding new subsection (f)(4)(ii) pertaining to permitted disclosures to entities by Bar Counsel with the approval of the Chair of the Commission; by adding the word "possible" before "criminal activity" in subsection (f)(8); by adding language to subsection (f)(9) expanding the other disciplinary authorities to which disclosures may be made; by adding new subsection (f)(10) addressing permitted disclosures to a representative of a Lawyer Assistance Program or the appropriate Department of Human Services or department of social services; by adding a Committee note after new subsection (f)(10) clarifying the intent of the subsection; by adding new subsection (f)(11) pertaining to permitted disclosures in response to a Petition for Reinstatement or a Petition for Resignation filed by an attorney; and by renumbering subsection (f)(10) to conform to the addition of new subsections, as follows:

Rule 19-707. CONFIDENTIALITY

(a) Peer Review ~~Meetings~~ Proceedings

(1) ~~Confidentiality~~ Generally

All records and proceedings of a Peer Review Panel, including all communications, whether written or oral, and all non-criminal conduct, made or occurring at a meeting of a peer review panel, are confidential and not open to public disclosure or inspection. Except as otherwise expressly permitted in this Rule, individuals present at the meeting of the panel shall maintain that confidentiality and may not disclose or be compelled to disclose such communications or conduct in any judicial, administrative, or other proceeding.

(2) Privilege

Communications and conduct that are confidential under this Rule are privileged and are not subject to discovery, but information that is otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use or occurrence at a peer review meeting.

(b) Other Confidential Material

Except as otherwise provided in this Rule, the following records and proceedings ~~listed in this section and the contents of those records and proceedings~~ are (1) confidential and not open to public inspection and (2) may not be disclosed by Bar Counsel, the staff and investigators of the Office of Bar Counsel, any member of the Commission, the staff of the Commission, any member of the Peer Review Committee, any

attorney involved in the proceeding, or, in any civil action or proceeding, by the complainant or an attorney for or agent of the complainant:

~~(A)~~ (1) the records of an investigation by Bar Counsel, including the existence and content of any complaint or response, until Bar Counsel files a petition for disciplinary or remedial action pursuant to Rule 19-721;

~~(B) the records and proceedings of a Peer Review Panel;~~

~~(C)~~ (2) information that is the subject of a protective order;

~~(D)~~ (3) the contents of a prior private reprimand or Bar Counsel reprimand pursuant to the Attorney Disciplinary Rules in effect prior to July 1, 2001, but the fact that a private or Bar Counsel reprimand was issued and the facts underlying the reprimand may be disclosed to a Peer Review Panel, a circuit court, and the Court of Appeals in a proceeding against the attorney alleging similar misconduct;

Committee note: Disclosure under subsection ~~(b) (2) (D)~~ (b) (3) of this Rule is not dependent upon a finding of relevance under Rule 19-720 (c) (1).

~~(E)~~ (4) the contents of a prior warning issued by the Commission pursuant to the Attorney Disciplinary Rules in effect prior to ~~October~~ July 1, 2020 2021, but the fact that a warning was issued and the facts underlying the warning may be disclosed

to a Peer Review Panel, a circuit court, and the Court of Appeals in a subsequent proceeding against the attorney when relevant to a complaint alleging similar conduct by the attorney as provided in Rule 19-715 (d);

(5) the contents of a letter of admonition issued by the Commission as provided in Rule 19-714;

(6) the contents of a letter of cautionary advice issued by the Commission as provided in Rule 19-714;

~~(F)~~(7) the contents of a Conditional Diversion Agreement as provided in Rule 19-716 (j) (2), except that Bar Counsel may disclose to the complainant, when applicable, the fact that, upon successful completion of the Conditional Diversion Agreement, the Commission will issue a reprimand to the attorney as provided in Rule 19-716 (c) (3) (A) (ix);

~~(G)~~(8) the records and proceedings of the Commission on matters that are confidential under this Rule;

(9) a motion filed pursuant to Rule 19-712 (f) or (h) and records and proceedings on that motion;

~~(H)~~(10) a Petition for Disciplinary or Remedial Action based solely on the alleged incapacity of an attorney and records and proceedings, other than the final order in proceedings in the Court of Appeals, on that petition; and

~~(I)~~(11) a petition for an audit of an attorney's accounts filed pursuant to Rule 19-731 and records and proceedings, other than proceedings in the Court of Appeals, on that petition.

(c) Public Proceedings and Records

The following records and proceedings are public and open to inspection:

(1) except as otherwise provided in subsection ~~(b)(2)(H)~~ (b)(10) of this Rule, a Petition for Disciplinary or Remedial Action, all proceedings on that petition, and all documents or other items admitted into evidence at any hearing on the petition;

(2) an affidavit filed pursuant to Rule 19-736 that consents to discipline and an order that disbars, suspends, or reprimands the attorney by consent;

(3) a reprimand issued by the Commission pursuant to Rule 19-716 or Rule 19-717; and

(4) except as otherwise provided by order of the Court of Appeals, all filings and proceedings under this Chapter in the Court of Appeals.

(d) Required Disclosures by Bar Counsel

(1) Reprimand by Commission

If an attorney is reprimanded by the Commission, Bar Counsel shall notify the Clerk of the Court of Appeals.

(2) Conviction of a Serious Crime

If Bar Counsel has received and verified information that an attorney has been convicted of a serious crime, Bar Counsel shall notify the Commission ~~and the Clerk of the Court of Appeals.~~

(e) Required Disclosures by Clerk of the Court of Appeals

If an attorney resigns or is reprimanded, convicted of a serious crime, or, by order of the Court of Appeals, disbarred, suspended, reinstated, or transferred to disability inactive status, the Clerk of the Court of Appeals of Maryland shall notify the National Lawyer Regulatory Data Bank of the American Bar Association and the disciplinary authority of every other jurisdiction in which the attorney is admitted to practice. In addition, the Clerk shall comply with Rule 19-761 upon entry of each order of the Court by which an attorney is disbarred, suspended, reinstated, or transferred to disability inactive status.

(f) Permitted Disclosures

(1) Written Waiver of Attorney

If the attorney has signed a written waiver of confidentiality, the Commission or Bar Counsel may disclose information to the extent permitted by the waiver.

(2) To Investigate a Complaint; Prepare a Defense to a Complaint; Prepare for a Hearing

The parties to a disciplinary or remedial action may use confidential information other than the records and proceedings of a Peer Review Panel to the extent reasonably necessary to investigate a complaint, prepare a defense to a complaint, or prepare for a public hearing in the action but shall preserve the confidentiality of the information in all other respects.

(3) Communications With Complainant

Upon written request of a complainant, Bar Counsel may disclose to the complainant the status of an investigation and of any disciplinary or remedial proceedings resulting from information from the complainant.

(4) Requests by Authorities

(i) Upon receiving a request that complies with this subsection, the Commission or Bar Counsel may disclose the pendency, subject matter, status, and disposition of disciplinary or remedial proceedings involving an attorney or former attorney that did not result in dismissal of a complaint. The request must be made in writing by a judicial nominating commission, a bar admission authority, the President of the United States, the Governor of a state, or a committee of the General Assembly of Maryland or of the United States Congress.

The requesting entity must represent that it is considering the nomination, appointment, confirmation, approval, or admission to practice of the attorney or former attorney, and that the information will be treated as confidential and without the consent of the attorney will not be copied or disclosed to anyone other than the ~~requesting entity~~ members or staff of the entity who require the information in order for the entity to perform its authorized function.

(ii) With the approval of the Chair of the Commission, Bar Counsel may disclose the pendency, subject matter, status, and disposition of disciplinary or remedial proceedings involving an attorney or former attorney that did not result in dismissal of a complaint to a judicial nominating commission, a bar admission authority, the President of the United States, the Governor of a state, or a committee of the General Assembly of Maryland or of the United States Congress. Bar Counsel must obtain a statement from the entity that it is considering the nomination, appointment, confirmation, approval, or admission to practice of the attorney or former attorney, and that the information will be treated as confidential and without the consent of the attorney will not be copied or disclosed to anyone other than the members or staff of the entity who require the information in order for the entity to perform its authorized function.

(5) Request by Client Protection Fund

Upon written request by the Client Protection Fund, Bar Counsel or the Commission may permit an authorized officer of the Fund to review and copy specific records relating to an attorney that are relevant to a claim pending before the Fund. Unless the Court orders otherwise, the Fund shall maintain the confidentiality of any records it has reviewed or copied.

(6) Explanatory Statements

The Chair of the Commission may issue a brief explanatory statement necessary to correct any public misperception about actual or possible proceedings.

(7) Court Order or Grand Jury Subpoena

Bar Counsel shall comply with an order of a court or a subpoena issued by a duly constituted grand jury of this State or the United States to produce records and disclose confidential information concerning the attorney.

(8) Law Enforcement Officials

With the approval of the Chair of the Commission, Bar Counsel may provide to law enforcement and prosecuting officials information involving possible criminal activity.

(9) Other Disciplinary Authorities

With the approval of the Chair of the Commission, Bar Counsel may provide to the disciplinary authority of any other

jurisdiction in which an attorney is admitted to practice,
maintains a location for the practice of law, or engages in the
unauthorized practice of law, records and other confidential
information concerning the attorney.

(10) Lawyer Assistance; Adult Protective Services

Bar Counsel may disclose the existence of a complaint
to a representative of a Lawyer Assistance Program sponsored by
a state or local bar association or the appropriate Department
of Human Services or department of social services regarding the
lawyer's potential need for treatment for substance abuse or a
mental health issue. Disclosure under this rule shall be
limited to the existence of the complaint and the issues of
concern and shall not reveal the nature or details of the
complaint unless such disclosure is necessary.

Committee Note: This subsection is intended to allow Bar
Counsel to disclose the existence of a complaint to a lawyer
assistance program when necessary to assist the attorney in
receiving appropriate services for substance abuse or mental
health problems revealed or implicit from the complaint or
through an investigation by Bar Counsel. It is not intended to
permit Bar Counsel to act on confidential information reported
by a lawyer assistance program to Bar Counsel absent a signed
waiver or consent by the attorney. Bar Counsel may not act on
any such information unless accompanied by a signed waiver or
consent by the attorney. This does not preclude Bar Counsel
from using or considering that kind of information lawfully
obtained from other sources.

(11) Bar Counsel may disclose the pendency, subject matter,
status, and disposition of disciplinary or remedial proceedings

involving an attorney or former attorney that did not result in dismissal of a complaint in response to a Petition for Reinstatement or a Petition for Resignation filed by an attorney.

~~(10)~~ (12) Summarized Information

In order to improve the administration of justice, the Commission and Bar Counsel may publish reports and summaries of confidential investigations, charges, and disciplinary or remedial proceedings, provided that the identity of attorneys, complainants, and witnesses is not revealed.

Source: This Rule is derived in part from former Rule 16-723 (2016) and is in part new.

REPORTER'S NOTE

Rule 19-707 concerns the confidentiality of records and proceedings in attorney discipline matters. Proposed amendments update the taglines of section (a) and subsection (a)(1). New language in subsection (a)(1) indicates that the confidentiality provisions apply not only to documents considered communications, but to all records and proceedings of a Peer Review Panel. Additional stylistic amendments are proposed in subsection (a)(1).

Section (b) lists the various records and proceedings that are considered confidential, are not open for inspection, and are not to be disclosed. Stylistic amendments are proposed, and additional language clarifies that the records and proceedings may not be disclosed by any member of the Peer Review Committee or an agent of the complainant. Due to stylistic changes and new proposed subsections, subsections (b)(2)(A) through (I) are renumbered.

Proposed amendments in section (b) create a detailed list of the records and proceedings included within the section's confidentiality provisions. Former subsection (b)(2)(B) is deleted because amended subsection (a)(1) addresses the confidentiality of the records and proceedings of a Peer Review Panel. A reference to subsection (b)(2)(D) is updated to reference subsection (b)(3) in a Committee note after subsection (b)(3). Amendments to subsection (b)(3) and (b)(4) address disclosure to a Peer Review Panel, a circuit court, and the Court of Appeals of the existence of a prior warning issued pursuant to the Attorney Disciplinary Rules and the underlying facts of the warning when relevant to a complaint alleging similar conduct by the attorney. New subsections (b)(5), (b)(6) and (b)(9) expand the list of confidential records and proceedings to include letters of admonition, letters of cautionary advice, and motions filed pursuant to Rule 19-712 (f) or (h), respectively. Proposed amendments to subsection (b)(7) permit disclosure to a complainant that the Commission will issue a reprimand upon successful completion of a Conditional Diversion Agreement. The addition of language to subsection (b)(10) provides that, in regard to a Petition for Disciplinary or Remedial Action based solely on the alleged incapacity of an attorney, only the final order in proceedings in the Court of Appeals is excluded from these confidentiality provisions.

Section (c) lists the records and proceedings considered public in attorney discipline matters. A reference in subsection (c)(1) to former subsection (b)(2)(H) is replaced with a reference to subsection (b)(10) to conform with proposed amendments. A reference to Rule 19-716 is proposed in subsection (c)(3). Language added to subsection (c)(4) clarifies that all filings in the Court of Appeals under this Chapter, not just the proceedings, are public.

A deletion in subsection (d)(2) provides that Bar Counsel is no longer required to notify the Clerk of the Court of Appeals upon receipt of verified information that an attorney has been convicted of a serious crime.

Section (e) is amended to use the phrase "transferred to disability inactive status" rather than having an attorney "placed on inactive status."

Subsection (f)(3) permits disclosure by Bar Counsel to a complainant of the status of an investigation and of any

disciplinary or remedial proceedings resulting from the complaint upon the written request of a complainant.

Subsection (f)(4) concerns permitted disclosures to authorities. Proposed amendments separate (f)(4) into additional subsections. Subsection (f)(4)(i) maintains the original language of subsection (f)(4), with additional language clarifying the limitations of copying or disclosing the information without the consent of the attorney. New subsection (f)(4)(ii) addresses disclosures to entities with the approval of the Chair of the Commission, requiring a statement from the entity containing specific assertions.

The addition of language in subsections (f)(8) and (f)(9) expands permitted disclosures, including providing information about possible criminal activity to law enforcement and prosecuting officials and providing records and other confidential information to the disciplinary authority of any other jurisdiction where an attorney maintains a location for the practice of law or engages in unauthorized practice of law.

When considering these Rules, the Subcommittee considered the importance of substance abuse and mental health treatment for attorneys. New subsection (f)(10) permits Bar Counsel to disclose the existence of a complaint to a representative of a Lawyer Assistance Program or the appropriate Department of Human Services or department of social services regarding the lawyer's need for substance abuse or mental health treatment. As the proposed Committee note explains, this new section permits disclosure in an effort to help attorneys receive appropriate services and does not, without a waiver or consent from the attorney, enable Bar Counsel to pursue discipline based on the receipt of confidential information from a lawyer assistance program.

New subsection (f)(11) permits certain disclosures to enable Bar Counsel to properly respond to a Petition for Reinstatement or a Petition for Resignation filed by an attorney.

Former subsection (f)(10) is renumbered as (f)(12).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 19-708 by changing the tagline from "Statement of Charges" to "Original Process;" by adding certain language to section (a); by deleting certain language in section (a) permitting service of original process on the Client Protection Fund; by adding language to section (b) permitting an attorney to be served with non-original process via all e-mail addresses on record for that attorney in the AIS system pursuant to Rule 19-802; by deleting language in the Committee note following section (b) pertaining to the service of papers on the Client Protection Fund; by adding language to the Committee note pertaining to the use of e-mail addresses contained in the AIS database for service of other papers; and by adding a reference to Rule 19-718 in the cross reference after section (b), as follows:

Rule 19-708. SERVICE OF PAPERS ON ATTORNEY

(a) ~~Statement of Charges~~ Original Process

A copy of a Statement of Charges filed pursuant to Rule 19-718 and a petition filed pursuant to ~~Rule 19-718~~ Rules 19-

721, 19-733, 19-737, or 19-738 shall be served on an attorney in the manner prescribed by Rule 2-121. ~~If after reasonable efforts the attorney cannot be served personally, service may be made upon the employee designated by the Client Protection Fund pursuant to Rule 19-604 (a) (12), who shall be deemed the attorney's agent for receipt of service. The Fund's employee shall send, by both certified mail and ordinary mail, a copy of the papers so served to the attorney at the address maintained in the Fund's records and to any other address provided by Bar Counsel.~~

(b) Service of Other Papers

Except as otherwise provided in this Chapter, ~~other~~ notices and papers may be served on an attorney in the manner provided by Rule 1-321 for service of papers after an original pleading or by e-mail to all e-mail addresses of record maintained by the attorney with the Attorney Information System in accordance with Rule 19-802.

Committee note: ~~The attorney's address contained in the records of the Client Protection Fund of the Bar of Maryland may be the attorney's last known address. Mailing address(es) and e-mail address(es) maintained by AIS may be relied upon by Bar Counsel and the Commission as the attorney's current information in accordance with Rule 19-802 (e).~~

Cross reference: See Rule 19-718 concerning service of a Statement of Charges. See Rule 19-721 concerning service of a Petition for Disciplinary or Remedial Action.

Source: This Rule is derived in part from former Rule 16-724 (2016) and is in part new.

REPORTER'S NOTE

The tagline of Rule 19-708 is proposed to be amended to include petitions as well as a statement of charges.

Section (a) is amended to remove the requirement for service of original process on the Client Protection Fund.

Section (b) is amended to permit an attorney to be served with non-original process via all e-mail addresses on record for that attorney in the AIS system pursuant to Rule 19-802.

The Committee note following section (b) is amended by deleting language pertaining to the service of papers on the Client Protection Fund and replacing it with language permitting the use of e-mail addresses contained in the AIS database for service of papers other than original process.

The cross reference following section (b) is amended by adding a reference to Rule 19-718.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 1. GENERAL PROVISIONS

Rule 19-709. COSTS

(a) Generally

Except as provided in section (c) of this Rule, and unless the Court of Appeals orders otherwise, the prevailing party in proceedings under this Chapter is entitled to reasonable and necessary costs. By order, the Court may allocate costs among the parties.

(b) Costs Defined

Costs include:

- (1) court costs;
- (2) reasonable and necessary fees and expenses paid to an expert witness who testified in the proceeding before the circuit court judge;
- (3) reasonable and necessary travel expenses of a witness who is not an expert witness;
- (4) reasonable and necessary costs of a transcript of proceedings before the circuit court judge;

(5) reasonable and necessary fees and expenses paid to a court reporter or reporting service for attendance at a deposition and for preparing a transcript, audio recording, or audio-video recording of the deposition; and

(6) other reasonable and necessary expenses, excluding attorneys' fees, incurred in investigating the claims and in prosecuting or defending against the petition for disciplinary or remedial action before the circuit court judge and in the Court of Appeals.

(c) Reinstatement Proceedings

In proceedings for reinstatement under Rules 19-751 or 19-752, the attorney shall pay all court costs and costs of investigation and other proceedings on the petition, including the costs of physical and mental examinations, transcripts, and other reasonable expenditures necessary to evaluate the petition.

(d) Judgment

Costs of proceedings under this Chapter, including the costs of all transcripts, shall be assessed by the Clerk of the Court of Appeals and included in the order as a judgment. On motion, the Court may review the action of the Clerk.

(e) Enforcement

Rule 8-611 applies to proceedings under this Chapter.

Source: This Rule is in part derived from former 16-761 (2016) and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-711 by deleting the word "individual" in sections (a) and (b) and replacing it with the word "person;" by deleting the word "address" in section (a) and subsection (c) (1) and replacing with the words "contact information;" by deleting certain language in subsection (b) (3) and adding certain language requiring that an investigation, in order to proceed, must find a substantial basis that an attorney committed misconduct or is incapacitated; by adding new subsection (b) (4) and renumbering former subsection (b) (4) as subsection (b) (5); by deleting "six months" from subsection (b) (5) and replacing it with "90 days;" by adding certain language to subsection (b) (5) expanding the reference to subsection (b) (3) to include subsection (b) (1); by renumbering the reference to subsection (b) (4) to subsection (b) (5) in subsection (b) (3) and subsection (d) (1); by deleting the reference to section (b) from the reference to Rule 19-108 in section (c); and by deleting the number "90" from subsection (d) (1) and replacing it with "120," as follows:

Rule 19-711. COMPLAINT; INVESTIGATION BY BAR COUNSEL

(a) Who May Initiate

Bar Counsel may file a complaint on Bar Counsel's own initiative, based on information from any source. Any other ~~individual~~ person also may file a complaint with Bar Counsel. Any communication to Bar Counsel that (1) is in writing, (2) alleges that an attorney has engaged in professional misconduct or has an incapacity, (3) includes the name and ~~address~~ contact information of the ~~individual~~ person making the communication, and (4) states facts which, if true, would constitute professional misconduct by or demonstrate an incapacity of an attorney constitutes a complaint.

(b) Review of Complaint

(1) Bar Counsel shall make an inquiry concerning every complaint that is not facially frivolous, unfounded, or duplicative.

(2) If Bar Counsel concludes that a complaint is without merit, does not allege facts which, if true, would demonstrate either professional misconduct or incapacity, or is duplicative, Bar Counsel shall decline the complaint and notify the complainant. Bar Counsel also may decline a complaint submitted by an ~~individual~~ person who provides information about an attorney derived from published news reports or third party

sources where the complainant appears to have no personal knowledge of the information being submitted.

(3) Unless a complaint is declined for one of the reasons set forth in subsection (b) (2) of this Rule, Bar Counsel ordinarily shall obtain a written response from the attorney who is the subject of a complaint and consider other appropriate information to assist in evaluating the merits of the complaint. If Bar Counsel determines based upon such evaluation that an insufficient basis exists to demonstrate misconduct or incapacity or that the overall circumstances do not warrant investigation, Bar Counsel may close the file without approval of the Commission. Otherwise, subject to subsection ~~(b) (4)~~ (b) (5) of this Rule, Bar Counsel shall (A) docket the complaint, (B) notify the complainant and explain in writing the procedures for investigating and processing the complaint, (C) comply with the notice requirement of section (c) of this Rule, and (D) conduct an investigation to determine whether ~~reasonable grounds exist to support the allegations of the complaint~~ there exists a substantial basis to conclude the attorney committed professional misconduct or is incapacitated.

(4) If a complaint is declined or closed by Bar Counsel, allegations made in the complaint may not be used in any disciplinary proceeding against the attorney. If additional

information becomes known to Bar Counsel regarding a complaint that was declined or closed before docketing, the earlier allegations may be reopened.

Committee note: In this Rule, "docket" refers to the process of listing a complaint on the docket of active investigations maintained by Bar Counsel, rather than on a docket maintained by the clerk of a court. Before determining whether a complaint is frivolous or unfounded, Bar Counsel may contact the attorney and obtain an informal response to the allegations.

~~(4)~~(5) If Bar Counsel concludes that a civil or criminal action involving material allegations against the attorney substantially similar or related to those alleged in the complaint is pending in any court of record in the United States, or that substantially similar or related allegations presently are under investigation by a law enforcement, regulatory, or disciplinary agency, Bar Counsel, with the approval of the Commission, may defer action on the complaint pending a determination of those allegations in the pending action or investigation. Bar Counsel shall notify the complainant of that decision and, during the period of the deferral, shall report to the Commission, at least every ~~six~~ 90 days, the status of the other action or investigation. The Commission, at any time, may direct Bar Counsel to proceed in accordance with subsection (b) (1) or (3) of this Rule.

(c) Notice to Attorney

(1) Except as otherwise provided in this section, Bar Counsel shall notify the attorney who is the subject of the complaint that Bar Counsel is undertaking an investigation to determine whether the attorney has engaged in professional misconduct or is incapacitated. The notice shall be given before the conclusion of the investigation and shall include the name and ~~address~~ contact information of the complainant and the general nature of the professional misconduct or incapacity under investigation. As part of the notice, Bar Counsel may demand that the attorney provide information and records that Bar Counsel deems appropriate and relevant to the investigation. The notice shall state the time within which the attorney shall provide the information and any other information that the attorney may wish to present. The notice shall be served on the attorney in accordance with Rule 19-708 ~~(b)~~.

(2) Bar Counsel need not give notice of investigation to an attorney if, with the approval of the Commission, Bar Counsel proceeds under Rule 19-737, 19-738, or 19-739.

(d) Time for Completing Investigation

(1) Generally

Subject to subsection ~~(b)(4)~~ (b)(5) of this Rule or unless the time is extended pursuant to subsection (d)(2) of

this Rule, Bar Counsel shall complete an investigation within ~~90~~
120 days after docketing the complaint.

(2) Extension

(A) Upon written request by Bar Counsel and a finding of good cause by the Commission, the Commission may grant an extension for a specified period. Upon a separate request by Bar Counsel and a finding of good cause, the Commission may renew an extension for a specified period.

(B) The Commission may not grant or renew an extension, at any one time, of more than 60 days unless it finds specific good cause for a longer extension.

(C) If an extension exceeding 60 days is granted, Bar Counsel shall provide the Commission with a status report at least every 60 days.

(3) Sanction

For failure to comply with the time requirements of section (d) of this Rule, the Commission may take any action appropriate under the circumstances, including dismissal of the complaint and termination of the investigation.

Source: This Rule is derived in part from former Rule 16-731 (2016) and is in part new.

REPORTER'S NOTE

Section (a) of Rule 19-711 is proposed to be amended by replacing the word "individual" with "person."

Subsection (a) (3) is amended by replacing the word "address" with "contact information" and by replacing the word "individual" with "person."

Subsection (b) (2) is amended by replacing the word "individual" with "person."

Subsection (b) (3) is amended by changing the reference to subsection (b) (4) to subsection (b) (5).

Subsection (b) (3) (D) is amended to change the standard that an investigation must meet in order to proceed from "reasonable grounds exit to support the allegations of the complaint" to a substantial basis exists that an attorney committed misconduct or is incapacitated.

New subsection (b) (4) is added, which specifies that allegations made in a complaint that is declined or closed by Bar Counsel may not be used in any disciplinary proceeding against the attorney. This does not preclude Bar Counsel from being able to reopen a closed investigation if additional information is discovered by Bar Counsel.

Subsection (b) (5) is amended to amend the time that Bar Counsel must report to the Attorney Grievance Commission during a deferral from every six months to every 90 days. The reference to subsection (b) (3) is also expanded to include subsection (b) (1).

Subsection (c) (1) is amended by replacing the word "address" with "contact information" and by removing subsection (b) from the reference to Rule 19-708.

Subsection (d) (1) is amended by changing the reference to subsection (b) (4) with a reference to subsection (b) (5). The time in which Bar Counsel must complete an investigation after a complaint is docketed is changed from 90 days to 120 days.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-712 by making stylistic changes to section (a); by deleting certain language from subsection (a)(1)(A); by adding certain language to subsection (a)(1)(A); by adding subsection (a)(1)(B) pertaining to subpoena to compel an attorney to submit to a mental or physical examination; by adding certain language to subsection (a)(2); by adding certain language to subsection (a)(2)(A); by making stylistic changes to section (b); by adding new subsection (b)(2) pertaining to the requirements necessary in a subpoena to compel an attorney to submit to a mental or physical evaluation; by making stylistic changes to section (c); by deleting certain language from section (c) pertaining to service pursuant to Rule 19-708 (b); by adding certain language to subsection (c)(1); by adding certain language to the cross reference following subsection (c)(1) pertaining to Rule 19-411 (b); by adding new subsection (c)(2) pertaining to alternative service; by re-lettering former section (g) as new section (d); by deleting certain language from section (d); by adding certain language to section (d); by re-lettering former section (d) as new section € pertaining to

objections to subpoenas; by deleting former section € and replacing it with new section (f) pertaining to the enforcement of subpoenas; by re-lettering former section (f) as new section (g); by adding certain language to section (g) clarifying that a circuit court is referenced in this section and not the Court of Appeals; and by adding new section (h) pertaining to the procedures that govern a petition for disciplinary or remedial action after an attorney is found to be in contempt, as follows:

Rule 19-712. INVESTIGATIVE SUBPOENA

(a) Approval and Issuance

(1) The Chair of the Commission may authorize Bar Counsel to issue a subpoena to (A) compel attendance of witnesses and the production of the person to whom it is directed to attend, give testimony, and produce designated documents, electronically stored information, or other tangible things at a time and place specified in the subpoena, or (B) to compel the attorney to submit to a mental or physical examination by a suitably licensed or certified examiner.

(2) The Chair of the Commission may authorize a subpoena if the Chair finds that (A) the subpoena is necessary to and in furtherance of an investigation being conducted by Bar Counsel pursuant to Rule 19-711, 19-735, 19-751, or 19-752 or (B) the

subpoena has been requested by a disciplinary authority of another jurisdiction pursuant to the law of that jurisdiction for use in a disciplinary or remedial proceeding in that jurisdiction to determine alleged professional misconduct or incapacity of an attorney subject to the jurisdiction of that disciplinary authority.

~~(2)~~(3) Upon approval, Bar Counsel may issue the subpoena.

(b) Contents

(1) A subpoena shall comply with the requirements of Rule 2-510 (c), except that to the extent practicable, a subpoena shall not identify the attorney under investigation. A subpoena to compel attendance of a witness shall include or be accompanied by a notice that the witness (1) has the right to consult with an attorney with respect to the assertion of a privilege or any other matter pertaining to the subpoena and (2) may file a motion for judicial relief under Rule 2-510.

(2) A subpoena to compel the attorney to submit to a mental or physical examination shall specify the time and place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(c) Service

~~Except for service upon an attorney in accordance with Rule 19-708 (b), a~~

(1) Generally

A subpoena shall be served in accordance with Rule 2-510 (d). Promptly after service of a subpoena on a person other than the attorney under investigation and in addition to giving any other notice required by law, Bar Counsel shall serve a copy of the subpoena on the attorney under investigation.

Cross reference: For examples of other notice required by law, see Code, Financial Institutions Article, § 1-304, concerning notice to depositors of subpoenas for financial records; Code, Health General Article, § 4-306 concerning disclosure of medical records, and Code, Health General Article, § 4-307, concerning notice of a request for issuance of compulsory process seeking medical records related to mental health services. See also Rule 19-411 (b), concerning notices required in connection with IOLTA accounts.

(2) Alternative Service

If after reasonable efforts the attorney cannot be served personally, service may be made on the attorney by sending by e-mail to all e-mail addresses of record maintained by the attorney with the Attorney Information System in accordance with Rule 19-802.

~~(g)~~ (d) Recording of Statements

All ~~statements~~ testimony by the subpoenaed witness shall be under oath and shall be contemporaneously recorded stenographically or ~~electronically~~ by electronic audio or audio-video recording.

~~(d)~~ (e) Objection

The person served with the subpoena or the attorney under investigation may file a motion in the circuit court for the county in which the subpoena was served for any order permitted by Rule 2-510 (e). The motion shall be filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance.

~~(e)~~(f) Enforcement

(1) Order enforcing compliance

(A) If (i) the person served with a subpoena fails to file a timely motion under section (e) or the court denies such a motion, and (ii) the person fails to comply with the subpoena, Bar Counsel may file a motion in the circuit court for the county in which the subpoena was served for an order to enforce compliance with the subpoena.

(B) Papers filed in the circuit court pursuant to this subsection shall be sealed upon filing and shall be open to inspection only by order of the court. A hearing before the court shall be on the record and shall be conducted outside of the presence of all individuals other than Bar Counsel, the attorney, the judge, and those individuals whose presence the court deems necessary. Any transcript or recording of the proceedings shall be sealed.

(2) Petition for contempt

If a person willfully fails to comply with an order issued under subsection (f)(1), Bar Counsel may file a petition for contempt pursuant to Rule 15-206 or for a body attachment pursuant to Rule 2-510 (j).

(3) Other sanctions

If the person is the attorney who is the subject of the investigation, Bar Counsel may, in addition, (A) with the approval of the Chair of the Commission, file with the Court of Appeals a petition to suspend the attorney from practicing law pending compliance with the subpoena, and (B) file a statement of charges pursuant to Rule 19-718 for violation of Rule 19-308.1. The attorney may file a response to a petition for suspension within 15 days after service of the petition. The Court may decide the issue on the papers filed or shall hold an expedited hearing on the petition.

~~(f)~~ (g) Confidentiality

Any paper filed in the circuit court with respect to a subpoena shall be sealed upon filing and shall be open to inspection only by order of the court. A hearing before the court on any motion shall be on the record and shall be conducted out of the presence of all individuals other than Bar Counsel, the attorney, and those individuals whose presence the court deems necessary.

(h) Petition for Disciplinary or Remedial Action

(1) Generally

If the circuit court makes a finding of contempt pursuant to Rule 15-206, Bar Counsel, with the approval of the Chair of the Commission, may file a Petition for Disciplinary or Remedial Action in the Court of Appeals pursuant to Rule 19-721 (a) (1). A certified copy of the order of contempt shall be attached to the Petition, and a copy of the Petition and order shall be served on the attorney in accordance with Rule 19-723.

(2) Show Cause Order

When a petition and certified copy of an order of contempt have been filed, the Court of Appeals shall order that the attorney, within 15 days from the date of the order, show cause in writing why the attorney should not be suspended immediately from the practice of law until the further order of the Court of Appeals.

(3) Action by the Court of Appeals

Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may enter an order (1) immediately suspending the attorney from the practice of law, (2) designating a judge pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727, or (3) containing any other appropriate provisions. The provisions of Rules 19-741

and 19-743 apply to an order under this section that suspends an attorney.

(4) Presumptive Effect of Order of Contempt

A finding of contempt is presumptive evidence that the attorney is in contempt of court, but the introduction of such evidence does not preclude Bar Counsel or the attorney from introducing additional evidence or otherwise showing cause why no suspension should be imposed.

(5) Termination of Suspension

On notification by Bar Counsel that the attorney has purged the contempt, the Court of Appeals shall order the attorney reinstated to the practice of law, unless other grounds exists for the suspension to remain in effect.

(6) Other Disciplinary Proceedings

Proceedings under this Rule shall not preclude the use of the facts underlying the order of contempt when relevant to a pending or subsequent disciplinary proceeding against the attorney.

Source: This Rule is derived from former Rule 16-732 (2016).

Source: This Rule is derived as follows:

Sections (a), (b), and (c) are derived in part from former Rule 16-732 (2016) and are in part new.

Sections (d), (e), and (g) are derived from former Rule 16-732 (2016).

Sections (f) and (h) are new.

REPORTER'S NOTE

Proposed stylistic changes are made to section (a) of Rule 19-712. Subsection (a)(1)(A) is amended and new subsection (a)(1)(B) is added to clarify the permissible uses of the Attorney Grievance Commission's subpoena power, which includes the ability to compel an attorney to submit to a mental or physical examination. Subsection (a)(2) is amended to indicate that the Chair of the Commission may authorize a subpoena pursuant to Rules 19-711, 19-735, 19-751, or 19-752.

Stylistic changes are made to section (b). New subsection (b)(2) is added pertaining to the requirements necessary in a subpoena to compel an attorney to submit to a mental or physical evaluation.

Stylistic changes are made to section (c). Section (c) and subsection (c)(1) are amended so that all subpoenas are now served in accordance with Rule 2-510 (d), the former language pertaining to attorneys being served pursuant to Rule 19-708 (b) is deleted. The cross reference following subsection (c)(1) is amended by adding a reference to Rule 19-411 (b). New subsection (c)(2) is added, permitting alternative service.

Former section (g) is re-lettered as new section (d). Section (d) is amended by changing the word "statements" to "testimony" and by replacing the word "electronically" with the words "electronic audio or audio-video recording."

Former section (d) is re-lettered as new section (e). No additional changes are made to this section.

Former section (e) is deleted and replaced in its entirety with new section (f) pertaining to the enforcement of subpoenas. Subsection (f)(1)(A) permits Bar Counsel to file a motion to enforce a subpoena in the circuit court where the subpoena was issued, and permits a circuit court to issue an order to enforce compliance. Subsection (f)(1)(B) requires any papers filed pursuant to subsection (f)(1)(A) to be sealed, and also requires any hearing in the circuit court to be conducted outside of the presence of all individuals other than Bar Counsel, the attorney, and any individuals deemed necessary for the proceedings by the Court. Subsection (f)(2) permits Bar Counsel to file a petition for contempt if a person willfully fails to comply with an order issued pursuant to subsection (f)(1)(A).

Subsection (f)(3) permits Bar Counsel to seek, with the consent of the Chair of the Commission, additional sanctions against an attorney for non-compliance, including a suspension or statement of charges.

Former section (f) is re-lettered as new section (g). Section (g) is amended to clarify that a circuit court is referenced in this section and not the Court of Appeals.

New section (h) is added, pertaining to the procedures that govern a petition for disciplinary or remedial action after an attorney is found to be in contempt pursuant to Rule 15-206.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

Rule 19-713. PERPETUATION OF EVIDENCE BEFORE PETITION FOR
DISCIPLINARY OR REMEDIAL ACTION

Before a Petition for Disciplinary or Remedial Action is filed, Bar Counsel or an attorney who is or may be the subject of an investigation by Bar Counsel may perpetuate testimony or other evidence relevant to a claim or defense that may be asserted in the expected action. The perpetuation of evidence shall be governed by Rule 2-404 and the issuance of subpoenas and protective orders shall be governed by Rules 2-510 and 2-403. The Commission shall perform the functions that the court performs under those Rules.

Source: This Rule is derived from former Rule 16-733 (2016).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-714 by deleting certain language from section (a) and adding language permitting Bar Counsel to recommend a letter of cautionary advice or letter of admonition; by adding new section (d), permitting Bar Counsel to recommend that an attorney be placed on permanent retired status in certain situations; by re-lettering former sections (d) and (e) as sections (e) and (f), respectively; and by adding a reference to Rule 19-741 to section (f), as follows:

Rule 19-714. ACTION BY BAR COUNSEL UPON COMPLETION OF INVESTIGATION

Upon completion of an investigation, Bar Counsel shall:

(a) recommend to the Commission dismissal of the complaint or termination of the proceeding without disciplinary or remedial action, with or without ~~a warning~~ a letter of cautionary advice or a letter of admonition, in accordance with Rule 19-715;

(b) recommend to the Commission approval of a Conditional Diversion Agreement in accordance with Rule 19-716;

(c) recommend to the Commission a reprimand in accordance with Rule 19-717;

(d) recommend to the Commission that the attorney be placed on permanent retired status in accordance with Rule 19-717.1;

~~(d)~~ (e) file with the Commission a Statement of Charges in accordance with Rule 19-718;

~~(e)~~ (f) recommend to the Commission the immediate filing of a Petition for Disciplinary or Remedial Action, with or without collateral remedial proceedings, in accordance with Rules 19-737, 19-738, ~~or 19-739,~~ or 19-741.

Source: This Rule is derived in part from former Rule 16-734 (2016) and is in part new.

REPORTER'S NOTE

Section (a) of Rule 19-714 is proposed to be amended to replace the term "warning" with "letter of cautionary advice" and "letter of admonition" as these dispositions are described in the proposed amendments to Rule 19-715.

New section (d) is added to this Rule, permitting Bar Counsel to recommend to the Commission that an attorney be placed on permanent retired status pursuant to Rule 19-716. Sections (d) and (e) are re-lettered as sections (e) and (f), respectively.

Section (f) is amended by adding a reference to Rule 19-741.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-715 by replacing the word "termination" with the word "dismissal" and the word "terminate" with the word "dismiss" throughout this Rule; by replacing the word "warning" with the words "letter of cautionary advice or letter of admonition" in subsection (a) (2) (A); by replacing the word "warning" with the words "letter of cautionary advice or letter of admonition" in subsection (a) (2) (B); by replacing the word "warning" with the words "letter of cautionary advice or letter of admonition" in section (b); by replacing the word "warning" with the words "letter of cautionary advice or letter of admonition" in the tagline of section (c); by making stylistic changes to section (c); by replacing the word "warning" with the words "letter of cautionary advice" and the word "warning" with the word "letter" in subsection (c) (1) (A); by adding certain language to subsection (c) (1) (A) to require that an attorney may not have any prior discipline, warning, letter of cautionary advice, or letter of admonition to be eligible; by replacing the word "warning" with the words "letter of cautionary advice" throughout subsection (c) (1) (B); by deleting certain language

from subsection (c) (1) (B); by deleting former subsections (c) (2) (A) (ii) and (c) (2) (A) (iii); by deleting former subsections (c) (2) (B) and (c) (2) (C); by replacing the word "warning" with the words "letter of cautionary advice" in the tagline of and in subsection (c) (1) (C); by deleting certain language and adding certain language to subsection (c) (1) (C); by adding new subsection (c) (2), pertaining to letters of admonition; by replacing the words "or Warning" with the words "Letter of Cautionary Advice, Letter of Admonition" in the tagline of section (d); by replacing the words "or Termination" with the words "of Complaint or Proceedings" in the tagline of subsection (d) (1); by adding a reference to subsection (d) (3) to subsection (d) (1) (A); by replacing the word "warning" with "letter of cautionary advice or letter of admonition" in subsection (d) (1) (A); by replacing the word "Warning" with the words "Letter of Cautionary Advice" in the tagline of subsection (d) (2); by replacing the word "warning" with the words "letter of cautionary advice" in subsection (d) (2) (A); by adding certain language to subsection (d) (2) (A) pertaining to the content of notice sent to the complainant; by replacing the first instance of the word "warning" with the words "letter of cautionary advice" in subsection (d) (2) (B); by replacing the second instance of the word "warning" with "letter" in subsection

(d) (2) (B); by deleting subsection (d) (2) (C); and by adding new subsection (d) (3), as follows:

Rule 19-715. DISMISSAL OF COMPLAINT; ~~TERMINATION~~ DISMISSAL OF DISCIPLINARY OR REMEDIAL PROCEEDING

(a) Recommendation by Bar Counsel or Peer Review Panel

Bar Counsel, upon completion of an investigation, or a Peer Review Panel, after a meeting of the Panel, may recommend to the Commission that:

(1) a complaint be dismissed because the evidence fails to show that the attorney has engaged in professional misconduct or is incapacitated; or

(2) a disciplinary or remedial proceeding be (A) ~~terminated dismissed~~, with or without a ~~warning~~ letter of cautionary advice or letter of admonition, because any professional misconduct on the part of the attorney was not sufficiently serious to warrant discipline and is not likely to be repeated, or (B) ~~terminated dismissed~~, without a ~~warning~~ a letter of cautionary advice or letter of admonition, because any incapacity on the part of the attorney is not sufficiently serious or long-lasting to warrant remedial action or, if resolved, is not likely to recur.

(b) Action by Commission

If satisfied with the recommendation of Bar Counsel or the Peer Review Panel, the Commission shall dismiss the

complaint or ~~terminate~~ dismiss the disciplinary or remedial proceeding, as appropriate. If the recommendation includes a ~~warning~~ letter of cautionary advice or letter of admonition, the matter shall proceed as provided in section (c) of this Rule.

(c) ~~Termination~~ Dismissal Accompanied by ~~Warning~~ Letter of Cautionary Advice or Letter of Admonition

(1) Letter of Cautionary Advice

(A) Recommendation by Bar Counsel or Peer Review Panel

Bar Counsel or the Peer Review Panel may recommend to the Commission that the ~~termination~~ dismissal of a disciplinary or remedial proceeding be accompanied by a ~~warning~~ letter of cautionary advice upon their respective conclusion that such a ~~warning~~ letter would be helpful to ensure that the conduct that led to the proceeding is not repeated, the attorney has no prior sanction, and the attorney has not received a prior warning, letter of cautionary advice, or letter of admonition for similar conduct by the attorney.

~~(2)~~ (B) Action by Commission

~~(A)(i)~~ If satisfied that ~~termination~~ dismissal of the disciplinary or remedial proceeding should be accompanied by a ~~warning~~ letter of cautionary advice, the Commission shall ~~mail~~ to the attorney a notice that states ~~(i) (1)~~ that on or after 30 days from the date of the notice, the Commission intends to ~~terminate~~ dismiss the disciplinary or remedial proceeding and

accompany the ~~termination~~ dismissal with a ~~warning~~ letter of cautionary advice. ~~(ii) the content of the proposed warning, and (iii) that the attorney may reject the proposed warning by filing a written rejection with the Commission no later than 25 days after the date of the notice.~~

~~(B) If the warning is not timely rejected, the Commission shall issue the warning when it dismisses the disciplinary or remedial proceeding.~~

~~(C) If the warning is timely rejected, the warning shall not be issued, but Bar Counsel or the Commission may take any other action permitted under this Chapter.~~

~~(3)~~ (C) Nature and Effect of Warning Letter of Cautionary Advice

A ~~warning~~ letter of cautionary advice ~~does~~ is not constitute discipline.

(2) Letter of Admonition

(A) Recommendation by Bar Counsel or Peer Review Panel

Bar Counsel or the Peer Review Panel may recommend to the Commission that the dismissal of a disciplinary or remedial proceeding be accompanied by a letter of admonition upon their respective conclusion that such a letter would be helpful to ensure that the conduct that led to the proceeding is not repeated.

(B) Action by Commission

(i) If satisfied that dismissal of the disciplinary or remedial proceeding should be accompanied by a letter of admonition, the Commission shall mail to the attorney a notice that states (a) that on or after 30 days from the date of the notice, the Commission intends to dismiss the disciplinary or remedial proceeding and accompany the dismissal with a letter of admonition, (b) the content of the proposed letter of admonition, and (c) that the attorney may reject the proposed letter of admonition by filing a written rejection with the Commission no later than 25 days after the date of the notice.

(ii) If the letter of admonition is not timely rejected, the Commission shall issue the letter when it dismisses the disciplinary or remedial proceeding.

(iii) If the letter of admonition is timely rejected, the letter shall not be issued, but Bar Counsel or the Commission may take any other action permitted under this Chapter.

(C) Nature and Effect of Letter of Admonition

A letter of admonition is not discipline.

(d) Disclosure of ~~Termination or Warning~~ Dismissal; Letter of Cautionary Advice; Letter of Admonition

(1) Disclosure of Dismissal ~~or Termination~~ of Complaint or Proceedings

(A) Except as provided in subsections (d) (2) and (d) (3) of this Rule, a dismissal ~~or a termination~~ of a complaint or proceedings under this Rule, with or without a ~~warning~~ letter of cautionary advice or letter of admonition, shall not be disclosed by the Commission or Bar Counsel in response to any request for information as to whether an attorney has been the subject of a disciplinary or remedial proceeding.

(B) The nature and existence of a proceeding ~~terminated~~ dismissed under this Rule, including any investigation by Bar Counsel that led to the proceeding, need not be disclosed by an attorney in response to a request for information as to whether the attorney has been the subject of a disciplinary or remedial proceeding.

(2) Disclosure of ~~Warning~~ Letter of Cautionary Advice

(A) The fact that a ~~warning~~ letter of cautionary advice was issued in conjunction with the ~~termination~~ dismissal of a complaint shall not be disclosed to the complainant. The complainant shall only be notified that the complaint was dismissed.

(B) The fact that a ~~warning~~ letter of cautionary advice was issued and the facts underlying the ~~warning~~ letter may be disclosed in a subsequent proceeding against the attorney when relevant to a complaint alleging similar conduct by the attorney.

~~(C) Neither the fact that a warning was proposed or rejected nor the contents of a warning that was not issued is admissible into evidence in any judicial or administrative proceeding.~~

(3) Disclosure of Letter of Admonition

(A) The fact that a letter of admonition was issued in conjunction with the dismissal of a complaint shall be disclosed to the complainant.

(B) The fact that a letter of admonition was issued and the facts underlying the letter may be disclosed in a subsequent proceeding against the attorney when relevant to a complaint alleging similar conduct by the attorney.

(C) Neither the fact that a letter of admonition was proposed or rejected nor the contents of a letter of admonition that was not issued is admissible into evidence in any judicial or administrative proceeding.

Source: This Rule is derived in part from former Rule 16-735 (2016) and is in part new.

REPORTER'S NOTE

Current Rule 19-715 permits the Attorney Grievance Commission, if recommended by Bar Counsel, to dismiss a complaint with a "warning" sent to the attorney. This can only occur with the consent of the attorney. If the attorney objects, the Commission may not dispose of a disciplinary matter in this fashion. The amendments proposed to this Rule replace the current "warning" with two options: dismissal with a

letter of cautionary advice, similar to what the Court approved in the Judicial Discipline Rules, which the Commission may issue without regard to any objection by the attorney, and a dismissal accompanied by a letter of admonition, which can only be issued with the consent of the attorney.

Either of the proposed new dispositions would be based on a conclusion by the Commission that the attorney's misconduct was not sufficiently serious to warrant discipline and, with the letter, is not likely to be repeated. The letter of cautionary advice is appropriate when the attorney has not been previously sanctioned or received a previous warning, admonition, or cautionary advice.

Neither the letter of cautionary advice nor the letter of admonition constitutes discipline. One difference between the two is that it is not disclosed to the complainant if a letter of cautionary advice is sent to the attorney. The complainant is notified, however, if a letter of admonition is sent to the attorney, and the facts underlying the admonition may be disclosed during a subsequent disciplinary proceeding against the attorney when they are relevant to the subsequent proceeding.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-716 by deleting and adding certain language to section (a) concerning when a conditional diversion agreement may be appropriate; by correcting a typo in subsection (a)(2); by adding the word "available" to subsection (a)(3); by deleting certain language from subsection (c)(3)(A)(ii) and adding new language to this subsection clarifying which types of individuals might be eligible for restitution; by making stylistic changes to subsection (c)(3)(A)(ix); by making stylistic changes to subsection (e)(2) which emphasize that the Commission must take affirmative action to disprove an agreement; and by correcting a typo in subsection (h)(1), as follows:

Rule 19-716. CONDITIONAL DIVERSION AGREEMENT

(a) When Appropriate

~~Upon completing an investigation, Bar Counsel may agree to a Conditional Diversion Agreement if Bar Counsel concludes that:~~ A Conditional Diversion Agreement may be appropriate and

may be approved by the Commission when there is an agreement between Bar Counsel and the attorney that:

(1) the attorney committed professional misconduct or is incapacitated;

(2) the professional misconduct or incapacity was not the result of any ~~wilful~~ willful or dishonest conduct and did not involve conduct that could be the basis for an immediate Petition for Disciplinary or Remedial Action pursuant to Rules 19-737, 19-738, or 19-739;

(3) the cause or basis of the professional misconduct or incapacity is subject to remediation or resolution through available alternative programs or mechanisms, including (A) medical, psychological, or other professional treatment, counseling, or assistance, (B) appropriate educational courses or programs, (C) mentoring or monitoring services, or (D) dispute resolution programs; and

(4) the public interest and the welfare of the attorney's clients and prospective clients will not be harmed if, instead of the matter proceeding immediately with a disciplinary or remedial proceeding, the attorney agrees to and complies with specific measures that, if pursued, will remedy the immediate problem and likely prevent any recurrence of it.

Committee note: Examples of conduct that may be susceptible to conditional diversion include conduct arising from (A) unfamiliarity with proper methods of law office management,

record-keeping, or accounting, (B) unfamiliarity with particular areas of law or legal procedure, (C) negligent management of attorney trust accounts or other financial matters, (D) negligent failure to maintain proper communication with clients, (E) negligent failure to provide proper supervision of employees, or (F) emotional stress or crisis or abuse of alcohol or other drugs.

(b) Voluntary Nature of Agreement; Effect of Rejection or Disapproval

(1) Voluntary Nature

Neither Bar Counsel nor the attorney is under any obligation to propose or enter into a Conditional Diversion Agreement.

(2) Effect of Rejection or Disapproval

If a Conditional Diversion Agreement is proposed and rejected or if a signed Agreement is not approved by the Commission, Bar Counsel may take any other action permitted under this Chapter. Neither the fact that an Agreement was proposed, rejected, or not approved nor the contents of the Agreement may be admitted into evidence.

(c) Terms of Agreement

(1) In Writing and Signed

A Conditional Diversion Agreement shall be in writing and signed by Bar Counsel, the attorney, and any monitor designated in the Agreement.

(2) Required Provisions

The agreement shall:

(A) recite the basis for it, as set forth in section (a) of this Rule;

(B) state that the attorney voluntarily consents to its terms and promises to pay all expenses reasonably incurred in connection with its performance and enforcement;

(C) contain an acknowledgment by the attorney that the attorney (i) has engaged in conduct that constitutes professional misconduct, or (ii) is currently incapacitated, and a warranty that the attorney has not concealed from or misrepresented to Bar Counsel any material fact pertaining to the attorney's conduct or status as incapacitated or to the Agreement;

(D) state the particular course of remedial action that the attorney agrees to follow and a time for performance or completion of that action;

(E) provide for a stay of any disciplinary or remedial proceeding pending satisfactory performance by the attorney; and

(F) state that it is expressly conditioned on (i) the attorney's not engaging in any further conduct that would constitute professional misconduct, or, (ii) non-recurrence of the nature or severity of the incapacity.

(3) Permissive Provisions

The agreement may:

(A) provide for any program or corrective action appropriate under the circumstances, including:

(i) mediation or binding arbitration of a fee dispute;

(ii) restitution to persons financially injured by the attorney's professional misconduct, to a client of unearned or excessive fees, and to the Client Protection Fund for amounts paid on claims arising from the attorney's professional misconduct; in a stipulated amount;

(iii) a public apology to designated persons;

(iv) assistance in law office management, including temporary or continuing monitoring, mentoring, accounting, bookkeeping, financial, or other professional assistance, and completion of specific educational programs dealing with law office management;

(v) completion of specific legal education courses or curricula, including courses in legal ethics and professional responsibility;

(vi) an agreement not to practice in specific areas of the law (a) unless the attorney associates himself or herself with one or more other attorneys who are proficient in those areas, or (b) until the attorney has successfully completed a designated course of study to improve the attorney's proficiency in those areas;

(vii) one or more specific courses of treatment for emotional distress, mental disorder or disability, dependence on alcohol, drugs, or other intoxicants;

(viii) a stipulated number of hours of pro bono legal services; or

(ix) a reprimand to be issued upon the successful termination of a Conditional Diversion Agreement. If that provision is included, ~~The~~ the text of the reprimand shall be agreed upon and attached to the Agreement as a separate document; and

Committee note: The text of the Conditional Diversion Agreement must be separate from the text of the reprimand because the contents of the Agreement are confidential, whereas the contents of the reprimand are public. See Rules 19-716 (j) and 19-717.

(B) designate either a private monitor engaged at the attorney's expense or Bar Counsel to supervise performance and compliance with the terms and conditions of the agreement.

(4) If Monitor Designated

(A) If the agreement designates Bar Counsel or a private monitor pursuant to subsection (c) (3) (B) of this Rule, the agreement shall authorize Bar Counsel or the monitor to request and receive all information and inspect any records necessary to verify compliance.

(B) If a private monitor is designated, the agreement shall specify the fees of the monitor and the method and

frequency of payment of the fees and shall direct the monitor promptly to report any violation or noncompliance to Bar Counsel.

(d) Submission to Commission

A Conditional Diversion Agreement is not effective until approved by the Commission. Upon signing the Agreement, Bar Counsel and the attorney shall submit to the Commission the Agreement, any explanatory material they believe relevant, and any further information that the Commission requests.

(e) Action by Commission

(1) Generally

After consideration, the Commission may:

(A) approve the Agreement if satisfied that it is reasonable and in the public interest;

(B) disapprove the Agreement if not convinced that it is reasonable and in the public interest; or

(C) recommend amendments to the Agreement as a condition of approval.

(2) Upon Commission Recommendations

The parties may accept or reject the Commission's proposed amendments. If Bar Counsel and the attorney accept the proposed amendments, they shall notify the Commission of the acceptance, and the Commission shall approve the Agreement as amended. If either party rejects a proposed amendment, the

~~Agreement shall be deemed Commission may disapproved disapprove~~
the Agreement by the Commission.

(f) Effect of Agreement

Approval by the Commission of a Conditional Diversion Agreement does not constitute discipline.

(g) Amendment of Agreement

A Conditional Diversion Agreement may be amended from time to time. An amendment shall be in a writing signed by Bar Counsel and the attorney and approved by the Commission.

(h) Revocation of Agreement

(1) Declaration of Proposed Default

Bar Counsel may declare a proposed default on a Conditional Diversion Agreement if Bar Counsel determines that the attorney (A) engaged in further professional misconduct while subject to the agreement, (B) ~~wilfully~~ willfully misrepresented or concealed material facts during the negotiation of the Agreement that induced Bar Counsel to recommend approval of the Agreement, or (C) has failed in a material way to comply with the Agreement. Bar Counsel shall give written notice to the attorney of the proposed default and afford the attorney a reasonable opportunity to refute the determination.

(2) Petition

If the attorney fails to refute the charge or to offer an explanation or proposed remedy satisfactory to Bar Counsel, Bar Counsel shall file a petition with the Commission to revoke the Agreement and serve a copy of the petition on the attorney. The attorney may file a written response with the Commission within 15 days after service of the petition. The Commission may act upon the petition and response or may request the parties to supply additional information, in writing or in person.

(3) Action by Commission

If the Commission concludes that the attorney is in material default of the Agreement, it shall revoke the Agreement, revoke the stay of the disciplinary or remedial proceeding and any reprimand, and direct Bar Counsel to proceed in accordance with Rule 19-721, or as otherwise authorized by the Rules in this Chapter.

(i) Satisfaction of Agreement

If Bar Counsel determines that the attorney has complied in full with the requirements of the Agreement and that the disciplinary or remedial proceeding should be terminated, Bar Counsel shall inform the Commission and request that the disciplinary or remedial proceeding be terminated. If satisfied with Bar Counsel's recommendation, the Commission shall terminate the disciplinary or remedial proceeding.

(j) Confidentiality

(1) Fact that Approved Agreement was Signed; Notice to Complainant

(A) The fact that an attorney has signed a Conditional Diversion Agreement approved by the Commission is public.

(B) Upon approval of an Agreement by the Commission, Bar Counsel shall inform the complainant (i) that such an Agreement has been entered into and approved, (ii) that the disciplinary or remedial proceeding has been stayed in favor of the Agreement, (iii) that, if the attorney complies with the Agreement, the proceeding will be terminated, and (iv) of the potential for and consequences to the attorney of noncompliance.

(2) Contents of Agreement

(A) Except as provided in subsections (j) (2) (B), (C), and (D) of this Rule, the contents of a Conditional Diversion Agreement are confidential and may not be disclosed.

(B) If the Agreement requires payment or the transfer of property to the complainant by the attorney or requires other communication with the complainant by the attorney, Bar Counsel shall inform the complainant of those requirements, but not of any other terms of the Agreement.

(C) Upon revocation of an Agreement pursuant to section (h) of this Rule, the contents of the Agreement may be disclosed in any ensuing disciplinary or remedial proceeding.

(D) The contents of a Conditional Diversion Agreement may be disclosed in a subsequent proceeding against the attorney if relevant to a subsequent complaint based on similar misconduct or incapacity.

Source: This Rule is derived from former Rule 16-736 (2016).

REPORTER'S NOTE

Section (a) of Rule 19-716 is proposed to be amended by adding language to clarify that a conditional diversion agreement is appropriate in cases where there is an agreement between Bar Counsel and the attorney that the circumstances listed in section (a) exist.

Subsection (a) (2) is amended to correct a typo.

Subsection (a) (3) is amended by adding the word "available" so that a conditional diversion agreement may not be considered in cases where there are no available alternative programs with the ability to address the underlying cause of the complaint.

Subsection (c) (3) (A) (ii) is amended to clarify which types of individuals might be eligible for restitution from an attorney: any person financially injured by the attorney's professional misconduct; a client subject to unearned or excessive fees; and the Client Protection Fund for amounts paid on claims arising from the attorney's professional misconduct.

Stylistic changes are made to subsection (c) (3) (A) (ix).

Subsection (e) (2) is amended to require the Commission to take affirmative action to disapprove an agreement when any party rejects a proposed agreement rather than an agreement being deemed disapproved in the same circumstances under the current Rule.

Subsection (h) (1) (B) is amended to correct a typo.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-717 by deleting certain language from subsection (e) (1) (A) pertaining to Bar Counsel administering a reprimand; by adding new language to subsection (e) (1) (A) pertaining to the Commission serving a reprimand pursuant to Rule 19-708; by making stylistic changes to subsection (e) (1) (A); and by deleting certain language from subsection (e) (2) indicating that a reprimand may be "deemed disapproved" by the Commission and replacing it with new language indicating that the Commission may disapprove a reprimand, as follows:

Rule 19-717. REPRIMAND BY COMMISSION

(a) Scope

This Rule does not apply to a reprimand that is to be issued upon successful termination of a Conditional Diversion Agreement.

Cross reference: See Rule 19-716 (c) (3) (A) (ix).

(b) Offer

(1) Service on Attorney

If Bar Counsel determines after completion of an investigation, or the Peer Review Panel determines after a Panel meeting, that an attorney has engaged in professional misconduct and that the appropriate sanction for the misconduct is a reprimand, Bar Counsel or the Panel shall serve on the attorney a written offer of a reprimand and a waiver of further disciplinary or remedial proceedings that is contingent upon acceptance of the reprimand by the attorney and approval of the reprimand by the Commission.

(2) Content

The offer shall include the text of the proposed reprimand, the date when the offer will expire, a contingent waiver of further disciplinary or remedial proceedings, and advice that the offer, if accepted, is subject to approval by the Commission. The text of the proposed reprimand shall summarize the misconduct for which the reprimand is to be imposed and include a reference to any rule, statute, or other law allegedly violated by the attorney.

(c) Response

The attorney may accept the offer by signing the stipulation, endorsing the proposed reprimand, and delivering both documents to Bar Counsel or the Panel within the time stated in the notice or otherwise agreed to by Bar Counsel or the Panel. The attorney may (1) reject the offer expressly or

by declining to return the documents timely, or (2) propose amendments to the proposed reprimand, which Bar Counsel or the Panel may accept, reject, or negotiate.

(d) Submission to Commission

If the attorney agrees to the proposed reprimand, Bar Counsel or the Panel shall submit the proposed reprimand to the Commission for approval, together with any explanatory material that the attorney or Bar Counsel believes relevant and any further information that the Commission requests.

(e) Action by Commission

(1) Generally

After consideration, the Commission may:

(A) approve the reprimand, if satisfied that it is appropriate under the circumstances, in which event ~~Bar Counsel~~ the Commission shall promptly ~~administer~~ serve the reprimand ~~to~~ on the attorney in accordance with Rule 19-708 and terminate the disciplinary or remedial proceeding;

(B) disapprove the reprimand, if not satisfied that it is appropriate under the circumstances and direct Bar Counsel to proceed in another manner; or

(C) recommend amendments to the reprimand as a condition of approval.

(2) Upon Commission Recommendations

The parties may accept or reject the Commission's proposed amendments. If the parties accept the amendments, they shall notify the Commission of the acceptance, and the Commission shall then approve the reprimand. If either party rejects a proposed amendment, the ~~reprimand shall be deemed disapproved by the Commission~~ may disapprove the reprimand.

(f) Effect of Rejection or Disapproval

If a reprimand is proposed and rejected or if a reprimand to which the parties have stipulated is not approved by the Commission, the proceeding shall resume as if no reprimand had been proposed, and neither the fact that a reprimand was proposed, rejected, or not approved nor the contents of the reprimand or stipulation may be admitted into evidence.

(g) Effect of Reprimand

A reprimand constitutes discipline.

Source: This Rule is derived from former Rule 16-737 (2016).

REPORTER'S NOTE

Subsection (e) (1) (A) of Rule 19-717 is proposed to be amended to require the Commission, rather than Bar Counsel, to serve a reprimand on the attorney in accordance with Rule 19-708. Stylistic changes are also made to this subsection.

Subsection (e) (2) is amended to require the Commission to take affirmative action to reject a reprimand when the Commission proposes amendments to a reprimand that are rejected by either the attorney or Bar Counsel. In the current Rule, a proposed reprimand is deemed disapproved in the same circumstances.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. SPECIAL PROCEEDINGS

AMEND Rule 19-740 by renumbering it as new Rule 19-717.1; by replacing the words "placed on" with the words "transferred to disability" in subsection (b) (1); and by changing the reference to former Rule 19-742 in subsection (e) (4) to Rule 19-741, as follows:

Rule ~~19-740~~ 19-717.1. PERMANENT RETIRED STATUS

(a) Purpose

Permanent retired status is intended to enable an attorney whose alleged conduct (1) meets the criteria set forth in section (b) of this Rule and (2) was predominantly the product of the attorney's ill health or decline, to retire permanently from the practice of law with dignity and to ensure the protection of the public. Permanent retired status is not a sanction, and no record of any investigation by Bar Counsel, documents associated therewith, or proceedings in connection with the determination that the attorney be placed on permanent retired status, shall be made public except with the written

consent of the attorney, a duly authorized representative of the attorney, or, upon good cause shown, by the Court of Appeals.

(b) Criteria

Upon completing an investigation and upon agreement of the attorney, Bar Counsel may recommend to the Commission that the attorney be placed on permanent retired status if Bar Counsel concludes that:

(1) the attorney is the subject of a complaint or allegation which if found meritorious, could lead to the attorney being disciplined or ~~placed on~~ transferred to disability inactive status;

(2) the alleged conduct was predominantly a result of the attorney's ill health or decline;

(3) the alleged conduct does not involve misconduct so serious that, if proven, would likely result in the suspension or disbarment of the attorney or placement of the attorney on inactive status;

(4) the alleged conduct does not reflect adversely on the attorney's honesty or involve conduct that could be the basis for an immediate Petition for Disciplinary or Remedial Action pursuant to Rules 19-737 or 19-738;

(5) the alleged conduct either did not result in actual loss or harm to a client or other person, or, if it did, full restitution has been made;

(6) because of the effect of the attorney's ill health or decline on the attorney's ability to comply fully with the Maryland Attorneys' Rules of Professional Conduct, the attorney should no longer engage in the practice of law; and

(7) the attorney has taken all appropriate actions to wind-up his or her practice or will do so within a time established by the Commission in any approval of permanent retired status.

(c) Action by Commission

If the attorney agrees to permanent retired status, Bar Counsel or the attorney may submit any explanatory materials that either believes relevant and shall submit any further material that the Commission requests. Upon submission, the Commission may take any of the following actions:

(1) the Commission may approve permanent retired status for the attorney, if satisfied that it is appropriate under the circumstances, in which event the attorney, upon notice of the Commission's written approval and upon the date specified by the Commission, shall take the actions set forth in section (e) of this Rule, and Bar Counsel shall terminate the disciplinary or remedial proceeding; or

(2) the Commission may disapprove permanent retired status for the attorney if not satisfied that it is appropriate under the circumstances and direct Bar Counsel to proceed in another manner consistent with the Rules in this Chapter.

(d) Effect of Disapproval

If permanent retired status is not approved by the Commission, any investigation or proceeding shall resume as if permanent retired status had not been recommended, and the fact that permanent retired status was recommended or that it was not approved may not be entered into the record of any proceeding.

(e) Effect of Permanent Retired Status

An attorney who has been placed on permanent retired status:

(1) shall, upon receipt of the Commission's determination that the attorney be placed on permanent retired status, cease the practice of law in this State and in all other jurisdictions in which the attorney was admitted on or before the date specified by the Commission;

(2) shall, by such date, notify the Client Protection Fund, in writing, of the Commission's approval of permanent retired status, and shall include with such notice a copy of the Commission's approval;

(3) shall not apply for admission to the bar of this State or any other jurisdiction or for revocation of permanent retired status; and

(4) shall, by such date, comply with the provisions of Rule ~~19-742 (b)~~ 19-741 (b).

Committee note: The name of a permanently retired attorney must be removed from the letterhead of any law firm with which the attorney was associated, but if the attorney's last name was part of a firm name that consisted of two or more last names, the firm is not required to remove the last name of the attorney from the name of the firm.

(f) Extension

Upon a showing of good cause and consideration of any objection by Bar Counsel, the Commission may permit an extension of the period to complete one or more of the tasks itemized in section (e) of this Rule.

Source: This Rule is derived from former Rule ~~16-738 (2016)~~ 19-740 (2021).

REPORTER'S NOTE

Rule 19-740 is proposed to be amended to renumber it as new Rule 19-717.1. The Committee determined that this Rule, which pertains to permanent retired status, fits better in Division 2 with the Rules pertaining to administrative proceedings, than in Division 4, with the Rules pertaining to special proceedings.

Subsection (b)(1) is amended so that an attorney is now "transferred to disability inactive status" rather than being "placed on inactive status" to conform with amendments to Rule 19-739.

Subsection (e)(4) is amended by changing the reference to former Rule 19-742 to Rule 19-741. This change is necessary as renumbering Rule 19-740 as Rule 19-717.1 required the remaining Rules in Division 4 to be renumbered to conform to this amendment.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-718 by deleting subsections (a) (3) and (a) (4) and making stylistic changes to section (a); by deleting certain language from subsection (b) (3) and replacing it with clarifying language; by adding new language to subsection (b) (3) requiring a statement of charges to include exculpatory material; by adding new subsection (c) (1) pertaining to Bar Counsel's service requirements upon the attorney; by making stylistic changes to section (c); by deleting certain language from new subsection (c) (2) pertaining to service on an attorney and by moving the cross reference from the end of section (c) to after subsection (c) (1); and by adding certain language to subsection (c) (2) to conform with the revisions to subsection (b) (3), as follows:

Rule 19-718. STATEMENT OF CHARGES

(a) Filing

Upon completion of an investigation, Bar Counsel shall file with the Commission a Statement of Charges if Bar Counsel determines that:

(1) the attorney engaged in conduct constituting professional misconduct or is incapacitated; and

(2) the professional misconduct or incapacity does not warrant an immediate Petition for Disciplinary or Remedial Action~~+~~.

~~(3) a Conditional Diversion Agreement is not appropriate under the circumstances; and~~

~~(4) a reprimand is not appropriate under the circumstances or a proposed reprimand (A) was offered and rejected by the attorney or (B) was disapproved by the Commission and Bar Counsel was directed to file a Statement of Charges.~~

(b) Content

The Statement of Charges shall be in writing and:

(1) in clear and specific language, inform the attorney of all professional misconduct charged;

(2) contain a reference to each Rule of the Maryland Attorneys' Rules of Professional Conduct allegedly violated; and

(3) include or be accompanied by ~~a fair summary of the evidence developed through the investigation~~ documentation and information, including any response that the attorney sent to Bar Counsel regarding the matter and any exculpatory material.

(c) Service; Peer Review

(1) Bar Counsel shall serve on the attorney a copy of a Statement of Charges, together with the documentation and

information filed pursuant to section (b) of this Rule, on an attorney in the manner prescribed by Rule 2-121 (a). If after reasonable efforts the attorney cannot be served personally, service may be made by e-mail to all e-mail addresses maintained by the attorney with the Attorney Information System in accordance with Rule 19-802.

Cross reference: See Rule 19-723 concerning service of a Petition for Disciplinary or Remedial Action.

(2) Bar Counsel shall ~~serve on the attorney and~~ send to the Chair of the Peer Review Committee a copy of the Statement of Charges, together with the supporting information and documentation filed pursuant to section (b) of this Rule. The matter shall then proceed in accordance with Rules 19-719 and 19-720.

~~Cross reference: See Rule 19-708 (a) concerning service of the Statement of Charges on the attorney.~~

Source: This Rule is derived in part from former Rule 16-741 (2016) and is in part new.

REPORTER'S NOTE

Rule 19-718 is proposed to be amended by deleting subsections (a) (3) and (a) (4) pertaining to a conditional diversion agreement and reprimand, respectively. Stylistic changes are also made to section (a).

Subsection (b) (3) is amended to clarify that a statement of charges must be accompanied by documentation and information, to include any exculpatory material.

Section (c) is amended by adding new subsection (c)(1) pertaining to Bar Counsel's service requirements upon the attorney. A cross reference to Rule 19-723 is added after subsection (c)(1). Stylistic changes are also made to section (c).

Subsection (c)(2) is amended to remove language pertaining to service on the attorney because service on the attorney is addressed in new subsection (c)(1). The requirement for Bar Counsel to provide a copy of the Statement of Charges to the chair of the Peer Review Committee remains. The word "information" is also added to this subsection to conform with the revisions to subsection (b)(3). The cross reference formerly at the end of section (c) is deleted.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-719 by deleting certain language from section (a) requiring the Chair of the Peer Review Committee to personally send certain documentation to the Committee and by adding new language to section (a) permitting certain documentation to be sent to the Peer Review Committee by a person other than the Chair, as follows:

Rule 19-719. PEER REVIEW PANEL

(a) Appointment

Within 30 days after receiving a copy of a Statement of Charges filed with the Commission, the Chair of the Peer Review Committee shall (1) appoint a Peer Review Panel, (2) notify the Commission, Bar Counsel, and the attorney of the appointment of the Panel and the names and addresses of its members, (3) ~~send to the members of the Panel a copy of the Statement of Charges and the supporting material filed by Bar Counsel with the Commission~~ cause a copy of the statement of charges and documentation and information filed by Bar Counsel to be sent to

the members of the Panel, and (4) in accordance with Rule 19-720 (b), schedule a meeting of the Peer Review Panel.

(b) Composition of Panel

(1) The Peer Review Panel shall consist of at least three members of the Peer Review Committee.

(2) A majority of the members of the Panel shall be attorneys, but at least one member shall not be an attorney.

(3) If practicable, the Chair shall appoint to the Panel members from the circuit in which the attorney who is the subject of the charges has an office for the practice of law or, if there is no such office, the circuit in which the last known address of the attorney, as reflected on the records of the Client Protection Fund, is located.

(c) Panel Chair

The Chair of the Peer Review Committee shall appoint an attorney member of the Panel as the Panel Chair.

(d) Removal and Recusal of Members

The Chair of the Peer Review Committee may remove a member of the Peer Review Panel for cause. A member of a Peer Review Panel shall not participate in any proceeding in which the member's impartiality might reasonably be questioned. A member who is required to recuse or who cannot attend the Peer Review meeting shall immediately notify the Chair of the Peer Review Committee, who shall promptly appoint another member.

(e) Quorum

The presence of any three members of the Peer Review Panel constitutes a quorum, whether or not a non-attorney member is present. With the consent of the Panel members who are present, Bar Counsel and the attorney may waive the quorum requirement. The concurrence of a majority of the members present is necessary to a recommendation to the Commission.

Source: This Rule is derived from former Rule 16-742 (2016).

REPORTER'S NOTE

Subsection (a) (3) of Rule 19-719 is proposed to be amended to remove the requirement for the Chair of the Peer Review Committee to personally send certain documentation to the Committee. This requirement is replaced with language permitting the Chair to delegate this responsibility.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-720 by deleting certain language in subsection (c) (3) pertaining to the number of days in which the Peer Review Panel must make a recommendation to the Commission; by adding new language to subsection (c) (3) shortening the number of days and changing the triggering event to the conclusion of the peer review meeting; by deleting the word "terminated" in subsection (c) (3) and replacing it with the word "dismissed;" by deleting the word "termination" from subsections (e) (2) (C) and (D); by replacing the word "a warning" in subsections (e) (2) (C) and (D) with the words "a letter of cautionary advice or letter of admonition;" and by replacing the words "Statement of Charges" with "complaint" and deleting the word "terminate" in subsection (f) (3), as follows:

Rule 19-720. PEER REVIEW PROCESS

(a) Purpose

The purpose of the peer review process is for the Peer Review Panel to consider the Statement of Charges and all relevant information offered by Bar Counsel and the attorney

concerning it and to determine (1) whether the Statement of Charges has a substantial basis and there is reason to believe that the attorney has committed professional misconduct or is incapacitated, and, if so, (2) whether a Petition for Disciplinary or Remedial Action should be filed or some other disposition is appropriate. The peer review process is not intended to be an adversarial one and it is not the function of Peer Review Panels to hold evidentiary hearings, adjudicate facts, or write full opinions or reports.

Committee note: If a Peer Review Panel concludes that the complaint has a substantial basis indicating the need for some remedy, some behavioral or operational changes on the part of the attorney, or some discipline short of suspension or disbarment, part of the peer review process can be an attempt through both evaluative and facilitative dialogue, (a) to effectuate directly or suggest a mechanism for effecting an amicable resolution of the existing dispute between the attorney and the complainant, and (b) to encourage the attorney to recognize any deficiencies on his or her part that led to the problem and take appropriate remedial steps to address those deficiencies. The goal, in this setting, is not to punish or stigmatize the attorney or to create a fear that any admission of deficiency will result in substantial harm, but rather to create an ambience for a constructive solution. The objective views of two fellow attorneys and a lay person, expressed in the form of advice and opinion rather than in the form of adjudication, may assist the attorney (and the complainant) to retreat from confrontational positions and look at the problem more realistically.

(b) Scheduling of Meeting; Notice to Attorney

(1) The Chair of the Peer Review Committee, after consultation with the members of the Peer Review Panel, Bar

Counsel, and the attorney, shall schedule a meeting of the Panel.

(2) If, without substantial justification, the attorney does not agree to schedule a meeting within the time provided in subsection (b) (5) of this Rule, the Chair may recommend to the Commission that the peer review process be terminated. If the Commission terminates the peer review process pursuant to this subsection, the Commission may take any action that could be recommended by the Peer Review Panel under section (e) of this Rule.

(3) The Chair shall notify Bar Counsel, the attorney, and each complainant of the time, place, and purpose of the meeting and invite their attendance.

(4) The notice to the attorney shall inform the attorney of the attorney's right to respond in writing to the Statement of Charges by filing a written response with the Commission and sending a copy of it to Bar Counsel and each member of the Peer Review Panel at least ten days before the scheduled meeting.

(5) Unless the time is extended by the Commission, the meeting shall occur within 60 days after appointment of the Panel.

(c) Meeting

(1) The Peer Review Panel shall conduct the meeting in an informal manner. It shall allow Bar Counsel, the attorney, and

each complainant to explain their positions and offer such supporting information as the Panel finds relevant. Upon request of Bar Counsel or the attorney, the Panel may, but need not, hear from any other individual. The Panel is not bound by any rules of evidence, but shall respect lawful privileges. The Panel may exclude a complainant after listening to the complainant's statement and, as a mediative technique, may consult separately with Bar Counsel or the attorney. The Panel may meet in private to deliberate.

(2) If the Panel determines that the Statement of Charges has a substantial basis and that there is reason to believe that the attorney has committed professional misconduct or is incapacitated, the Panel may (A) conclude the meeting and make an appropriate recommendation to the Commission or (B) inform the parties of its determination and allow the attorney an opportunity to consider a reprimand or a Conditional Diversion Agreement.

(3) The Panel may schedule one or more further meetings, but, unless the time is extended by the Commission, it shall make a recommendation to the Commission within ~~90~~ 30 days after ~~appointment of the Panel~~ conclusion of the meeting. If a recommendation is not made within that time or any extension granted by the Commission, the peer review process shall be ~~terminated~~ dismissed and the Commission may take any action that

could be recommended by the Peer Review Panel under section (e) of this Rule.

(d) Ex Parte Communications

Except for administrative communications with the Chair of the Peer Review Committee and as allowed under subsection (c) (1) of this Rule as part of the peer review meeting process, no member of the Panel shall participate in an ex parte communication concerning the substance of the Statement of Charges with Bar Counsel, the attorney, the complainant, or any other person.

(e) Recommendation of Panel

(1) Agreed Upon Recommendation

(A) If Bar Counsel, the attorney, and the Panel agree upon a recommended disposition, the Panel shall transmit the recommendation to the Commission.

(B) If the Panel determines that the attorney committed professional misconduct or is incapacitated and that the parties should consider a Conditional Diversion Agreement, the Panel shall orally advise the parties of that determination and afford them the opportunity to consider and enter into such an Agreement in accordance with Rule 19-716. If an Agreement is reached, the Conditional Diversion Agreement shall be the Panel's recommended disposition.

(2) If No Agreement

If there is no agreed-upon recommendation under subsection (e) (1) of this Rule, the Panel shall transmit to the Commission an independent recommendation, not subject to the approval of Bar Counsel, and shall accompany its recommendation with a brief explanatory statement. The Panel's recommendation shall be one of the following:

(A) the filing of a Petition for Disciplinary or Remedial Action;

(B) a reprimand in accordance with Rule 19-717;

(C) dismissal of the complaint or ~~termination~~ of the proceeding without discipline, but with ~~a warning~~ a letter of cautionary advice or letter of admonition, in accordance with Rule 19-715 (c); or

(D) dismissal of the complaint or ~~termination~~ of the proceeding without discipline and without ~~a warning~~ a letter of cautionary advice or letter of admonition, in accordance with Rule 19-715.

(f) Action by Commission

The Commission may:

(1) direct Bar Counsel to file a Petition for Disciplinary or Remedial Action;

(2) take any action on the Panel's recommendation that the Commission could take on a similar recommendation made by Bar Counsel under Rule 19-714; or

(3) dismiss the ~~Statement of Charges~~ complaint and ~~terminate~~ the proceeding.

Source: This Rule is derived from former Rule 16-743 (2016).

REPORTER'S NOTE

Subsection (c) (3) of Rule 19-720 is proposed to be amended by changing the number of days in which the Peer Review Panel must make a recommendation to the Commission from 90 days after the appointment of a panel to 30 days after the conclusion of the peer review meeting. The word "terminated" is also replaced with the word "dismissed."

Subsections (e) (2) (C) and (e) (2) (D) are amended by deleting the word "termination" from each subsection. These two subsections are also amended to conform to the proposed amendments to Rule 19-715 in which a "warning" is replaced with a "letter of admonition" and a "letter of cautionary advice."

Subsection (f) (3) is amended by replacing the words "Statement of Charges" with "complaint" and deleting the word "terminate."

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 3. PROCEEDINGS ON PETITION FOR
DISCIPLINARY OR REMEDIAL ACTION

AMEND Rule 19-721 by updating a reference to Rule 19-707 (b) (2) (H) to subsection (b) (10) in the cross reference following section (a) and by replacing the words "placed on" with the words "transferred to disability" in section (b), as follows:

Rule 19-721. PETITION FOR DISCIPLINARY REMEDIAL ACTION

(a) Commencement of Action

(1) Upon Approval or Direction of the Commission

Upon approval or direction of the Commission, Bar Counsel, on behalf of the Commission, shall file a Petition for Disciplinary or Remedial Action in the Court of Appeals.

(2) Conviction of Crime; Reciprocal Action

If authorized by Rule 19-737 or 19-738, Bar Counsel, on behalf of the Commission, may file a Petition for Disciplinary or Remedial Action in the Court of Appeals without prior approval of the Commission. On review, the Commission may direct the withdrawal of a petition filed pursuant to this

subsection, in which event, Bar Counsel shall withdraw the petition.

Cross reference: See Rule 19-707 ~~(b) (2) (H)~~ (b) (10) concerning confidentiality of a petition to place an incapacitated attorney on inactive status.

(b) Form of Petition

The Commission shall be the petitioner. The attorney shall be the respondent. The petition shall be sufficiently clear and specific to inform the attorney of any professional misconduct charged and the basis of any allegation that the attorney is incapacitated and should be ~~placed on~~ transferred to disability inactive status.

Source: This Rule is derived from former Rule 16-751 (2016).

REPORTER'S NOTE

The cross reference after section (a) is proposed to be amended to conform the reference to proposed amendments to Rule 19-707.

Subsection (b) is amended so that an attorney is now "transferred to disability inactive status" rather than being "placed on inactive status" to conform with amendments to Rule 19-739.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 3. PROCEEDINGS ON PETITION FOR
DISCIPLINARY OR REMEDIAL ACTION

AMEND Rule 19-722 by deleting certain language from section (a); by making stylistic changes to section (b); by deleting certain language from subsection (b) (1); by adding certain language to subsection (b) (1) requiring the Clerk of the Court of Appeals to send an electronic copy of a transmittal order to Bar Counsel and to transmit the file to the designated circuit court clerk; and by adding new subsection (b) (2) pertaining to the issuance of a summons, as follows:

Rule 19-722. ORDER DESIGNATING JUDGE AND CLERK

(a) Order

Upon the filing of a Petition for Disciplinary or Remedial Action, the Court of Appeals may enter an order designating (1) a judge of any circuit court to hear the action, and (2) the clerk responsible for maintaining the record. The order of designation shall require the judge, not later than 15 days after the date on which an answer is due, and after consultation with Bar Counsel and the attorney, to enter a

scheduling order. The scheduling order shall ~~define the extent of discovery and~~ set dates for the completion of discovery, designation of experts, the filing of motions, and a hearing on the petition. Subject to Rule 19-727 (a) and (e) and for good cause, the judge may amend the scheduling order.

(b) Service Transmittal of the Record; Summons

(1) Transmittal of the Record

Upon entry of an order under section (a) of this Rule, the clerk of the Court of Appeals shall send an electronic copy ~~two copies of the order~~ to Bar Counsel and transmit the file to the designated clerk of the circuit court. ~~Bar Counsel shall serve a copy of the order and a copy of the petition on the respondent. The copies shall be served in accordance with Rule 19-723 or as otherwise ordered by the Court of Appeals.~~

(2) Summons

Upon receipt of the record from the Court of Appeals, the clerk of the circuit court shall issue forthwith a summons for the respondent and shall deliver it, together with a copy of each paper filed, including the Order entered under subsection (a) (1), to Bar Counsel for service on the attorney.

(c) Motion to Amend Order Designating Judge

Within 15 days after the respondent has been served, either party may file a motion in accordance with Rule 8-431 requesting that the Court of Appeals designate another judge.

The motion shall not stay the time for filing an answer to the petition.

Source: This Rule is in part derived from former Rule 16-752 (2016) and is in part new.

REPORTER'S NOTE

Section (a) of Rule 19-722 is proposed to be amended by deleting the language pertaining to discovery. The language is removed from this Rule because discovery is now addressed in Rule 19-726.

Stylistic changes are made to section (b).

Subsection (b)(1) is amended by requiring the Clerk of the Court of Appeals to send an electronic copy of a transmittal order to Bar Counsel and to transmit the file to the designated circuit court clerk. In the current Rule, the Clerk of the Court of Appeals is required to send two copies to Bar Counsel, and Bar Counsel is to serve a copy of the order and petition on the respondent.

New subsection (b)(2) is added, which requires the clerk of the circuit court, upon receipt of the record from the Court of Appeals, to issue a summons to Bar Counsel for service upon the attorney.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 3. PROCEEDINGS ON PETITION FOR
DISCIPLINARY OR REMEDIAL ACTION

AMEND Rule 19-723 by deleting section (b) and making stylistic changes; by adding certain language concerning a summons issued pursuant to Rule 19-722 (b); and by adding certain language concerning the circuit court, as follows:

Rule 19-723. SERVICE OF PETITION AND ORDER

~~(a) Generally~~

A copy of a Petition for Disciplinary or Remedial Action filed pursuant to Rule 19-721, ~~and~~ the order of the Court of Appeals entered pursuant to Rule 19-722 (a), and the summons issued by the circuit court pursuant to Rule 19-722 (b) shall be served on the attorney in the manner prescribed in Rule 2-121, or in any other manner directed by the Court of Appeals or the circuit court.

~~(b) Alternative Service~~

~~—If after reasonable efforts the attorney cannot be served personally, service may be made on the attorney by serving the employee designated by the Client Protection Fund pursuant to~~

~~Rule 19-604, who shall be deemed the attorney's agent for receipt of service. The employee promptly shall (1) send, by certified and first class mail, a copy of the papers so served to the attorney at the attorney's address maintained in the Fund's records and to any other address provided by Bar Counsel, and (2) file a certificate of the mailing with the clerk and send a copy of the certificate to Bar Counsel.~~

Source: This Rule is in part derived from former Rule 16-753 (2016) and is in part new.

REPORTER'S NOTE

Rule 19-723 is proposed to be amended by deleting section (b) pertaining to alternative service and making stylistic changes. Language is also added to this Rule to clarify the documents that constitute original process.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 3. PROCEEDINGS ON PETITION FOR
DISCIPLINARY OR REMEDIAL ACTION

AMEND Rule 19-724 by deleting certain language from subsection (a) (1); by deleting subsection (a) (2); and by renumbering former subsection (a) (3) as subsection (a) (2), as follows:

Rule 19-724. ANSWER

(a) Timing

The attorney shall file with the designated clerk and serve on Bar Counsel an answer to the petition:

~~(1) if the petition and order were served pursuant to Rule 19-723 (a),~~ within 15 days after service; or

~~(2) if the petition and order were served pursuant to Rule 19-723 (b), within 15 days after a copy of the petition and order was mailed to the attorney by the employee of the Client Protection Fund; or~~

~~(3)~~ (2) by such other time specified by the Court of Appeals.

(b) Content and Scope

(1) Generally

Defenses and objections to the petition, including insufficiency of service, shall be stated in the answer and not by preliminary motion.

(2) Limited Scope

It is not a defense or ground for objection to a petition that procedural defects may have occurred during disciplinary or remedial proceedings prior to the filing of the petition.

(c) Failure to Answer

If the time for filing an answer has expired and the attorney has failed to file an answer in accordance with section (a) of this Rule, the court shall treat the failure as a default, and the provisions of Rule 2-613 shall apply.

Source: This Rule is derived from former Rule 16-754 (2016).

REPORTER'S NOTE

Section (a) is amended by deleting language in subsection (a)(1) and deleting subsection (a)(2). Subsection (a)(2) pertains to the deadline for an attorney to respond after the attorney is served through the Client Protection Fund, and this provision is proposed to be removed from Rule 19-708. The changes to section (a) result in an answer to the petition being due within 15 days after service or other time specified by the Court of Appeals. Stylistic changes are also made to section (a).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 3. PROCEEDINGS ON PETITION FOR
DISCIPLINARY OR REMEDIAL ACTION

AMEND Rule 19-725 by making stylistic changes to the tagline of the Rule and by adding certain language to section (c) prohibiting motions for summary judgment, as follows:

Rule 19-725. PLEADINGS; ~~MOTIONS~~; AMENDMENTS; MOTIONS

(a) Pleadings

Except as provided in section (b) of this Rule or otherwise expressly permitted by these Rules or ordered by the Court of Appeals, the only pleadings permitted in an action for Disciplinary or Remedial Action are the petition and an answer.

(b) Amendments

Bar Counsel may amend a petition and the attorney may amend an answer in accordance with the applicable provisions of Rule 2-341.

(c) Motions

Motions dealing with discovery, pre-hearing procedural matters, or matters arising at the hearing conducted pursuant to Rule 19-727 are permissible and shall comply with applicable

provisions of Rule 2-311. Motions to dismiss the proceeding and motions for summary judgment are not permitted.

Committee note: Proceedings on a Petition for Disciplinary or Remedial Action are conducted pursuant to the original jurisdiction of the Court of Appeals to regulate the practice of law and are not the place for collateral actions or such things as counterclaims. Moreover, because the authority of the circuit court judge designated by the Court of Appeals pursuant to Rule 19-722 is limited to taking evidence and making findings of fact and proposed conclusions of law, that judge is not empowered to dismiss a petition. Defenses to the petition may be raised in the answer and may be addressed by the designated judge, but only the Court of Appeals has authority to dismiss all or part of a petition.

Source: Sections (a) and (c) of this Rule are new. Section (b) is derived from former Rule 16-755 (2016).

REPORTER'S NOTE

Proposed stylistic changes amend the tagline of Rule 19-725 to correspond with the order of the sections presented in the Rule.

Section (c) of Rule 19-725 is proposed to be amended to add motions for summary judgment to the list of prohibited motions for the reasons set forth in the Committee note following section (c). This section already prohibits motions to dismiss.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 3. PROCEEDINGS ON PETITION FOR
DISCIPLINARY OR REMEDIAL ACTION

AMEND Rule 19-726 by deleting certain language in the preamble referencing Title 2, Chapter 400 of the Rules; by adding the words "permitted as follows" to the preamble; and by adding new sections (a) pertaining to discovery from Bar Counsel, (b) pertaining to exculpatory information, (c) pertaining to witnesses, (d) pertaining to discovery from the attorney, (e) pertaining to depositions, (f) pertaining to the continuing duty to disclose, and (g) pertaining to motions, as follows:

Rule 19-726. DISCOVERY

After a Petition for Disciplinary or Remedial Action has been filed, discovery is permitted as follows ~~governed by Title 2, Chapter 400~~, subject to any scheduling order entered pursuant to Rule 19-722.

(a) Discovery from Bar Counsel

After an Answer has been filed pursuant to Rule 19-724 and within 30 days after a written request from the attorney,

Bar Counsel shall (1) provide the attorney with a copy of all material and information accumulated during the investigation and statements as defined in Rule 2-402 (f), (2) provide summaries or reports of all oral statements for which contemporaneously recorded substantially verbatim recitals do not exist, and (3) certify to the attorney in writing that, except for material that constitutes attorney work product or that is subject to a lawful privilege or protective order issued by the circuit court, the material disclosed constitutes the complete record of Bar Counsel as of the date of inspection.

(b) Exculpatory Information

Whether as part of the disclosure pursuant to section (a) of this Rule or otherwise, no later than 30 days following the filing of an Answer, Bar Counsel shall disclose to the attorney all statements and other evidence of which Bar Counsel is aware that (1) directly negate any allegation in the Petition, (2) would be admissible to impeach a witness intended to be called by Bar Counsel, or (3) would be admissible to mitigate any sanction.

(c) Witnesses

(1) Fact Witnesses

No later than 15 days after the filing of an Answer, Bar Counsel shall provide to the attorney the names and addresses of all persons, other than a rebuttal witness, Bar Counsel intends

to call at the hearing. No later than 35 days after the filing of an Answer, the attorney shall provide to Bar Counsel the names and addresses of all persons, other than a rebuttal witness, the attorney intends to call at the hearing.

(2) Expert Witnesses

The designation of expert witnesses is governed by Title 5, Chapter 700.

(d) Other Discovery from the Attorney

(1) Bar Counsel may serve interrogatories, requests for production of documents, electronically stored information and property, requests for admission of facts and genuineness of documents, and request for mental or physical evaluations of the attorney pursuant to Title 2, Chapter 400.

(2) Waiver of Medical Privilege; Medical or Psychological Examination

The assertion by an attorney of the existence of a mental or physical condition or an addiction, as a defense to or in mitigation of a charge of misconduct, or the non-existence of a mental or physical condition or an addiction, as a defense to a charge against the attorney constitutes a waiver of the attorney's medical privilege and permits Bar Counsel to obtain, by subpoena or other legitimate means, medical and psychological records of the attorney relevant to issues presented in the case.

(e) Depositions

(1) Except as provided in subsection (e)(2) of this Rule, depositions are governed by the Rules in Title 2, Chapter 400.

(2) The Attorney Grievance Commission may not be subject to an organizational designee deposition, pursuant to Rule 2-412

(d), in an attorney disciplinary matter.

(f) Continuing Duty to Disclose

Bar Counsel and the attorney have a continuing duty to supplement promptly the information required to be disclosed under this Rule.

(g) Motions

All discovery motions are governed by Title 2, Chapter 400.

Source: This Rule is new in part and is derived, in part from former Rule 16-756 (2016).

REPORTER'S NOTE

Rule 19-726 is proposed to be amended by removing the provision indicating that the discovery Rules in Title 2, Chapter 400 apply to disciplinary proceedings. The permitted discovery is now set forth in new sections: (a) pertaining to discovery from Bar Counsel; (b) pertaining to exculpatory information; (c) pertaining to witnesses; (d) pertaining to discovery from the attorney; (e) pertaining to depositions; (f) pertaining to the continuing duty to disclose; and (g) pertaining to motions. This approach is consistent with that applicable in judicial discipline cases. See Rule 18-433.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 3. PROCEEDINGS ON PETITION FOR
DISCIPLINARY OR REMEDIAL ACTION

AMEND Rule 19-727 by re-lettering former section (e) as new section (d); by re-lettering former section (d) as new section (e); by replacing the word "clerks" in section (e) with the word "clerk;" and by adding certain language to section (f) requiring Bar Counsel to provide an electronic copy of the transcript to the attorney, as follows:

Rule 19-727. JUDICIAL HEARING

(a) Evidence and Procedure Generally

Except as otherwise provided by the Rules in this Chapter, the hearing of a disciplinary or remedial action is governed by the rules of evidence and procedure applicable to a non-jury trial in a civil action in a circuit court.

(b) Certain Evidence Allowed

(1) Before the conclusion of the hearing, the judge may permit any complainant to testify, subject to cross-examination, regarding the effect of the alleged misconduct or incapacity.

(2) The attorney may offer, or the judge may inquire regarding, evidence otherwise admissible of any remedial action undertaken by the attorney relevant to the allegations of misconduct or incapacity. Bar Counsel may respond to any evidence of remedial action.

(c) Burdens of Proof

Bar Counsel has the burden of proving the averments of the petition by clear and convincing evidence. If the attorney asserts an affirmative defense or a matter of mitigation or extenuation, the attorney has the burden of proving the defense or matter by a preponderance of the evidence.

(d) Time for Completion

Unless extended by the Court of Appeals, the hearing shall be completed within 120 days after service on the attorney of the order entered under Rule 19-722.

~~(d)~~ (e) Findings and Conclusions

The judge shall prepare and file a written statement which shall contain: (1) findings of fact and conclusions of law as to each charge; (2) findings as to any remedial action taken by the attorney; and (3) findings as to any aggravating or mitigating circumstances that exist. Unless the time is extended by the Court of Appeals, the statement shall be filed with the clerk responsible for the record no later than 45 days

after the conclusion of the hearing. The ~~clerks~~ clerk shall mail a copy of the statement to each party.

~~(e) Time for Completion~~

~~Unless extended by the Court of Appeals, the hearing shall be completed within 120 days after service on the attorney of the order entered under Rule 19-722.~~

(f) Transcript

Bar Counsel shall cause a transcript of the hearing to be prepared and included in the record and provide an electronic copy of the transcript of the hearing to the attorney.

(g) Transmittal of Record

Unless a different time is ordered by the Court of Appeals, the clerk shall transmit the record to the Court of Appeals within 15 days after the statement of findings and conclusions is filed.

Source: This Rule is derived from former Rule 16-757 (2016).

REPORTER'S NOTE

Rule 19-727 is proposed to be amended by re-lettering former section (e) as new section (d) and by re-lettering former section (d) as new section (e).

Section (e) is amended by replacing the word "clerks" with the word "clerk."

Section (f) is amended to require Bar Counsel to provide an electronic copy of the transcript to the attorney.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 3. PROCEEDINGS ON PETITION FOR
DISCIPLINARY OR REMEDIAL ACTION

AMEND Rule 19-728 by replacing "15" with "30" in section (b) and by replacing "19-741" with "19-740" in sections (b) and (e), as follows:

Rule 19-728. POST-HEARING PROCEEDINGS

(a) Notice of the Filing of the Record

Upon receiving the record, the Clerk of the Court of Appeals shall notify the parties that the record has been filed.

(b) Exceptions; Recommendations; Statement of Costs

Within ~~15~~ 30 days after service of the notice required by section (a) of this Rule, each party may file (1) exceptions to the findings and conclusions of the hearing judge, (2) recommendations concerning the appropriate disposition under Rule ~~19-741~~ 19-740 (c), and (3) a statement of costs to which the party may be entitled under Rule 19-709.

(c) Response

Within 15 days after service of exceptions, recommendations, or a statement of costs, the adverse party may file a response.

(d) Form

The parties shall file eight copies of any exceptions, recommendations, and responses. The copies shall conform to the requirements of Rule 8-112.

(e) Proceedings in Court of Appeals

Review in and disposition by the Court of Appeals are governed by Rule ~~19-741~~ 19-740.

Source: This Rule is derived from former Rule 16-758 (2016).

REPORTER'S NOTE

Section (b) of Rule 19-728 is proposed to be amended by extending the time to file exceptions from 15 days to 30 days.

Section (b) and section (e) are amended so that the reference to Rule 19-741 in each section is changed to Rule 19-740 to conform to the re-numbering necessary in Division 5 after Rule 19-740 was re-numbered as Rule 19-717.1.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-731 by making stylistic changes to section (d); by adding certain language to subsection (d)(1) clarifying that "court" refers to a circuit court; by deleting certain language from subsection (d)(1) pertaining to the service of an order and petition; by adding new subsection (d)(2) pertaining to the service of an order and petition in a manner prescribed in Rule 2-121; by adding new subsection (d)(3) pertaining to the use of e-mail addresses contained in the AIS system as alternative service; by making stylistic changes to section (f); by adding certain language to section (f) clarifying that "court" refers to a circuit court; by adding new subsection (f)(2) requiring that a show cause order issued under Rule 19-731 must direct an attorney to promptly comply with an auditor's request for accounts and records; by deleting section (h) "Duty of Clerk to Preserve" and replacing it with new section (h) "Confidentiality" requiring that any paper filed in a circuit court pertaining to an audit must be sealed and any proceedings must be conducted out of the presence of any persons except for parties and persons deemed necessary by the court; and by adding

new section (k) pertaining to sanctions which may be imposed upon an attorney for violating a show cause order issued pursuant to Rule 19-731, as follows:

Rule 19-731. AUDIT OF ATTORNEY ACCOUNTS AND RECORDS

(a) Action for Audit

Bar Counsel or the Trustees of the Client Protection Fund may file a petition requesting an audit of the accounts and records that an attorney is required by law or Rule to maintain. The petition may be filed in the circuit court in any county where the attorney resides or has an office for the practice of law. If the attorney has no established office and the attorney's residence is unknown, the petition may be filed in any circuit court.

(b) Petition

The petition shall state the facts showing that an audit is necessary and shall request the appointment of a Certified Public Accountant to conduct the audit.

(c) Caption

The petition and all subsequent pleadings and papers filed in the action shall contain a caption, "In re: Application for Audit of an Attorney's Accounts and Records."

(d) Show Cause Order; Service

(1) Show Cause Order

The circuit court shall enter an order giving the attorney notice of the action and directing the attorney to show cause on or before a stated date why an audit should not be conducted as requested. ~~The order and the petition shall be served in the manner that the court directs so as to preserve the confidentiality of the action.~~

(2) Service

A copy of a petition and the show cause order shall be served on the attorney in the manner prescribed in Rule 2-121, or in any other manner directed by the circuit court.

(3) Alternative Service

If after reasonable efforts the attorney cannot be served personally, service may be made on the attorney by sending by e-mail to all e-mail addresses maintained by the attorney with the Attorney Information System in accordance with Rule 19-802.

(e) Response to Petition

The attorney may file a response to the petition and show cause order not later than the date stated in the order or, if no date is stated, within five days after being served.

(f) Order Directing Audit

After considering the petition and any response and upon a finding of good cause, the circuit court may order any of the accounts and records required by law or Rule to be maintained by

the attorney to be audited by a Certified Public Accountant designated in the order. The order directing the audit shall (1) expressly require that the audit be conducted and a report be made in a manner that preserves the confidentiality of the proceedings and the attorney's confidential relation with the attorney's clients, and (2) direct the attorney to produce promptly all accounts and records required by the auditor.

(g) Finality of Order

An order granting or denying a petition for an audit is a final order for purposes of appeal.

~~(h) Duty of Clerk to Preserve Confidentiality~~

~~The clerk shall maintain a separate docket with an index for proceedings under this Rule. The docket entries shall not identify the attorney against whom the petition is filed. Pleadings and other papers filed in the proceedings shall be stamped "confidential" and sealed in accordance with Rule 19-707 (b)(2)(I) at the time they are filed. The docket, index, and papers in the proceedings shall not be open to inspection by any person, including the parties, except upon order of court after reasonable notice and for good cause shown.~~

Any paper filed in the circuit court with respect to an audit shall be sealed upon filing and shall be open to inspection only by order of the court. A hearing before the court on any petition or motion shall be on the record but shall

be conducted out of the presence of all individuals other than Bar Counsel, the attorney, and those individuals whose presence the court deems necessary. Any transcript or recording of the proceedings shall be sealed.

(i) Cost of Audit

Upon completion of the audit, the court may order all or part of the costs of the audit and of the proceeding to be paid by any party to the proceeding, except that costs shall not be assessed against the attorney if the audit fails to disclose any irregularity.

(j) Remedy Not Exclusive

Neither this Rule nor any proceeding under this Rule precludes any other remedy or cause of action while the audit is pending or thereafter.

(k) Sanctions for Violations

(1) Contempt

If the attorney violates the order of the circuit court entered pursuant to section (f) of this Rule, Bar Counsel may institute a proceeding for contempt pursuant to Rule 15-206.

(2) Petition for Disciplinary or Remedial Action

(A) Generally

If the circuit court makes a finding of contempt pursuant to Rule 15-206, Bar Counsel, with the approval of the Chair of the Commission, may file a Petition for Disciplinary or

Remedial Action in the Court of Appeals pursuant to Rule 19-721

(a) (1). A certified copy of the order of contempt shall be attached to the Petition, and a copy of the Petition and order shall be served on the attorney in accordance with Rule 19-723.

(B) Show Cause Order

When a petition and certified copy of an order of contempt have been filed, the Court of Appeals shall order that the attorney, within 15 days from the date of the order, show cause in writing why the attorney should not be suspended immediately from the practice of law until further order of the Court of Appeals. A copy of the Petition and show cause order shall be served on the attorney in accordance with Rule 19-723.

(C) Action by the Court of Appeals

Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may enter an order: (1) immediately suspending the attorney from the practice of law, pending further order of the Court, (2) designating a judge pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727, or (3) containing any other appropriate provisions. The provisions of Rules 19-741 and 19-743 apply to an order under this section.

(D) Presumptive Effect of Order of Contempt

A finding of contempt is presumptive evidence that the attorney is in contempt of court, but the introduction of such

evidence does not preclude Bar Counsel or the attorney from introducing additional evidence or otherwise showing cause why no suspension should be imposed.

(E) Termination of Suspension

On notification by Bar Counsel that the attorney has purged the contempt, the Court of Appeals shall order the attorney reinstated to the practice of law, unless other grounds exists for the suspension to remain in effect.

(1) Other Disciplinary Proceedings

Proceedings under this Rule shall not preclude the use of the facts underlying the order of contempt when relevant to a pending or subsequent disciplinary proceeding against the attorney.

~~Source: This Rule is derived from former Rule 16-722 (2016).~~

Source: This Rule is derived as follows:

Sections (a), (b), (c), (e), (g), (i), and (j) are derived from former Rule 16-722 (2016).

Sections (d), (f), and (h) are derived in part from former Rule 16-722 (2016) and are in part new.

Sections (k) and (l) are new.

REPORTER'S NOTE

Subsection (d)(1) is proposed to be amended to clarify that the reference to court in this subsection refers to a circuit court, and not the Court of Appeals. The language in subsection (d)(1) pertaining to service has been deleted from this subsection, and moved to new subsection (d)(2). The new subsection changes the former requirement that the order and petition be served in the manner directed by the court to requiring that the petition and order be served as prescribed in

Rule 2-121. New subsection (d)(3) is added, pertaining to alternative service. This subsection permits, after reasonable efforts are made, the use of e-mail addresses contained in the AIS system pursuant to Rule 19-802 as a means of alternative service on the attorney. Stylistic changes are also made to section (d).

Section (f) is amended to clarify that the reference to court in this section refers to a circuit court, and not the Court of Appeals. New subsection (f)(2) is added requiring that a show cause order issued pursuant to this Rule must direct an attorney to promptly comply with an auditor's request for accounts and records. Stylistic changes are also made to section (f).

Section (h) "Duty of Clerk to Preserve," is deleted and replaced with new section (h) "Confidentiality." New section (h) requires that any paper filed in a circuit court pertaining to an audit must be sealed and any proceedings must be conducted out of the presence of any persons except for parties and persons deemed necessary by the court.

New section (k) is added, pertaining to sanctions which may be imposed upon an attorney for violating a show cause order issued pursuant to this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-732 by adding new section (c) concerning service of an order or petition issued pursuant to Title 15, Chapter 500; by adding new section (d) concerning procedures to be followed if there is a credible allegation that an attorney in unable to assist in a defense due to physical or mental disability; and by re-lettering former sections (c), (d), (e), and (f) as new sections (e), (f), (g), and (h), respectively, as follows:

Rule 19-732. INJUNCTION; EXPEDITED ACTION

(a) Authority to Seek Injunction

Upon receiving information that an attorney is engaging in professional misconduct or has an incapacity and poses an immediate threat of causing (1) death or substantial bodily harm to another, (2) substantial injury to the financial interest or property of another, or (3) substantial harm to the administration of justice, Bar Counsel, with the approval of the Chair of the Commission, may apply in accordance with the provisions of Title 15, Chapter 500 for appropriate injunctive

relief against the attorney. The relief sought may include restricting the attorney's practice of law, limiting or prohibiting withdrawals from any account in any financial institution, and limiting or prohibiting transfers of funds or property.

Committee note: Except as otherwise provided in this Rule, Rules 15-501 through 15-505, the rules relating to temporary restraining orders and injunctions, apply. The appealability of injunctions under this Rule is governed by Code, Courts Article, § 12-303.

Cross reference: See Rule 19-734 for the right of Bar Counsel to request the appointment of a conservator when an attorney no longer can practice.

(b) Parties

The action for injunction shall be brought in the name of the Commission against the attorney whose conduct is alleged to be causing or threatening the harm and against any other person alleged to be assisting or acting in concert with the attorney.

(c) Service

A copy of any petition filed or order issued pursuant to Title 15, Chapter 500 shall be served on the attorney in accordance with Rule 19-723.

(d) Inability to Defend

Upon a credible allegation by the attorney or other evidence that the attorney, by reason of physical or mental disability or impairment, is unable to assist in a defense to a petition filed pursuant to section (a) of this Rule, the circuit

court may (1) appoint counsel for the attorney if the attorney is not otherwise represented by counsel, (2) appoint a guardian ad litem, or (3) both.

~~(e)~~ (e) Effect of Investigation or Disciplinary or Remedial Proceeding

A court may not delay or deny an injunction solely because misconduct is or may become the subject of an investigation under Rule 19-711 or the basis for a Statement of Charges under Rule 19-718.

~~(d)~~ (f) Order Granting Injunction

In addition to meeting the requirements of Rule 15-502 (e), an order granting a preliminary or permanent injunction under this section shall include specific findings by a preponderance of the evidence that the attorney has engaged in the alleged professional misconduct or has the incapacity alleged and poses the threat alleged in the complaint. A bond shall not be required except in exceptional circumstances.

~~(e)~~ (g) Service on Financial Institution

An order granting an injunction under this section that limits or prohibits withdrawals from any account or that limits or prohibits a transfer of funds or property is effective against any financial institution upon which it is served from the time of service.

~~(f)~~ (h) Expedited Disciplinary or Remedial Action

(1) Filing of Petition

When an injunction is issued pursuant to this Rule, notwithstanding any pending appeal or motion to modify or dissolve the injunction, Bar Counsel shall immediately file a Petition for Disciplinary or Remedial Action pursuant to Rule 19-721. A certified copy of the order granting the injunction shall be attached to the petition.

(2) Action on Petition

The action shall proceed in accordance with Rules 19-721 through 19-729 and Rules 19-741 through 19-744, to the extent applicable. The Court of Appeals may assign the petition for hearing to the judge who granted the injunction.

~~Source: This Rule is derived from former Rule 16-776 (2016).~~
Source: This Rule is derived as follows:
Sections (a), (b), (e), (f), (g), and (h) are derived from
former Rule 16-776 (2016).
Sections (c) and (d) are new.

REPORTER'S NOTE

Rule 19-732 is proposed to be amended by adding new section (c), which requires that an order or petition issued pursuant to Title 15, Chapter 500 must be served on the attorney as indicated in Rule 19-723.

New section (d) is added, which establishes procedures to be followed if there is a credible allegation that an attorney is unable to assist in a defense due to physical or mental disability. The circuit court, in this situation, may: appoint counsel for the attorney if the attorney is unrepresented; appoint a guardian *ad litem*; or both. This is consistent with Rule 18-441 (d) applicable to proceedings before the Judicial Disabilities Commission.

Stylistic changes are also made to this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-733 by adding certain language to section (a) clarifying that Bar Counsel need file a petition only after conducting an investigation and determining that the attorney has violated the law; by deleting certain language from section (b) pertaining to Bar Counsel having to show cause; by adding certain language to section (b) clarifying that a suspension is subject to further order of the Court; by deleting the words "and indefinitely" from subsection (c)(1); by adding certain language to subsection (c)(1) clarifying that a suspension is subject to further order of the Court; and by deleting references in subsection (c)(3) to Rule 19-741 and Rule 19-744 and replacing them with references to Rule 19-740 and Rule 19-743, respectively, as follows:

Rule 19-733. REFERRAL FROM CHILD SUPPORT ADMINISTRATION

(a) Referral

The Commission promptly shall transmit to Bar Counsel a referral from the Child Support Administration pursuant to Code, Family Law Article, § 10-119.3 (e)(3) and direct Bar Counsel to

investigate, and if the attorney has violated the law, file a Petition for Disciplinary or Remedial Action in the Court of Appeals pursuant to Rule 19-721 (a)(1). A copy of the Administration's referral shall be attached to the Petition, and a copy of the Petition and notice shall be served on the attorney in accordance with Rule 19-723.

Committee note: The procedures set out in Code, Family Law Article, § 10-119.3 (f)(1), (2), and (3) are completed before the referral to the Attorney Grievance Commission.

(b) Show Cause Order

When a petition and notice of referral have been filed, the Court of Appeals shall order that ~~Bar Counsel~~ and the attorney, within 15 days from the date of the order, show cause in writing why the attorney should not be suspended from the practice of law until the further order of the Court.

(c) Action by the Court of Appeals

Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may enter an order: (1) immediately ~~and indefinitely~~ suspending the attorney from the practice of law, pending further order of the Court, (2) designating a judge pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727, or (3) containing any other appropriate provisions. The provisions of Rules ~~19-741~~ 19-740 through ~~19-744~~ 19-743, as applicable, apply to an order under this section that suspends an attorney.

(d) Presumptive Effect of Referral

A referral from the Child Support Administration to the Attorney Grievance Commission is presumptive evidence that the attorney falls within the criteria specified in Code, Family Law Article, § 10-119.3 (e) (1), but the introduction of such evidence does not preclude Bar Counsel or the attorney from introducing additional evidence or otherwise showing cause why no suspension should be imposed.

(e) Termination of Suspension

(1) On Notification by the Child Support Administration

Upon notification by the Child Support Administration that the attorney has complied with the provisions of Code, Family Law Article, § 10-119.3 (j), the Court of Appeals shall order the attorney reinstated to the practice of law, unless other grounds exist for the suspension to remain in effect.

(2) On Verified Petition by Attorney

In the absence of a notification by the Child Support Administration pursuant to subsection (e) (1) of this Rule, the attorney may file with the Court of Appeals a verified petition for reinstatement. The petition shall allege under oath that (A) the attorney is in compliance with the provisions of Code, Family Law Article, § 10-119.3 (j) and is not currently in arrears in the payment of child support, (B) at least 15 days prior to filing the verified petition, the attorney gave written

notice of those facts to the Child Support Administration and requested that the Child Support Administration notify the Court, (C) the Child Support Administration has failed or refused to file such a notification, and (D) the attorney is entitled to be reinstated. All relevant documents shall be attached to the petition as exhibits. A copy of the petition and exhibits shall be served on Bar Counsel, who shall file an answer within 15 days after service. Upon consideration of the petition and answer, the Court of Appeals may enter an order reinstating the attorney, an order denying the petition, or any other appropriate order.

(f) Other Disciplinary Proceedings

Proceedings under this Rule shall not preclude (1) the use of the facts underlying the referral from the Child Support Administration when relevant to a pending or subsequent disciplinary proceeding against the attorney or (2) prosecution of a disciplinary action based upon a pattern of conduct adverse to the administration of justice.

Source: This Rule is derived from former Rule 16-778 (2016).

REPORTER'S NOTE

Section (a) of Rule 19-733 is proposed to be amended to clarify that Bar Counsel need file a petition only after conducting an investigation and determining that the attorney has violated the child support law. Without this new language,

a literal reading of section (a) would require Bar Counsel to immediately file a petition without first investigating and determining that the attorney has violated the law.

Section (b) is amended by deleting the requirement for Bar Counsel to show cause. This section is also amended to clarify that a suspension remains in effect subject to further order of the Court.

Subsection (c)(1) is amended to clarify that a suspension remains in effect pending further order of the Court, and not indefinitely, as in the current form of the Rule.

Subsection (c)(3) is amended by replacing references to Rule 19-741 and Rule 19-744 with references to Rule 19-740 and Rule 19-743, respectively. These amendments are necessary to conform to the renumbering of Division 5 required by renumbering Rule 19-740 as new Rule 19-717.1.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-734 by replacing the words "placed on" with the words "transferred to disability" in subsection (a)(1); by adding certain language to subsection (b)(1) permitting a petition to appoint a conservator to be filed in a certain county; by adding certain language to subsection (b)(1) correcting the reference to former subsection (b)(3) to subsection (b)(4) to conform to the re-lettering of former subsections (b)(3) and (b)(4) as subsections (b)(4) and (b)(5), respectively; by adding new subsection (b)(3) pertaining to the use of e-mail addresses contained in AIS for the purpose of alternative service of process in certain situations; by correcting a typo in subsection (f)(1); by making stylistic changes to subsection (f)(2); by replacing the word "motion" with "petition" in subsection (f)(2); by adding certain language to subsection (f)(2) requiring that a copy of the petition be served on Bar Counsel; and by adding a Committee note following subsection (f)(2) indicating that a conservator may file a timely claim (including a contingent claim) against a deceased attorney's estate, as follows:

Rule 19-734. CONSERVATOR OF CLIENT MATTERS

(a) Appointment; When Authorized

If (1) an attorney dies, disappears, has been disbarred, suspended, or ~~placed on~~ transferred to disability inactive status, or is incapacitated or has abandoned the practice of law, (2) there are open client matters, and (3) and there is not known to exist any personal representative, partner, or other individual who is willing to conduct and capable of conducting the attorney's client affairs, Bar Counsel may file a petition requesting the appointment of a conservator to inventory the attorney's files and to take other appropriate action to protect the attorney's clients. A conservatorship may coexist with the administration of the attorney's general estate by a personal representative or guardian.

Committee note: The conservator will be responsible for dealing with the attorney's trust accounts and client matters over which a guardian or personal representative, even if one exists, ordinarily should have no authority. A guardian or personal representative who has been appointed should be served with the petition and order, however, to avoid the prospect of conflicts.

(b) Petition; Service; Order

(1) Filing

The petition to appoint a conservator may be filed in the circuit court for any county in which the attorney resided or maintained an office for the practice of law, and may include

a request for emergency relief in accordance with subsection (b)~~(3)~~(4) of this Rule. If the attorney has no established office and the attorney's residence is unknown, the petition may be filed in any circuit court.

(2) Service

The petition shall be served on the attorney, the guardian of the attorney, or the personal representative of the attorney, as appropriate, and on any other person the court may require to be served. Service shall be made in the manner described in Rule 2-121.

(3) Alternative Service

If, after reasonable efforts, the attorney cannot be served personally, service may be made on the attorney by sending the petition by e-mail to all e-mail addresses maintained by the attorney with the Attorney Information System in accordance with Rule 19-802.

~~(3)~~(4) Emergency Appointment

Upon sufficient allegations in the petition and a showing by affidavit or other evidence that immediate, substantial, and irreparable harm may result from the attorney's disappearance or inability or unwillingness to deal properly with the attorney's trust accounts or client matters, the court may enter an order (A) appointing an attorney approved by Bar Counsel to serve as a temporary emergency conservator with

authority to take control of the trust accounts and client files and (B) enjoining the financial institutions holding the trust accounts from transferring any funds except upon the order of the temporary conservator, all pending further order of the court.

~~(4)~~(5) Order Appointing Conservator

Upon such proof of the facts as the court may require, the court may enter an order appointing an attorney approved by Bar Counsel to serve as conservator subject to further order of the court.

(c) Inventory

Promptly upon accepting the appointment, the conservator shall take possession and prepare an inventory of the attorney's files, take control of the attorney's trust and business accounts, review the files and accounts, identify open matters, and note the matters requiring action.

(d) Disposition of Files

With the consent of the client or the approval of the court, the conservator may assist the client in finding a new attorney, assume responsibility for specific matters, or refer the client's open matters to attorneys willing to handle them.

(e) Sale of Law Practice

With the approval of the court, the conservator may sell the attorney's law practice in accordance with Rule 19-301.17 (1.17) of the Maryland Attorneys' Rules of Professional Conduct.

(f) Compensation

(1) Entitlement

The conservator is entitled to periodic payment from the attorney's assets or estate for reasonable hourly ~~attorney's~~ attorneys' fees and reimbursement for expenditures reasonably incurred in carrying out the order of appointment.

(2) ~~Motion~~ Petition for Judgment Attorneys' Fees and Expenses

Upon verified ~~motion~~ petition served on the attorney at the attorney's last known address or, if the attorney is deceased, on the personal representative of the attorney, the court may order payment to the conservator and enter judgment against the attorney or personal representative for the reasonable fees and expenses of the conservator. A copy of the verified petition also shall be served on Bar Counsel.

Committee note: If the attorney is deceased, the conservator may file a timely claim, which may be a contingent claim, in the estate of the attorney prior to filing a petition under subsection (f) (2) of this Rule. See Code, Estates & Trusts Article, §§ 8-104 (Claims) and 8-112 (Contingent Claims).

(3) Payment from Disciplinary Fund

If the conservator is unable to obtain full payment within one year after entry of judgment, the Commission may

authorize payment from the Disciplinary Fund in an amount not exceeding the amount of the judgment that remains unsatisfied. If payment is made from the Disciplinary Fund, the conservator shall assign the judgment to the Commission for the benefit of the Disciplinary Fund.

(g) Confidentiality

A conservator shall not disclose any information contained in a client's file without the consent of the client, except as necessary to carry out the order of appointment.

Source: This Rule is derived in part from former Rule 16-777 (2016) and is in part new.

REPORTER'S NOTE

Subsection (a) (1) is amended so that an attorney is now "transferred to disability inactive status" rather than being "placed on inactive status" to conform with amendments to Rule 19-739.

Subsection (b) (1) is proposed to be amended to permit the filing of a petition to appoint a conservator in any county where the attorney resided or maintained an office, or if the attorney's office and residence are unknown, in any county. The reference to subsection (b) (3) in this subsection is changed to subsection (b) (4) to conform to the re-lettering of former subsections (b) (3) and (b) (4) as subsections (b) (4) and (b) (5), respectively.

New subsection (b) (3) is added, permitting the use of e-mail addresses contained in AIS for the purpose of alternative service of process after reasonable efforts to effectuate service pursuant to Rule 2-121 have been made.

Subsection (f) (1) is amended to correct a typo.

Subsection (f)(2) is amended to replace "motion" with "petition." This subsection is also amended to require that a copy of the fee petition must be served on Bar Counsel. Stylistic changes are made to this subsection, and a Committee note is added following subsection (f)(2) indicating that a conservator may file a timely claim (including a contingent claim) against a deceased attorney's estate.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-735 (d) by adding language pertaining to consideration of the application and response; by providing that an order may be signed by either the Chief Judge or a judge of the Court of Appeals designated by the Chief Judge; and by adding certain language stating that the provisions of Rule 19-741 apply to an order issued under section (d), as follows:

Rule 19-735. RESIGNATION OF ATTORNEY

(a) Application

An application to resign from the practice of law in this State shall be submitted in writing under oath to the Court of Appeals, with a copy to Bar Counsel. The application shall state that the resignation is not being offered to avoid disciplinary action and that the attorney has no knowledge of any pending investigation, action, or proceedings in any jurisdiction involving allegations of professional misconduct by the attorney.

(b) When Attorney May Not Resign

An attorney may not resign while the attorney is the subject of a disciplinary investigation, action, or proceeding involving allegations of professional misconduct. An application to resign does not prevent or stay any disciplinary action or proceeding against the attorney.

(c) Procedure

Upon receiving a copy of the application submitted in accordance with section (a) of this Rule, Bar Counsel shall investigate the application and file a response with the Clerk of the Court.

(d) Order of the Court of Appeals

~~The Court of Appeals shall~~ Upon consideration of the application and response, the Court of Appeals may enter an order, signed by the Chief Judge, or a judge of the Court designated by the Chief Judge, enter an order accepting or denying the resignation. A resignation is effective only upon entry of an order accepting it. The provisions of Rule 19-741 apply to an order under this section.

(e) Duty of Clerk

When the Court enters an order accepting an attorney's resignation, the Clerk of the Court of Appeals shall strike the name of the attorney from the register of attorneys in that Court and shall certify that fact to the Trustees of the Client Protection Fund of the Bar of Maryland and the clerks of all

courts in this State. The Clerk shall give any notice required by Rule 19-707 (e).

(f) Effect of Resignation

An attorney may not practice law in this State after entry of an order accepting the attorney's resignation.

(g) Motion to Vacate

On motion of Bar Counsel, the Court may vacate or modify the order if there has been intrinsic or extrinsic fraud.

Source: This Rule is derived from former Rule 16-775 (2016).

REPORTER'S NOTE

Section (d) of Rule 19-735 is proposed to be amended to provide that an order accepting or denying the resignation may be signed by either the Chief Judge or a judge of the Court of Appeals designated by the Chief Judge and to indicate that the provisions of Rule 19-741 apply to an order issued under this section.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-736 by making stylistic changes; by replacing the words "placement on" in section (a) with "transfer to disability;" by replacing the words "is aware" in subsection (b) (2) (A) with the word "acknowledges;" by replacing the word "knows" in subsection (b) (2) (B) with the word "acknowledges;" by replacing the words "is aware of" in subsection (b) (2) (E) with the word "understands;" by replacing the reference in subsection (b) (2) (F) to Rule 19-742 with a reference to Rule 19-741; by replacing the reference in subsection (b) (3) to Rule 19-742 with a reference to Rule 19-741; by replacing the words "placement on" with the words "transfer to disability" in subsection (c) (1); by replacing the word "placing" with the word "transferring" in subsection (c) (1); by replacing the word "on" with the words "to disability" in subsection (c) (1); by adding the word "disability" before the words "inactive status" in subsection (c) (1); by replacing the word "a" with the words "one or more" in subsection (c) (1); by replacing the word "event" with the word "events" in subsection (c) (1); by replacing the words "placement on" with the words "transfer to disability" in

subsections (c) (2) (B), (c) (2) (E), and (c) (2) (F); by replacing the word "knows" with the word "acknowledges" in subsection (c) (2) (E); by replacing the reference to Rule 19-744 with a reference to Rule 19-743 in subsection (c) (2) (G); by adding certain language to subsection (c) (2) (I) indicating that a disclosure must be to Bar Counsel's satisfaction; by replacing the word "placing" with the word "transferring" and the word "on" with the words "to disability" in subsection (c) (3); by replacing the reference to Rule 19-744 with a reference to Rule 19-743 in subsection (c) (3); by adding new subsection (c) (4) pertaining to the effect of a transfer to disability inactive status to a pending disciplinary proceeding; by replacing the words "placed on" with the words "transferred to disability" in section (d); and by adding certain language to section (e), as follows:

Rule 19-736. CONSENT TO DISCIPLINE OR TRANSFER TO DISABILITY
INACTIVE STATUS

(a) General Requirement

An attorney may consent to discipline or ~~placement on~~
transfer to disability inactive status in accordance with this Rule.

(b) Consent to Discipline for Misconduct

(1) Joint Petition

An attorney may consent to disbarment or other discipline by joining with Bar Counsel in a petition for an order disbaring the attorney, suspending the attorney from the practice of law, or reprimanding the attorney. The petition shall be signed by the attorney and Bar Counsel and filed in the Court of Appeals. If a suspension is requested, the petition shall state whether the suspension should be indefinite or for a stated period and shall set forth any conditions that the parties agree should be imposed. If a reprimand is requested, the petition shall state the proposed text of the reprimand and any conditions.

(2) Affidavit Required

A joint petition filed under subsection (b)(1) of this Rule shall be accompanied by an affidavit by the attorney that certifies that the attorney:

(A) ~~is aware~~ acknowledges that an investigation or proceeding is currently pending involving allegations of professional misconduct, the nature of which shall be specifically set forth;

(B) ~~knows~~ acknowledges that if a hearing were to be held, sufficient evidence could be produced to sustain the allegations of misconduct;

(C) consents to the disbarment or other discipline stated in the petition;

(D) gives the consent freely and voluntarily without coercion or duress;

(E) ~~is aware of~~ understands the effects of the disbarment or other discipline to which the attorney is consenting; and

(F) agrees to comply with Rule ~~19-742~~ 19-741 and any conditions stated in the petition that the Court of Appeals may impose.

(3) Order of the Court of Appeals

Upon the filing of the joint petition and the affidavit, the Court of Appeals may enter an order, signed by the Chief Judge or a judge designated by the Chief Judge, disbarring the attorney by consent from the practice of law in the State, suspending the attorney by consent from the practice of law, or reprimanding the attorney by consent and imposing any conditions stated in the petition. The provisions of Rule ~~19-742~~ 19-741 apply to an order entered under subsection (b) (3) of this Rule.

(c) Consent to ~~Placement on~~ Transfer to Disability Inactive Status

(1) Joint Petition

If competent to do so, an attorney may consent to ~~placement on~~ transfer to disability inactive status by joining with Bar Counsel in a petition for an order ~~placing~~ transferring the attorney ~~on~~ to disability inactive status. The petition shall be signed by the attorney and Bar Counsel and filed in the

Court of Appeals. The petition shall state whether the disability inactive status should be indefinite or until the occurrence of ~~a~~ one or more specified ~~event~~ events and shall set forth any conditions that the parties agree should be imposed.

(2) Affidavit Required

A joint petition filed under subsection (c)(1) of this Rule shall be accompanied by an affidavit by the attorney that certifies that the attorney:

(A) understands and is competent to make the other certifications in subsection (c)(2) of this Rule;

(B) consents to the ~~placement on~~ transfer to disability inactive status;

(C) gives the consent freely and voluntarily without coercion or duress;

(D) is currently incapacitated and unable to render adequate legal service;

(E) ~~knows~~ acknowledges that if a hearing were to be held, Bar Counsel would have the burden of proving by clear and convincing evidence that the attorney is so incapacitated as to require the attorney to be ~~placed on~~ transferred to disability inactive status;

(F) understands that being ~~placed on~~ transferred to disability inactive status, if ordered by the Court of Appeals,

terminates the attorney's privilege to practice law in this State until otherwise ordered by the Court;

(G) agrees to comply with Rule ~~19-744~~ 19-743 and any conditions stated in the petition that the Court of Appeals may impose;

(H) understands that the attorney may not be reinstated to practice law unless the attorney is able to prove by a preponderance of the evidence that the attorney has regained the ability to render adequate legal services, that inactive status should be terminated, and that the attorney should be reinstated to active practice;

(I) has disclosed to Bar Counsel, to Bar Counsel's satisfaction, the name of every physician, other health care provider, and health care facility by whom or at which the attorney has been examined, evaluated, or treated; and

(J) has furnished Bar Counsel with written consent to the release of such health care information and records as Bar Counsel has requested and waived any privilege as to such information and records.

(3) Order of the Court of Appeals

Upon the filing of the joint petition and affidavit, the Court of Appeals may enter an order, signed by the Chief Judge or a judge designated by the Chief Judge, ~~placing~~ transferring the attorney ~~on~~ to disability inactive status by consent pending

further order of the Court and imposing any conditions stated in the petition. The provisions of Rule ~~19-744~~ 19-743 apply to an order entered under subsection (c)(3) of this Rule.

(4) Effect on Disciplinary or Remedial Proceeding

If a disciplinary or remedial proceeding for alleged misconduct is pending against the attorney, the entry of an order under this section shall stay the proceeding subject to further order of the Court.

(d) Duty of Clerk

When an attorney has been disbarred, suspended, or ~~placed on~~ transferred to disability inactive status under this Rule, the Clerk of the Court of Appeals shall comply with Rule 19-761.

(e) Effect of Denial

If the Court of Appeals denies a joint petition for discipline or disability inactive status, the investigation or disciplinary or remedial proceeding shall resume as if no consent had been given. Neither the joint petition nor the affidavit may be admitted in evidence.

Source: This Rule is derived from former Rule 16-772 (2016). Subsection (c)(4) is new.

REPORTER'S NOTE

Stylistic changes are proposed to be made to Rule 19-736.

Section (a) is amended so that a matter is now "transferred to disability inactive status" rather than having an attorney "placed on inactive status" throughout the entire section.

Subsection (b) (2) is amended so that the attorney will no longer be making representations on the affidavit that the attorney "is aware" or "knows" averments. These words are changed throughout subsection (b) (2) to "acknowledges" and "understands."

Subsections (b) (2) (F) and (b) (3) are amended to replace the references to Rule 19-742 with references to Rule 19-741. This amendment is necessary to conform to the renumbering of Division 5 required by renumbering Rule 19-740 as new Rule 19-717.1.

Section (c) is amended so that a matter is now "transferred to disability inactive status" rather than having an attorney "placed on inactive status" throughout the entire section. Subsection (c) (1) is amended so that more than one specified event may be included in the petition. Subsection (c) (2) (E) is amended so that the attorney will no longer be making representations on the affidavit that the attorney "knows" averments. This word is changed in this subsection to "acknowledges." Subsections (c) (2) (G) and (c) (3) are amended to replace the references to Rule 19-744 with references to Rule 19-743. These amendments are necessary to conform to the renumbering of Division 5 required by renumbering Rule 19-740 as new Rule 19-717.1. Subsection (c) (2) (I) is amended to require that a disclosure must be to Bar Counsel's satisfaction. New subsection (c) (4) is added, which sets forth the effect of a transfer to disability inactive status on a pending disciplinary proceeding. Stylistic changes are also made to section (c).

Section (d) is amended by replacing the words "placed on" with the words "transferred to disability."

Section (e) is amended to add "disability" to the term "inactive status."

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-737 by making stylistic changes to section (a); by replacing the words "placed on" with "transferred to disability" in subsection (a) (3); by replacing the words "based on incapacity" with the words "or an equivalent status in that jurisdiction" in subsection (a) (3); by adding new language to subsection (a) (4) pertaining to remedial orders in another jurisdiction; by replacing the words "or placed on" with the words "transferred to disability" in section (b); by deleting certain language in section (b) pertaining to incapacity; by adding certain language to section (b) pertaining to equivalent status and remedial orders in another jurisdiction; by making stylistic changes to section (c); by adding certain language to section (c) pertaining to remedial orders and petitions filed under Rule 19-723; by making stylistic changes to section (d); by adding certain language to subsection (d) (1) pertaining to suspension; by deleting the word "by" and certain language from subsection (d) (1) pertaining to the effective date of an order suspending an attorney; by adding certain language to subsection (d) (1) concerning the procedures to be followed when a show

cause order is issued pertaining to the suspension or transfer to disability inactive status of an attorney; by adding new language to subsection (d) (2) pertaining to an order of suspension or transfer to disability inactive status issued by the Court of Appeals; by making stylistic changes to subsection (d) (2); by replacing references to Rules 19-742 and 19-744 in subsection (d) (2) (C) with references to Rules 19-741 and 19-743, respectively; by adding new subsection (d) (3) pertaining to the termination of a temporary suspension or disability inactive status; by making stylistic changes to section (f); by adding certain language to subsection (f) (1) pertaining to remedial orders; by replacing references to Rules 19-742 and 19-744 in subsection (f) (3) with references to Rules 19-741 and 19-743, respectively; by deleting certain language from subsection (f) (3) pertaining to placement on inactive status and replacing it with language pertaining to transfer to disability inactive status; and by adding language to section (h) pertaining to remedial orders, as follows:

Rule 19-737. RECIPROCAL DISCIPLINE OR INACTIVE STATUS

(a) Duty of Attorney

An attorney who in another jurisdiction (1) is disbarred, suspended, or otherwise disciplined, (2) resigns from the bar while disciplinary or remedial action is threatened or pending

in that jurisdiction, ~~or~~ (3) is ~~placed on~~ transferred to disability inactive status based on incapacity or an equivalent status in that jurisdiction, or (4) is subject to a remedial order entered in that jurisdiction shall inform Bar Counsel promptly of the discipline, resignation, ~~or~~ inactive status, or remedial order.

(b) Petition in Court of Appeals

Upon receiving and verifying information from any source that in another jurisdiction an attorney has been disciplined, ~~or placed on~~ transferred to disability inactive status based on incapacity or an equivalent status, or is subject to a remedial order entered in that jurisdiction, Bar Counsel may file a Petition for Disciplinary or Remedial Action in the Court of Appeals pursuant to Rule 19-721 (a) (2). A certified copy of the disciplinary or remedial order shall be attached to the Petition.

(c) Show Cause Order

When a petition and certified copy of a disciplinary or remedial order have been filed, the Court of Appeals shall order that Bar Counsel and the attorney, within the time specified in the order, show cause in writing based upon any of the grounds set forth in section (e) of this Rule why corresponding discipline, ~~or~~ inactive status, or remedial order should or

should not be imposed. A copy of the petition and show cause order shall be served in accordance with Rule 19-723.

(d) Temporary Suspension of Attorney

(1) When the petition and disciplinary or remedial order demonstrate that an attorney has been disbarred or suspended, or is currently suspended from practice by pending a final order of a court in another jurisdiction, or has been transferred to disability inactive status based on incapacity in another jurisdiction, the Court of Appeals may enter an order, effective immediately, suspending the attorney from the practice of law, pending further order of Court shall order that the attorney, within 15 days from the date of the order, show cause in writing why the attorney should not be suspended from the practice of law or transferred to disability inactive status immediately until the further order of the Court of Appeals. The show cause order shall be served in accordance with Rule 19-723.

(2) Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may enter an order: (A) immediately suspending the attorney from the practice of law, pending further order of the Court, (B) immediately transferring the attorney to disability inactive status, pending further order of the Court, or (C) containing any other appropriate provisions. The provisions of Rules 19-742 19-741

or ~~19-744~~ 19-743, as applicable, apply to an order ~~suspending an attorney under this section~~ under this section.

(3) Termination of Temporary Suspension or Disability
Inactive Status

On notification by Bar Counsel that the disciplinary or remedial order has been reversed or vacated in the other jurisdiction, the Court of Appeals shall vacate the order of temporary suspension or disability inactive status, unless other grounds exist for the suspension to remain in effect.

(e) Exceptional Circumstances

Reciprocal discipline shall not be ordered if Bar Counsel or the attorney demonstrates by clear and convincing evidence that:

(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) there was such infirmity of proof establishing the misconduct as to give rise to a clear conviction that the Court, consistent with its duty, cannot accept as final the determination of misconduct;

(3) the imposition of corresponding discipline would result in grave injustice;

(4) the conduct established does not constitute misconduct in this State or it warrants substantially different discipline in this State; or

(5) the reason for inactive status no longer exists.

(f) Action by Court of Appeals

Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may: (1) immediately impose corresponding discipline, ~~or~~ inactive status, or a corresponding remedial order; (2) enter an order designating a judge pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727; or (3) enter any other appropriate order. The provisions of Rules ~~19-742~~ 19-741 or ~~19-744~~ 19-743, as applicable, apply to an order under this section that disbars or suspends an attorney or that ~~places~~ transfers the attorney ~~on~~ to disability inactive status.

(g) Conclusive Effect of Adjudication

Except as provided in subsections (e) (1) and (e) (2) of this Rule, a final adjudication in a disciplinary or remedial proceeding by another court, agency, or tribunal that an attorney has been guilty of professional misconduct or is incapacitated is conclusive evidence of that misconduct or incapacity in any proceeding under this Chapter. The introduction of such evidence does not preclude the Commission or Bar Counsel from introducing additional evidence or preclude the attorney from introducing evidence or otherwise showing cause why no discipline or lesser discipline should be imposed.

(h) Effect of Stay in Other Jurisdiction

If the other jurisdiction has stayed the discipline, ~~or~~ inactive status, or remedial order, any proceedings under this Rule shall be deferred until the stay is no longer operative and the discipline or inactive status becomes effective.

(i) Duties of Clerk of Court of Appeals

The applicable provisions of Rule 19-761 apply when an order is entered under this Rule.

Source: This Rule is derived in part from former Rule 16-773 (2016) and is in part new.

REPORTER'S NOTE

Subsection (a) (3) of Rule 19-737 is proposed to be amended so that a matter is now "transferred to disability inactive status" rather than having an attorney "placed on inactive status" throughout the entire subsection. This subsection is also amended by replacing the words "based on incapacity" with the words "or an equivalent status in that jurisdiction."

New subsection (a) (4) is added to add remedial orders entered in other jurisdictions to the panoply of reciprocal discipline in this State. Stylistic changes are also made to section (a).

Section (b) is amended so that a matter is now "transferred to disability inactive status" rather than having an attorney "placed on inactive status" throughout the entire section. This section is also amended by replacing the words "based on incapacity" with the words "or an equivalent status, or is subject to a remedial order in that jurisdiction."

Stylistic changes are made to section (c). This section is also amended to add remedial orders to the list of remedies available when a show cause order is issued in response to a petition filed under section (b) of this Rule. Section (c) is also amended to require that the petition as well as the show cause order must be served in accordance with Rule 19-723.

Stylistic changes are made to section (d). Subsection (d)(1) is amended to add the following determinations which, if demonstrated in the petition or remedial order, will trigger the Court of Appeals to issue an order requiring the attorney to show cause within 15 days why the attorney should not be suspended or transferred to disability inactive status pending further order of the Court: suspension, suspension pending a final order, and placement on inactive status based on incapacity in another jurisdiction.

New language is added to subsection (d)(2) pertaining to an order of suspension or transfer to disability inactive status issued by the Court of Appeals after consideration of the petition and any answer to the show cause order. Subsection (d)(2)(C) is amended by replacing the references to Rules 19-742 and 19-744 with references to Rules 19-741 and 19-743, respectively. These changes are necessary to conform to the renumbering of Division 5 required by renumbering Rule 19-740 as new Rule 19-717.1.

New subsection (d)(3) is added, which contemplates the Court of Appeals vacating a temporary suspension or removing an attorney from disability inactive status upon notification by Bar Counsel that another jurisdiction's disciplinary or remedial order has been reversed or vacated and no other grounds for suspension exist.

Stylistic changes are made to section (f). Subsection (f)(1) is amended by adding remedial orders to the remedies to be considered by the Court of Appeals. Subsection (f)(3) is amended by replacing references to Rules 19-742 and 19-744 with references to Rules 19-741 and 19-743, respectively. These changes are necessary to conform to the renumbering of Division 5 required by renumbering Rule 19-740 as new Rule 19-717.1. This subsection is also amended so that a matter is now "transferred to disability inactive status" rather than having an attorney "placed on inactive status."

Section (h) is amended to add remedial orders to the list of matters originating in other jurisdictions to be considered in this section.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-738 by making stylistic changes to section (a); by adding certain language to subsection (a) (1) pertaining to guilty pleas and conditional pleas of guilty; by adding new subsection (a) (2) clarifying that a probation before judgment is defined as a conviction under Rule 19-738; by adding certain language to subsection (b) (3) pertaining to probation before judgment; by correcting the cross reference to Rule 19-701 (1) following subsection (b) (4) to Rule 19-701 (r); by making stylistic changes to section (c); by adding certain language to subsection (c) (1) (B) pertaining to certified copies of transcripts concerning convictions; by re-lettering former section (e) as subsection (c) (2); by deleting certain language from subsection (c) (2) (A) pertaining to petitions and replacing it with certain language pertaining to petitions filed pursuant to Rule 19-721 (a) (2); by adding certain language to subsection (c) (2) (B) pertaining to certified copies of transcripts reflecting findings of guilt; by deleting former subsection (e) (4) and adding new subsection (c) (2) (C) pertaining to the imposition of a sentence and entry of a judgment of conviction;

by making stylistic changes to section (d); by deleting certain language from section (d) pertaining to the filing of a petition; by deleting certain language from section (d) pertaining to issuing an order that requires an attorney to show cause; by adding certain language to section (d) that states the Court of Appeals will order an attorney to show cause in writing when a petition is filed that demonstrates the attorney has been found guilty or convicted of a serious crime; by adding new section (e) concerning the temporary suspension of an attorney; by adding a cross reference to Rule 19-741 following section (e); by adding new section (f) pertaining to the termination of a temporary suspension; by deleting former subsections (e) (3) and (e) (4); by making stylistic changes to section (g); by adding new subsection (g) (1) pertaining to the immediate suspension of an attorney; by adding new subsection (g) (3) pertaining to the Court of Appeals entering any other appropriate order; by adding new section (h) pertaining to the time for holding a hearing; by re-lettering former subsections (g) (1), (g) (2), and (g) (3) as new subsections (h) (1), (h) (2), and (h) (3), respectively; by re-lettering former section (h) as new subsection (h) (4); by re-lettering former section (f) as new section (j); and by re-lettering former section (j) as new section (k), as follows:

Rule 19-738. DISCIPLINE ON CONVICTION OF CRIME

(a) Definition

In this Rule, "conviction" includes (1) a judgment entered upon acceptance by the court of a plea of guilty, conditional plea of guilty, or nolo contendere and (2) a criminal matter in which a probation before judgment is entered by the trial court, regardless of whether the probation before judgment is predicated upon a plea of guilty, a conditional plea of guilty, or plea of nolo contendere or upon a finding of guilt by a trier of fact after a trial on the merits.

(b) Duty of Attorney

An attorney charged with a serious crime in this State or any other jurisdiction shall promptly inform Bar Counsel in writing of (1) the filing of the charge, (2) any finding or verdict of guilty on such charge, (3) the entry of a judgment of conviction or a probation before judgment on such charge, and (4) the final disposition of the charge in each court that exercised jurisdiction over the charge.

Cross reference: Rule 19-701 ~~(1)~~(r).

(c) ~~Petition Upon Conviction in Court of Appeals for~~
Disciplinary or Remedial Action

(1) Generally Petition Upon Conviction

(A) Upon receiving and verifying information from any source that an attorney has been convicted of a serious crime, Bar Counsel may file a Petition for Disciplinary or Remedial Action pursuant to Rule 19-721 (a) (2). The petition may be filed whether an appeal or any other post-conviction proceeding is pending.

~~(2)~~ (B) Contents

The petition shall allege the fact of the conviction and include a request that the attorney be suspended immediately from the practice of law. A certified copy of the judgment of conviction or a certified copy of the transcript reflecting the conviction shall be attached to the petition and shall be prima facie evidence of the fact that the attorney was convicted of the crime charged.

(2) ~~(e)~~ Petition When Imposition of Sentence is Delayed

~~(1)~~ (A) Generally

Upon receiving and verifying information from any source that an attorney has been found guilty of a serious crime but that sentencing has been delayed for a period of more than 30 days, Bar Counsel may file a ~~Petition for Interim Disciplinary or Remedial Action~~ Petition for Disciplinary or Remedial Action pursuant to Rule 19-721 (a) (2). The petition may be filed whether or not a motion for new trial or other relief is pending.

~~(2)~~ (B) Contents

The petition shall allege the finding of guilt and the delay in sentencing and request that the attorney be suspended immediately from the practice of law pending the imposition of sentence and entry of a judgment of conviction. Bar Counsel shall attach to the petition a certified copy of the docket reflecting the finding of guilt or a certified copy of the transcript reflecting the finding of guilt, which shall be prima facie evidence that the attorney was found guilty of the crime charged.

~~(4) Entry of Judgment of Conviction or Order for New Trial~~

(C) Notification to the Court of Appeals

Upon the imposition of sentence and entry of a judgment of conviction ~~or upon the granting of a new trial by the trial court~~, Bar Counsel shall inform the Court of Appeals and attach a certified copy of the judgment of conviction or a certified copy of the transcript reflecting the conviction ~~or order granting a new trial~~. ~~If a judgment of conviction was entered, Bar Counsel may file a petition under section (c) of this Rule.~~

(d) ~~Temporary Suspension~~ Show Cause Order

~~Upon filing of the petition pursuant to section (c) of this Rule,~~ When the petition demonstrates that an attorney has been found guilty or convicted of a serious crime, the Court of

Appeals shall ~~issue an order requiring that~~ the attorney, ~~to~~ show cause within 15 days from the date of the order, show cause in writing why the attorney should not be suspended immediately from the practice of law until the further order of the Court of Appeals.

(e) Temporary Suspension of Attorney

~~If, after~~ Upon consideration of the petition and the answer to the order to show cause, the Court of Appeals ~~determines that the attorney has been convicted of a serious crime, the Court~~ may enter an order immediately suspending the attorney from the practice of law ~~until final disposition of the disciplinary or remedial action,~~ pending further order of the Court, or enter an order containing any other appropriate provisions. The provisions of Rules 19-741 and 19-743, as applicable, apply to an order suspending an attorney under this section. ~~The Court of Appeals shall vacate the order and terminate the suspension if the conviction is reversed or vacated.~~

Cross reference: Rule 19-741.

(f) Termination of Temporary Suspension

(1) On notification by Bar Counsel or the attorney that the conviction was reversed, the Court of Appeals shall vacate the order of temporary suspension, unless other grounds exist for the suspension to remain in effect.

~~(3) Interim Temporary Suspension~~

~~Upon the filing of the petition, the Court of Appeals shall issue an order requiring the attorney to show cause within the time specified in the order why the attorney should not be suspended immediately from the practice of law, on an interim basis, until further order of the Court of Appeals. If, after consideration of the petition and any answer to the order to show cause, the Court of Appeals determines that the attorney was found guilty of a serious crime but that sentencing has been delayed for a period of more than 30 days, the Court may enter an order suspending the attorney from the practice of law on an interim basis pending further action by the trial court and further order of the Court of Appeals.~~

~~(4) Entry of Judgment of Conviction or Order for New Trial~~

~~Upon the imposition of sentence and entry of a judgment of conviction or upon the granting of a new trial by the trial court, Bar Counsel shall inform the Court of Appeals and attach a certified copy of the judgment of conviction or order granting a new trial. If a judgment of conviction was entered, Bar Counsel may file a petition under section (c) of this Rule. The Court shall then proceed in accordance with section (d) of this Rule but may order that any interim suspension remain in effect pending disposition of the new petition. If the trial court has vacated the finding of guilt and granted a new trial, or if the~~

~~attorney received probation before judgment, the Court of Appeals shall dismiss the petition for interim suspension and terminate any interim suspension that has been ordered.~~

(g) Further Proceedings Action by the Court of Appeals

When a petition filed pursuant to section (c) of this Rule alleges the conviction of a serious crime and the attorney denies the conviction or intends to present evidence in support of a disposition other than disbarment, the Court of Appeals may (1) immediately suspend the attorney; (2) enter an order designating a judge pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727, or (3) enter any other appropriate order. The provisions of Rules 19-741 and 19-743 apply to an order under this section that disbars or suspends an attorney or that places the attorney on inactive status.

(h) Time for Holding a Hearing

If, pursuant to section (g) of this Rule, the Court designates a judge to hold a hearing, the hearing shall be scheduled as follows:

(1) No Appeal of Conviction

If the attorney does not appeal the conviction, the hearing shall be held within a reasonable time after the time for appeal has expired.

(2) Appeal of Conviction

If the attorney appeals the conviction, the hearing shall be delayed, except as provided in section (h) (4) of this Rule, until the completion of appellate review.

(A) If, after completion of appellate review, the conviction is reversed or vacated, the judge to whom the action is assigned shall either dismiss the petition or hear the action on the basis of evidence other than the conviction.

(B) If, after the completion of appellate review, the conviction is not reversed or vacated, the hearing shall be held within a reasonable time after the mandate is issued.

(3) Effect of Incarceration

If the attorney is incarcerated as a result of the conviction, the hearing shall be delayed until the termination of incarceration unless the attorney requests an earlier hearing and makes all arrangements (including financial arrangements) to attend the hearing or waives the right to attend.

~~(h)~~ (4) Right to Earlier Hearing

If the hearing on the petition has been delayed under subsection (h) (2) of this Rule and the attorney has been suspended from the practice of law under section (e) of this Rule, the attorney may request that the judge to whom the action is assigned hold an earlier hearing, at which the conviction shall be considered a final judgment.

(i) Conclusive Effect of Final Conviction

In any proceeding under this Chapter, a final judgment of any court of record convicting an attorney of a crime, whether the conviction resulted from acceptance by the court of a plea of guilty or nolo contendere, or a verdict after trial, is conclusive evidence of the attorney's guilt of that crime. As used in this Rule, "final judgment" means a judgment as to which all rights to direct appellate review have been exhausted. The introduction of the judgment does not preclude the Commission or Bar Counsel from introducing additional evidence or the attorney from introducing evidence or otherwise showing cause why a disposition other than disbarment should be entered.

~~(f)~~ (j) Statement of Charges

If the Court of Appeals denies or dismisses a petition filed under section (c) of this Rule, Bar Counsel may file a Statement of Charges under Rule 19-718.

~~(j)~~ (k) Duties of Clerk of Court of Appeals

The applicable provisions of Rule 19-761 apply when an order is entered under this Rule.

Source: This Rule is derived in part from former Rule 16-771 (2016) and is in part new.

REPORTER'S NOTE

Stylistic changes are proposed to be made to section (a) of Rule 19-738. Subsection (a)(1) is amended to broaden the existing definition of conviction to include guilty and

conditional guilty pleas. New subsection (a)(2) is added to clarify that a probation before judgment is now defined as a conviction under this Rule.

Subsection (b)(3) is amended to require an attorney to disclose to Bar Counsel a probation before judgment for a serious crime.

The cross reference following subsection (b)(4) is amended to correct the reference to Rule 19-701 (l) to Rule 19-701 (r).

Stylistic changes are made to section (c). Subsection (c)(1)(B) is amended to permit a certified copy of a transcript reflecting a conviction to be attached to a petition filed by Bar Counsel. Former section (e) is re-lettered as subsection (c)(2). Subsection (c)(2)(A) is amended to rename the pleading filed by Bar Counsel from a "Petition for Interim Disciplinary or Remedial Action" to a "Petition for Disciplinary or Remedial Action." Subsection (c)(2)(B) is amended to permit a certified copy of a transcript reflecting a finding of guilt to be attached to a petition filed by Bar Counsel.

Former subsection (e)(4) is deleted, and new subsection (c)(2)(C) is added, pertaining to the imposition of a sentence and entry of a judgment of conviction.

Stylistic changes are made to section (d). Section (d) is amended to change the event that triggers the issuance of a show cause order by the Court of Appeals from the filing of a petition by Bar Counsel to when a petition demonstrates that an attorney has been found guilty or convicted of a serious crime.

New section (e) is added concerning the temporary suspension of an attorney. A cross reference to Rule 19-741 is added following section (e).

New section (f) is added pertaining to the termination of a temporary suspension.

Former subsections (e)(3) and (e)(4) are deleted.

Stylistic changes are made to section (g). New subsection (g)(1) is added, permitting the immediate suspension of an attorney. New subsection (g)(3) is added as a catchall provision, and indicates that the provisions of Rules 19-741 and 19-743 apply to an order under section (g).

New section (h) is added to establish how a hearing will be scheduled. Former subsections (g)(1), (g)(2), and (g)(3) are re-located under new section (h), and are subsections (h)(1), (h)(2), and (h)(3), respectively. No other changes are made to these subsections.

Former section (h) is re-lettered new subsection (h)(4). No further changes are made to this subsection.

Former section (f) is re-lettered new section (j). No further changes are made to this subsection.

Former section (j) is re-lettered new section (k). No further changes are made to this section.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-739 by adding new section (a) pertaining to the purpose of Rule 19-739; by making stylistic changes to Rule 19-739; by re-lettering former section (a) as section (b); by adding certain language to section (b) pertaining to the permissible grounds for transfer to disability inactive status; by adding new subsection (b) (2) pertaining to a licensed physician's examination and determination; by adding new subsection (b) (3) pertaining to an order appointing a conservator; by re-lettering former section (b) as section (c); by deleting certain language in subsection (c) (1) pertaining to summary placement with new language pertaining to transfer to disability inactive status; by adding new subsections (c) (1) (B) and (c) (1) (C) pertaining to medical certificates and conservatorship orders; by updating a reference to Rule 19-707 (b) (2) (H) to subsection (b) (10) in subsection (c) (1); by adding a Committee note after subsection (c) (1); by adding certain language to subsection (c) (2) pertaining to show cause orders issued pursuant to petitions filed with the Court of Appeals pursuant to subsection (c) (1); by deleting certain language in

subsection (c) (2); by adding certain language to subsection (c) (2) pertaining to which papers must be served upon the attorney or an agent or guardian of the attorney; by re-lettering former section (c) as section (d); by deleting certain language in section (d); by adding certain language to section (d); by adding new section (e) pertaining to the effect of a denial of a petition; by re-lettering former section (d) as section (f); by re-lettering former section (e) as section (g); by adding certain language to section (g); by adding new subsection (g) (3) as a catchall provision; by adding new section (h) pertaining to procedures concerning an inability to defend on the part of an attorney; and by adding new section (i) pertaining to costs; by re-lettering former section (f) as section (j), as follows:

Rule 19-739. ~~SUMMARY PLACEMENT ON~~ TRANSFER TO DISABILITY INACTIVE STATUS

(a) Purpose

On information that an attorney has a physical or mental disability or impairment that adversely affects the attorney's ability to practice law, Bar Counsel may conduct an investigation to determine whether the attorney should be transferred to disability inactive status. Transfer to disability inactive status is not a form of discipline but is

designed to ensure the protection of the public and, to the extent possible, rehabilitation of the attorney.

~~(a)~~ (b) Grounds for Transfer

An attorney may be transferred to disability inactive status for any of the following reasons:

~~An attorney may be placed summarily on inactive status for an indefinite period if the~~

(1) The attorney has been judicially determined to be mentally incompetent or to require a guardian of the person for any of the reasons stated in Code, Estates and Trusts Article, § 13-705 (b), or, in accordance with law, has been involuntarily admitted to a facility for inpatient care treatment of a mental disorder;

(2) A physician licensed to practice medicine in the United States with special knowledge or training relating to the nature and causes of the disability or impairment has examined the attorney and determined the attorney is incapacitated as defined by Rule 19-701 (m); or

(3) A circuit court has entered an order appointing a conservator pursuant to Rule 19-734.

~~(b)~~ (c) Procedure

(1) Petition ~~for Summary Placement~~ to Transfer to Disability Inactive Status; Confidentiality

With the approval of the Chair of the Commission, Bar Counsel may file a petition to ~~summarily place~~ transfer an attorney ~~on~~ to disability inactive status. The petition shall be supported by (A) a certified copy of the judicial determination or involuntary admission; (B) certification of a suitably licensed or certified examiner or medical doctor that the attorney is incapacitated; or (C) a certified copy of the order appointing a conservator pursuant to Rule 19-734. The petition and all other papers filed in the Court of Appeals shall be sealed and stamped "confidential" in accordance with Rule 19-707 ~~(b) (2) (H)~~ (b) (10).

Committee Note: The Order of Transfer to Disability Inactive Status is the only document that should be open to inspection by the public.

(2) Show Cause Order; Service

Upon filing of the petition pursuant to subsection (c) (1) of this Rule, the Court of Appeals shall order that the attorney show cause, within 15 days of the date of the order, why the attorney should not be immediately transferred to disability inactive status.

~~The~~ A copy of the show cause order and petition and all papers filed with the petition shall be served ~~upon~~ on the attorney in accordance with Rule 19-723 and, in addition, upon any guardian ~~of the person~~ of the attorney, any known agent of the attorney, and the director of any facility to which the

attorney has been admitted. ~~Proof of service shall be made in accordance with Rule 2-126.~~

~~(e)~~ (d) Order of the Court of Appeals

Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may enter an order:

(1) immediately ~~place~~ transferring the attorney ~~on~~ to disability inactive status, ~~for an indefinite period~~ pending further order of the Court; (2) ~~enter an order~~ designating a judge ~~in accordance with~~ pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727; or (3) ~~enter~~ containing any other appropriate ~~order~~ provisions. The provisions of ~~Rule~~ Rules 19-741 and 19-744 19-743, as applicable, apply to an order that ~~places the~~ transfers an attorney ~~on~~ to disability inactive status. Copies of the order shall be served upon Bar Counsel and each person named in the proof of service of the petition.

(e) Effect of Denial

If the Court of Appeals denies a petition filed under section (c) of this Rule, Bar Counsel may file a Statement of Charges under Rule 19-718.

~~(d)~~ (f) Effect on Disciplinary or Remedial Proceeding

If a disciplinary or remedial proceeding for alleged misconduct is pending against the attorney, the entry of an order under this section shall stay the proceeding until the further order of the Court.

~~(e)~~ (g) Termination of Disability Inactive Status

~~When an~~ On notification by Bar Counsel that the attorney who has been placed on inactive status under section (c) of this Rule is judicially determined to be competent, is judicially released after involuntary admission, or is no longer incapacitated as defined by Rule 19-701 (m), the Court of Appeals shall terminate may enter an order: (1) terminating the disability inactive status and either dismiss dismissing the petition, (2) or enter an order designating a judge in accordance with Rule 19-722 to hold a hearing in accordance with Rule 19-727, or (3) containing any other appropriate provisions.

(h) Inability to Defend

Upon a credible allegation by the attorney or other evidence that the attorney, by reason of physical or mental disability or impairment, is unable to assist in a defense to a petition filed pursuant to section (c) (1) of this Rule, the Court of Appeals may (1) appoint counsel for the attorney if the attorney is not otherwise represented by counsel, (2) appoint a guardian ad litem for the attorney, (3) appoint both counsel for the attorney and a guardian ad litem, (4) enter an order designating a circuit court judge to hold a hearing to determine, by clear and convincing evidence, whether the attorney is unable to assist in a defense and, if the attorney is found to be unable to assist in a defense, appoint counsel

for the attorney if the attorney is not otherwise represented by counsel, appoint a guardian ad litem, or both, or (5) enter any other appropriate order.

(i) Costs

(1) Allocation of Costs

The Court of Appeals may order all or part of the costs, as defined in Rule 19-709, be allocated among the parties.

(2) Compensation for Appointed Counsel and Guardians ad Litem

(A) Entitlement

An individual appointed pursuant to section (h) of this Rule is entitled to payment from the attorney's assets or the Disciplinary Fund for reasonable and necessary fees incurred in carrying out the order of appointment.

(B) Petition for Fees

Upon verified petition served on the attorney at the attorney's last known address, the Court may order payment to an individual appointed pursuant to section (h) of this Rule and enter judgment against the attorney.

(C) Order of the Court of Appeals

Upon consideration of the petition and any answer, the Court of Appeals may enter an order: (1) granting the verified petition for fees, in whole, or in part; (2) denying the verified petition; (3) designating a circuit court judge to

hold a hearing on the reasonableness and necessity of fees and costs, and to make recommendations to the Court of Appeals, to which exceptions may be filed and considered by the Court in accordance with the procedures set forth in Rule 19-728; or (4) containing any other appropriate provisions. If the order includes an award of attorney's fees, the award may be deemed a money judgment, which may be recorded in any circuit court for purposes of enforcement.

(D) Payment from Disciplinary Fund

If an individual appointed pursuant to section (h) of this Rule is unable to obtain full payment within one year after entry of judgment, the Commission may authorize payment from the Disciplinary Fund in an amount not exceeding the amount of the judgment that remains unsatisfied. If payment is made from the Disciplinary Fund, the individual appointed pursuant to section (h) of this Rule shall assign the judgment to the Commission for the benefit of the Disciplinary Fund.

~~(f)~~ (j) Duties of Clerk of Court of Appeals

The applicable provisions of Rule 19-761 apply when an order is entered under this Rule.

~~Source: This Rule is derived from former Rule 16-774 (2016).~~

Source: This Rule is derived as follows:

Sections (a), (e), (h) and (i) are new.

Sections (b), (c), and (g) are derived in part from former Rule 16-774 (2016) and are in part new.

Sections (d), (f), and (j) are derived from former Rule 16-774 (2016).

REPORTER'S NOTE

Stylistic changes are proposed to be made to Rule 19-739.

New section (a) is added which permits Bar Counsel to conduct an investigation to determine whether an attorney should be transferred to disability inactive status if Bar Counsel receives information that an attorney has a physical or mental disability or impairment that adversely affects the attorney's ability to practice law.

Former section (a) is re-lettered section (b). New section (b) is amended by adding language which makes the subsections of section (b) a list of reasons for which an attorney may be transferred to disability inactive status. The list is expanded by adding new subsections (b) (2) (a determination made by a physician after an examination) and (b) (3) (an order from a circuit court appointing a conservator pursuant to Rule 19-734).

Former section (b) is re-lettered section (c). Stylistic changes are made to subsection (c) (1). Subsection (c) (1) is amended so that a petition is filed to transfer an attorney to disability inactive status rather than to be summarily placed on inactive status. New subsections (c) (1) (B) and (c) (1) (C) are added, which mirror the additions of subsections (b) (2) and (b) (3). A reference to Rule 19-707 (b) (2) (H) in subsection (b) (2) is updated to Rule 19-707 (b) (10) to conform with proposed amendments to Rule 19-707. A new Committee note after subsection (c) (1) notes that the Order of Transfer to Disability Inactive Status is the only document open to inspection by the public. Subsection (c) (2) is amended so that a show cause order issues after a petition is filed with the Court of Appeals pursuant to subsection (c) (1). This subsection is also amended to require the show cause order and petition to be served, in addition to the attorney, on any guardian of the attorney and any known agent of the attorney. Proof of service in accordance with Rule 2-126 is no longer required.

Former section (c) is re-lettered as section (d). Section (d) is amended by including a reference to the show cause order also added to subsection (c) (2). Subsection (d) (1) is amended to permit the Court of Appeals to transfer an attorney to disability inactive status pending further order of the court

rather than placing an attorney on inactive status for an indefinite period. Stylistic changes are also made to section (d).

New section (e) is added which permits Bar Counsel to file a Statement of Charges if the Court of Appeals denies a petition filed under section (c) of this Rule.

Former section (d) is re-lettered as new section (f).

Former section (e) is re-lettered as new section (g). Section (g) is amended to clarify that Bar Counsel must notify the Court of Appeals when an attorney is no longer incapacitated as defined by Rule 19-701 (m). New subsection (g)(3) is added as a catchall provision for orders issued by the Court of Appeals in response to the notice from Bar Counsel mentioned in section (g). Stylistic changes are also made to section (g).

New section (h) is added pertaining to procedures to be followed in the event of an inability to defend on the part of an attorney. These procedures include appointing counsel for an attorney, appointing a guardian *ad litem* for the attorney, or both. This is consistent with Rule 18-441 (d) applicable in Judicial Disability Commission proceedings. The Court of Appeals may also designate a circuit court judge to hold a hearing to determine, by clear and convincing evidence, whether the attorney is able to assist in a defense.

New section (i) is added pertaining to the allocation of costs, and introduces procedures to be followed for fee petitions to be filed. This section also establishes that a fee award may be deemed a money judgment and specifies when payment may be sought for outstanding fee awards from the Disciplinary Fund.

Former section (f) is re-lettered as section (j).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 5. DISPOSITIONS BY COURT OF APPEALS

AMEND Rule 19-741 by renumbering it as Rule 19-740; by adding certain language and making stylistic changes to section (a) pertaining to circumstances in which an attorney is deemed to have waived oral argument; by adding new subsection (c) (1) (C) pertaining to probation; by re-lettering former subsections (c) (1) (C), (c) (1) (D), (c) (1) (E), and (c) (1) (F) as subsections (c) (1) (D), (c) (1) (E), (c) (1) (F), and (c) (1) (G), respectively; by making stylistic changes to subsection (c) (2); by replacing the word "court" with the word "Court" in subsection (c) (2) (A); by adding certain language to subsection (c) (2) (A) indicating that an order for indefinite suspension may include conditions for reinstatement; by deleting the cross reference following subsection (c) (2) (A); by adding a Committee note following subsection (c) (2) (A) clarifying that subsection (c) (2) (A) is not intended to conflict with Rule 19-752; by adding new subsection (c) (2) (B) pertaining to stays of execution of suspensions; by adding a Committee note after subsection (c) (2) (B) pertaining to the relevant factors to be considered before granting a stay of execution and probation; by adding new subsection (c) (2) (C)

pertaining to referrals to circuit court undertaken by Bar Counsel upon receipt of a report of material non-compliance; by adding new subsection (c) (2) (D) pertaining to actions to be taken by a circuit court upon a referral filed pursuant to subsection (c) (2) (C) and permitting exceptions to be filed; by adding new subsection (c) (2) (E) pertaining to the procedure to be followed by the Court in resolving a referral filed pursuant to subsection (c) (2) (C) whether or not exceptions are filed; and by replacing the word "placement" with the word "transfer" and the word "on" with the words "to disability," in section (e), as follows:

Rule ~~19-741~~ 19-740. DISPOSITION - GENERALLY

(a) Oral Argument

Unless oral argument is waived by the parties, the Court shall set a date for oral argument. Oral argument shall be conducted in accordance with Rule 8-522. An attorney is deemed to have waived oral argument where: (1) the attorney failed to file an answer pursuant to Rule 19-724 and the Judge entered an order of default pursuant to Rule 19-724 (c), (2) the order of default was not vacated, (3) the attorney failed to appear at the hearing held pursuant to Rule 19-727; and (4) the attorney failed to file any exceptions or recommendation for sanction pursuant to Rule 19-728 (b).

(b) Review by Court of Appeals

(1) Conclusions of Law

The Court of Appeals shall review de novo the circuit court judge's conclusions of law.

(2) Findings of Fact

(A) If No Exceptions are Filed

If no exceptions are filed, the Court may treat the findings of fact as established.

(B) If Exceptions are Filed

If exceptions are filed, the Court of Appeals shall determine whether the findings of fact have been proved by the requisite standard of proof set out in Rule 19-727 (c). The Court may confine its review to the findings of fact challenged by the exceptions. The Court shall give due regard to the opportunity of the hearing judge to assess the credibility of witnesses.

(c) Disposition

(1) Generally

The Court of Appeals may order (A) disbarment, (B) suspension, (C) probation under specified terms and conditions, ~~(C)(D)~~ a reprimand, ~~(D)(E)~~ placement on transfer to disability inactive status, ~~(E)(F)~~ dismissal of the disciplinary or remedial action, or ~~(F)(G)~~ a remand for further proceedings.

Cross reference: Rule 19-706 and Rule 19-305.3 (d).

(2) If Suspension Ordered

(A) The ~~court~~ Court may order a suspension for a fixed period of time or indefinitely. An order for indefinite suspension may provide that the attorney may not seek reinstatement until the expiration of a specified period and may include preset conditions for reinstatement.

Cross reference: For reinstatement, including reinstatement following a suspension for a fixed period, see Rules 19-751 and 19-752. Committee note: Rule 19-752 sets forth conditions to and the procedure for applying for reinstatement. Subsection (c)(2)(A) of this Rule is not intended to conflict with that Rule but allows the Court, in its Order of suspension, to include conditions for reinstatement as a guide to the attorney based on facts apparent at the time of suspension. That does not preclude the Court from requiring other or different conditions pursuant to Rule 19-752 based on circumstances apparent when the attorney petitions for reinstatement.

(B) Upon a request by Bar Counsel or the attorney or on its own initiative and for good cause, the Court may stay execution of a suspension and place the attorney on probation upon terms and conditions the Court finds appropriate, which may include any terms or conditions permitted in a Conditional Diversion Agreement. The Order staying execution of a suspension may include provisions for monitoring compliance with the terms and conditions and for prompt reporting to Bar Counsel, the attorney, and the Court of any material noncompliance.

Committee note: In determining whether to enter a stay of execution and place the attorney on probation, the Court should

consider, among any other relevant factors, whether (1) the attorney had been the subject of prior discipline or the dismissal of a complaint with a letter of cautionary advice or admonition; (2) the misconduct was repetitive in nature; (3) the misconduct was likely to have been episodic and out of character; (4) upon the attorney's satisfaction of conditions attached to the stay, misconduct was not likely to recur; (5) the attorney recognizes the misconduct and the severity of it and has shown genuine remorse; and (6) the attorney has provided or will provide adequate recompense for anyone harmed by his or her misconduct.

(C) Upon Bar Counsel's receipt of a report of material non-compliance, Bar Counsel shall petition the Court to request that the Court take such action as it finds appropriate, which may include an immediate lifting of the probation and stay of execution and a referral of the matter to a circuit court judge to conduct an evidentiary hearing and file with the Court of Appeals the judge's findings of fact and conclusions of law relating to the alleged non-compliance.

(D) In the event of such a referral, the judge shall send a copy of the judge's findings and conclusions to Bar Counsel and the attorney. Within 30 days after the sending of such notice, Bar Counsel, the Commission, and the attorney may file exceptions with the Court of Appeals. The excepting party shall serve the exceptions on the other parties.

(E) If no exceptions are timely filed, the Court may treat the findings of fact as established. If exceptions are timely filed, the Court shall proceed in accordance with Rule 19-

740(b)(2)(B). The Court may enter any further Order it finds appropriate.

(d) Decision

The decision of the Court of Appeals is final. The decision shall be evidenced by an order which the clerk shall certify under the seal of the Court. The order may be accompanied by an opinion.

(e) Effective Date of Order

Unless otherwise stated in the order, an order providing for the disbarment, suspension, or reprimand of an attorney or the ~~placement~~ transfer of an attorney ~~on~~ to disability inactive status shall take effect upon its filing with the Clerk of the Court.

Cross reference: For duties of the Clerk of Court of Appeals upon entry of certain orders, see Rule 19-761.

Source: This Rule is derived in part from former ~~Rule 16-759~~ ~~(2016)~~ Rule 19-741 (2021) and is in part new.

REPORTER'S NOTE

Rule 19-741 is proposed to be renumbered as Rule 19-740. This change is necessary to conform to the renumbering of Division 5 required by renumbering Rule 19-740 as new Rule 19-717.1.

Section (a) is amended to specify the circumstances in which an attorney is deemed to have waived oral argument.

New subsection (c)(1)(C) is added to permit a disposition of probation under specified terms and conditions. Stylistic

changes are also made to subsection (c)(1). A cross reference is added following subsection (c)(1). Stylistic changes are made to subsection (c)(2). Subsection (c)(2)(A) is amended by clarifying that the court referred to is the Court of Appeals, and by specifying that an order for indefinite suspension may include preset conditions for reinstatement. The cross reference following subsection (c)(2)(A) is deleted. A Committee Note following subsection (c)(2)(A) is added, clarifying that subsection (c)(2)(A) is not intended to conflict with Rule 19-752. New subsection (c)(2)(B) is added concerning probation upon terms and conditions. A Committee Note is added following subsection (c)(2)(B) explaining the relevant factors to be considered before granting a stay of execution and probation. New subsection (c)(2)(C) is added pertaining to referrals to circuit court undertaken by Bar Counsel upon receipt of a report of material non-compliance. New subsection (c)(2)(D) is added pertaining to actions to be taken by a circuit court upon receipt of a referral filed pursuant to subsection (c)(2)(C). This provision permits exceptions to be filed. New subsection (c)(2)(E) is added pertaining to the procedure to be followed by the Court in resolving a referral filed pursuant to subsection (c)(2)(C) whether exceptions are filed or not.

Section (e) is amended so that a matter is now "transferred to disability status" rather than having an attorney "placed on inactive status."

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 5. DISPOSITIONS BY COURT OF APPEALS

AMEND Rule 19-742 by renumbering it as Rule 19-741; by making stylistic changes; by adding certain language to section (a) pertaining to an order accepting resignation and the use of e-mail addresses located in the AIS database to provide notice of a disposition by the Court of Appeals; by deleting certain language in section (a) pertaining to electronic mail; by adding certain language to section (b) pertaining to an order accepting resignation; by adding a cross reference following subsection (b) (3) referencing Rule 19-305.3 and Code, Business Occupations and Professions Article, § 10-101; by deleting the word "Myspace" from the Committee note following subsection (b) (5); by adding "Instagram" and "YouTube" to the Committee note following subsection (b) (5); by amending the reference to Rule 19-740 to Rule 19-717.1 in the cross reference following subsection (b) (6) (B); by adding new subsection (b) (7) prohibiting a disbarred or suspended attorney from engaging in law-related activities while employed or retained by an attorney; by adding new subsection (c) (3) (B) pertaining to notices which must be sent by a disbarred or suspended attorney

to certain persons concerning the disbarred or suspended attorney's status as a fiduciary; by re-lettering former subsection (c) (3) (B) as subsection (c) (3) (C); and by adding new subsection (c) (3) (C) (vii) requiring a suspended or disbarred attorney to provide a copy of any notices sent pursuant to subsection (c) (3) (B) of this Rule to Bar Counsel, as follows:

Rule ~~19-742~~ 19-741. ORDER OF DISBARMENT OR SUSPENSION; ORDER ACCEPTING RESIGNATION

(a) Duties of Clerk

Upon the filing of an order of disbarment or suspension, or order accepting resignation under Rule 19-735, the Clerk of the Court of Appeals shall (1) notify the attorney ~~in writing~~ by first-class mail and by e-mail to the attorney at each e-mail address for the attorney listed in AIS ~~, and, if practicable, by electronic mail,~~ and (2) comply with Rule 19-761.

(b) Effect of Order

Except as provided in section (c) of this Rule, after the effective date of an order of disbarment or suspension, or an order accepting resignation, an attorney may not:

(1) practice law or offer to practice law in this State, either directly or through any other person;

(2) undertake any new representation of existing clients or any representation of new clients;

(3) solicit or procure any legal business or retainer for an attorney, whether or not for personal gain;

Cross reference: See Rule 19-305.3 (d) (B) (i)-(vii) and Code, Business Occupations and Professions Article, § 10-101.

(4) share in any fees for legal services performed by another attorney, but may be compensated for the reasonable value of services rendered prior to the effective date of the order;

(5) use any business card, sign, advertisement, social networking media, website, or other form of communication suggesting that the attorney is entitled to practice law or maintain, alone or with another, an office for the practice of law; or

Committee note: Examples of social networking media include Facebook, LinkedIn, ~~Myspace~~ Instagram, YouTube, and Twitter.

(6) except for the limited purpose of complying with the requirements of section (c) of this Rule:

(A) occupy, share, or use office space in which an attorney practices law unless under circumstances clearly indicating to clients, prospective clients, and individuals who may visit the office that the attorney is not an attorney and is not permitted to practice law; or

(B) use any stationery, bank account, checks, or labels on which the attorney's name appears as an attorney or in connection with any office for the practice of law.

Cross reference: For the applicability of the provisions of section (b) of this Rule to an attorney who is placed on permanent retired status, see Rule ~~19-740~~ 19-717.1 (e) (4).

(7) engage in any law-related activities while employed or retained by an attorney, except as permitted by Rule 19-305.3
(d).

(c) Affirmative Duties of Attorney

Unless the Court orders otherwise, an attorney who has been disbarred or suspended shall take the following actions:

(1) Requirements to be Completed Within 15 Days

Within 15 days after the effective date of the order, the attorney shall:

(A) conclude all client matters that can be concluded within that period;

(B) supply to Bar Counsel or an attorney designated by Bar Counsel pursuant to section (e) of this Rule (i) the names, addresses, and telephone numbers of all of the attorney's current clients and (ii) identify, by client name, tribunal, and docket reference, all client matters pending in any court or other tribunal or agency; and

(C) mail a letter giving notice of the order and of the effective date of the attorney's disbarment or suspension to (i) all of the attorney's current clients, (ii) counsel for each party and any self-represented party in all pending actions, proceedings, negotiations, or transactions, and (iii) each

attorney with whom the attorney is associated in the practice of law.

Committee note: An attorney's current clients include persons who have hired the attorney on retainer. A person may be a current client even if the attorney was not actively performing any legal work for that person on the date of disbarment or suspension.

(2) Requirements to be Completed Promptly and Within 30 Days

As soon as practicable but within 30 days after the effective date of the order, the attorney shall:

(A) take or cause to be taken, without charging any additional fee, any action immediately necessary to protect the interests of current clients which, as a practical matter, cannot otherwise be protected;

Committee note: The intent of subsection (c)(2)(A) of this Rule is to assure that existing clients are not unduly harmed by the attorney's immediate disbarment or suspension by requiring the attorney, during a brief grace period and without any additional fee, to deal with urgent matters necessary to protect the clients' interests, such things as requesting a postponement of closely impending hearings or trials or filing a paper in a pending case which, if not done prior to the client's practical ability to obtain another attorney, would result in significant harm to the client. See *Attorney Grievance v. Maignan*, 402 Md. 39 (2007). This is intended as a very narrow and time-limited exception to the prohibition against practicing law. Because the need for such action arises solely from the attorney's disbarment or suspension, the Rule prohibits the charging of a fee for those services.

(B) inform current clients, in writing, that the client may obtain another attorney, and that it may be necessary for the client to obtain another attorney depending upon the status of the client's case or legal matter.

(C) deliver to clients with pending matters all papers and other property to which the clients are entitled or notify the clients and any co-counsel of a suitable time and place to obtain the papers and property and call attention to any urgent need to obtain them;

(D) notify the disciplinary authority in each jurisdiction in which the attorney is admitted to practice of the disciplinary sanction imposed by the Court of Appeals; and

(E) unless the attorney is suspended for a fixed period of time not exceeding one year, request the publisher of each telephone directory or law listing to remove each listing or reference that suggests that the attorney is eligible to practice law; request the attorney's name be removed from the law firm's website and letterhead; and remove any reference that the attorney is eligible to practice law from any website or social networking profile, regardless of whether the website or profile is that of the attorney individually or of a law firm or other group or entity.

(3) Requirements to be Completed Within 30 Days

Within 30 days after the effective date of the order, the attorney shall:

(A) withdraw from all client matters; ~~and~~

(B) in all cases in which the attorney is then acting, or thereafter attempts to act, in any specified fiduciary capacity,

including, but not limited to, power of attorney, personal representative, trustee, administrator, guardian, receiver or conservator, promptly notify in writing all (1) co-fiduciaries, (2) beneficiaries, and (3) courts out of which the matter arose, of the attorney's disbarment, suspension, or transfer to disability inactive status. Such notice shall clearly state the name of the matter, any caption and docket number, and, if applicable, the name and date of death or current residence of the decedent, settlor, individual or entity with respect to whose assets the attorney is acting as a fiduciary; and

~~(B)~~ (C) file with Bar Counsel an affidavit that states or is accompanied by:

(i) the manner and extent to which the attorney has complied with the order and this Rule;

(ii) all actions taken by the attorney pursuant to subsection (c) (2) (A) and (B) of this Rule;

(iii) the names of all State and Federal jurisdictions in which and administrative agencies before which the attorney has been admitted to practice;

(iv) the residence and other addresses of the attorney to which future communications may be directed;

(v) the name and address of each insurer that provided malpractice insurance coverage to the attorney during the past

five years, the policy number of each policy, and the inclusive dates of coverage; ~~and~~

(vi) a copy of each letter sent pursuant to subsection (c) (2) (B) of this Rule; and

(vii) a copy of each notice sent pursuant to subsection (c) (3) (B) of this Rule.

(d) Duties of Bar Counsel

Bar Counsel shall enforce the order and the provisions of this Rule. Bar Counsel may designate an attorney to monitor compliance by the disbarred or suspended attorney and to receive the lists and copies of letters required by subsections (c) (1) (B) and (c) (2) (B) of this Rule.

(e) Conditions on Reinstatement

(1) Time for Application

In an order that suspends an attorney for an indefinite period, the Court may permit the attorney to apply for reinstatement after a minimum period of time specified in the Order.

(2) Other Conditions to or Upon Reinstatement

In an order of suspension for an indefinite or fixed period entered under this Rule, the Court may require, as a condition precedent to reinstatement or as a condition of probation after reinstatement, one or more of the requirements set forth in Rule 19-752.

Cross reference: For reinstatement, including reinstatement following a suspension for a fixed period, see Rules 19-751 and 19-752.

(f) Responsibility of Affiliated Attorneys

After the effective date of an order that disbars or suspends an attorney or places an attorney on inactive status, no attorney may assist the disbarred or suspended attorney in any activity that constitutes the practice of law or in any activity prohibited under section (a) of this Rule. Upon notice of the order, an attorney associated with the disbarred or suspended attorney as a partner, or member or shareholder of a law firm, shall take reasonable action to ensure compliance with this Rule. The law firm may give written notice to any client of the disbarred or suspended attorney of that attorney's inability to practice law and of its willingness to represent the client with the client's consent.

(g) Non-Admitted Attorney

(1) Duties of Clerk

On the effective date of an order by the Court of Appeals that disbars or suspends a non-admitted attorney, the Clerk of the Court of Appeals shall place the name of that attorney on a list maintained in that Court of non-admitted attorneys who are excluded from exercising in any manner the privilege of practicing law in the State. The Clerk also shall forward a copy of the order to the clerks of all courts in this

State, including the U.S. District Court for the District of Maryland, the U.S. Court of Appeals for the 4th Circuit, and the U.S. Supreme Court, and to the State Court Administrator and the Board of Law Examiners to be maintained with the docket of out-of-state attorneys who are denied special admission to practice under the Rules Governing Admission to the Bar of Maryland. The Clerk shall give the notice required by Rule 19-707 (e).

(2) Effect of Order

After the effective date of an order entered under this section, the attorney may not practice law in this State and is disqualified from admission to the practice of law in this State.

(h) Modification of Order

Upon joint stipulation or verified motion filed by the attorney, the Court of Appeals may reduce a period of suspension, waive a requirement or condition imposed by this Rule or by order, or otherwise modify an order entered under this Rule. Relief may be denied without a hearing unless it appears from the stipulation or from clear and convincing evidence submitted with the motion that the respondent is attempting in good faith to comply with the order but that full and exact compliance has become impossible or will result in unreasonable hardship. If necessary to resolve a genuine issue of material fact, the Court may enter an order designating a

judge in accordance with Rule 19-722 to hold a hearing in accordance with Rule 19-727.

(i) Sanctions for Violations

(1) Disciplinary or Remedial Action

Upon receiving information from any source that the attorney has violated section (b) or (c) of this Rule or the order of the Court of Appeals, Bar Counsel shall investigate the matter. In addition to any other remedy, Bar Counsel may file a Petition for Disciplinary or Remedial Action pursuant to Rule 19-721 based on the violation.

(2) Injunction

Upon receiving information from any source that the attorney is violating sections (b) or (c) of this Rule, Bar Counsel may institute or intervene in an action in any court with jurisdiction to enjoin the respondent from further violations.

(3) Contempt

If the attorney violates an order of the Court of Appeals, Bar Counsel may request the initiation of a proceeding for constructive criminal contempt pursuant to Rule 15-205 and may institute a proceeding for constructive civil contempt pursuant to Rule 15-206.

Source: This Rule is derived, ~~in part, from former Rule 16-760 (2016)~~ in part from former Rule 19-742 (2021) and is in part new.

REPORTER'S NOTE

Rule 19-742 is proposed to be renumbered as Rule 19-741. This change is necessary to conform to the renumbering of Division 5 required by renumbering Rule 19-740 as new Rule 19-717.1. Stylistic changes are also made to Rule 19-741.

Section (a) is amended to add an order accepting a resignation under Rule 19-735 to the list of filings applicable to this section. Subsection (a)(1) is amended so that the Clerk of the Court of Appeals may now provide notice to the attorney via any e-mail address contained in AIS in addition to first class mail.

Section (b) is amended to add an order accepting resignation to the list of discipline. A cross reference is added following subsection (b)(3) referencing Rule 19-305.3 and Code, Business Occupations and Professions Article, § 10-101. The committee note following subsection (b)(5) is amended by replacing "Myspace" with "Instagram" and "YouTube."

The cross reference following subsection (b)(6)(B) is amended to change the reference to Rule 19-740 with a reference to Rule 19-717.1.

New subsection (b)(7) is added which prohibits a disbarred or suspended attorney from engaging in law-related activities while employed or retained by an attorney, except as permitted by Rule 19-305.3 (d).

New subsection (c)(3)(B) is added pertaining to a notice which must be sent by a disbarred or suspended attorney to any individual on whose behalf the disbarred or suspended attorney was engaged as a fiduciary. Stylistic changes are also made to subsection (c)(3)(C). New subsection (c)(3)(C)(vii) is added to require a suspended or disbarred attorney to provide a copy of any notices sent pursuant to subsection (c)(3)(B) of this Rule to Bar Counsel.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 5. DISPOSITIONS BY COURT OF APPEALS

RENUMBER Rule 19-743 as Rule 19-742, as follows:

Rule ~~19-743~~ 19-742. ORDER OF REPRIMAND

(a) Accompanying Requirements

As part of a reprimand, the Court may require the attorney:

(1) to reimburse a client for any part of fees paid in advance for legal services that were not completed;

(2) to make restitution to a client for any other sum found to be due to the client;

(3) to pay all costs assessed by the order of reprimand;

(4) to issue a public apology to designated persons; and

(5) to take any other corrective action that the Court finds reasonable and appropriate.

(b) Content of Order

Unless accompanied by a reported opinion, an order that reprimands an attorney shall (1) summarize the misconduct for which the reprimand is imposed, (2) include specific reference to any rule or statute violated by the attorney, and (3) state

any requirements imposed on the attorney pursuant to section (a) of this Rule. Upon the entry of an order that reprimands an attorney, the Clerk of the Court of Appeals shall give the notice required by Rule 19-707 (e).

Source: This Rule is derived from former Rule 19-743 (2021) ~~16-760 (b) (2016)~~.

REPORTER'S NOTE

Rule 19-743 is proposed to be renumbered as Rule 19-742. This change is necessary to conform to the renumbering of Division 5 required by renumbering Rule 19-740 as new Rule 19-717.1.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 5. DISPOSITIONS BY COURT OF APPEALS

AMEND Rule 19-744 by renumbering it as Rule 19-743; by making stylistic changes; by deleting "placing" and "on" in subsection (a) (1); by adding "transferring" and "to disability" to subsection (a) (1); by replacing each reference in this Rule to Rule 19-742 with a reference to Rule 19-741; by deleting certain language from subsection (a) (2) pertaining to the Court of Appeals; by adding "may" to subsection (a) (2); by deleting former subsection (a) (2) (B) pertaining to the incapacitated attorney being required to cooperate with a conservator or court-appointed attorney; by adding new subsection (a) (2) (B) permitting an attorney to be appointed pursuant to Rule 19-739; by adding new subsection (a) (2) (C) in order to permit both subsections (a) (2) (A) and (a) (2) (B) to apply; and by replacing the reference to Rule 19-701 (g) in the Committee note following subsection (a) (2) (C) with a reference to Rule 19-701 (m), as follows:

Rule ~~19-744~~ 19-743. ~~PLACEMENT ON~~ ORDER OF TRANSFER TO
DISABILITY INACTIVE STATUS

(a) Effect of Order

(1) Generally

After the effective date of an order ~~placing~~ transferring an attorney ~~on~~ to disability inactive status, the attorney (A) may not engage in any conduct prohibited to a disbarred or suspended attorney under Rule ~~19-742~~ 19-741 (a), and (B) except as provided in subsection (a)(2) of this Rule, must perform the duties required by Rule ~~19-742~~ 19-741 (c).

(2) If Attorney Unable to Comply With Rule ~~19-742~~ 19-741 (c)

If, due to the nature or severity of the attorney's incapacity, the attorney is unable to perform the duties required by Rule ~~19-742~~ 19-741 (c) and satisfactory arrangements have not been made for the performance of those duties, ~~the Court of Appeals may (A) direct Bar Counsel to~~ may seek (A) the appointment of a conservator pursuant to Rule 19-734, and (B) direct that the incapacitated attorney cooperate to the best of the attorney's ability with the conservator or other attorney (B) the appointment of counsel pursuant to Rule 19-739 (h), or (C) both.

Committee note: Because placement of an attorney on inactive status arises only from a finding of incapacity, as defined in Rule 19-701 ~~(g)~~ (m), there may be a legitimate question of whether the attorney is competent to fulfill the winding up obligations set forth in Rule ~~19-742~~ 19-741 (c). Unless another attorney capable of performing those duties has agreed to do so, Bar Counsel and the Court should give consideration to whether a conservator may need to be appointed to perform those duties.

(b) Duties of Clerk

Upon the filing of the order, the Clerk of the Court of Appeals shall take the actions specified in Rule ~~19-742~~ 19-741

(a).

(c) Duties of Bar Counsel

Bar Counsel shall perform the duties specified in Rule ~~19-742~~ 19-741 (d).

(d) Conditions on Reinstatement

In an order that places an attorney on inactive status, the Court may permit the attorney to apply for reinstatement after a minimum period of time and upon conditions specified in Rule 19-753.

(e) Other Provisions of Rule ~~19-742~~ 19-741

The provisions of Rule ~~19-742~~ 19-741 (f), (g), (h), and (i) shall apply with respect to an order entered under this Rule.

Source: This Rule is derived ~~in part from former Rule 16-760 (2016)~~ from former Rule 19-744 (2021).

REPORTER'S NOTE

Rule 19-744 is proposed to be renumbered as Rule 19-743. Rule 19-744 is amended to change each reference to Rule 19-742 with a reference to Rule 19-741. These amendments are necessary to conform to the renumbering of Division 5 required by renumbering Rule 19-740 as new Rule 19-717.1. Stylistic changes are also made to Rule 19-743.

Subsection (a) (1) is amended so that a matter is "transferred to disability inactive status" rather than having an attorney "placed on inactive status." Subsection (a) (2) is amended so that Bar Counsel is permitted to seek the appointment of a conservator rather than having the Court direct Bar Counsel to do so. This subsection is also amended to delete former subsection (a) (2) (B) (requiring the incapacitated attorney to cooperate with a conservator or court-appointed attorney) and replacing it with proposed new subsection (a) (2) (B), which permits the appointment of an attorney or conservator, or both for the attorney pursuant to Rule 19-739 (h). New subsection (a) (2) (C) is added in order to permit both subsections (a) (2) (A) and (a) (2) (B) to apply, if necessary. The Committee note following subsection (a) (2) (C) is amended by replacing the reference to Rule 19-701 (g) to Rule 19-701 (m) to conform to the proposed changes made to Rule 19-701.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 6. REINSTATEMENT

AMEND Rule 19-751 by adding certain language to subsection (c) (3) pertaining to the caption required for a petition for reinstatement and by replacing the reference to former Rule 19-742 with Rule 19-741, as follows:

Rule 19-751. REINSTATEMENT - SUSPENSION SIX MONTHS OR LESS

(a) Scope of Rule

This Rule applies to an attorney who has been suspended for a fixed period of time not exceeding six months.

(b) Reinstatement Not Automatic

An attorney subject to this Rule is not automatically reinstated upon expiration of the period of suspension. An attorney is not reinstated until the Court of Appeals enters an Order of Reinstatement.

(c) Petition for Reinstatement

(1) Requirement

An attorney who seeks reinstatement shall file a verified petition for reinstatement with the Clerk of the Court

of Appeals and serve a copy on Bar Counsel. The attorney shall be the petitioner and Bar Counsel shall be the respondent.

(2) Timing

The petition may not be filed earlier than ten days prior to the end of the period of suspension.

(3) Content

The petition shall be captioned "In the Matter of the Petition for Reinstatement of XXXX to the Bar of Maryland" and shall state the effective date of the suspension and the asserted date of its completion, certify that (A) the attorney has complied with Rule ~~19-742~~ 19-741 and all requirements and conditions specified in the suspension order and (B) to the best of the attorney's knowledge, information, and belief, no complaints or disciplinary proceedings are currently pending against the attorney. The petition shall be accompanied by (i) a copy of the Court's order imposing the suspension, (ii) any opinion that accompanied that order, and (iii) any filing fee prescribed by law.

(d) Review by Bar Counsel

Bar Counsel shall promptly review the petition and, within five days after service, shall file with the Clerk of the Court of Appeals and serve on the attorney any objection to the reinstatement. The basis of the objection shall be stated with particularity.

(e) Action by Court of Appeals

(1) If No Timely Objection Filed

If Bar Counsel has not filed a timely objection, the Clerk shall promptly forward to the Chief Judge or a judge of the Court designated by the Chief Judge the petition, a certificate that no objection had been filed, and a proposed Order of Reinstatement. The Chief Judge or the designee may sign and file the order on behalf of the Court.

(2) If Timely Objection Filed

If Bar Counsel files a timely objection, the Clerk shall refer the matter to the full Court for its consideration. The Court may overrule Bar Counsel's objections and enter an Order of Reinstatement or set the matter for hearing.

(f) Effective Date of Reinstatement Order

An order that reinstates the petitioner may provide that it shall become effective immediately or on a date stated in the order.

(g) Duties of Clerk

(1) Attorney Admitted to Practice

Promptly after the effective date of an order that reinstates a petitioner, the Clerk of the Court of Appeals shall comply with Rule 19-761.

(2) Attorney Not Admitted to Practice

Upon receiving a reinstatement notice authorized by section (e) of this Rule, or on the effective date of an order or notice that reinstates a petitioner not admitted by the Court of Appeals to practice law, the Clerk of the Court of Appeals shall remove the petitioner's name from the list maintained in that Court of non-admitted attorneys who are ineligible to practice law in this State, and shall certify that fact to the Board of Law Examiners and the clerks of all courts in the State.

(h) Motion to Vacate Reinstatement

Bar Counsel may file a motion to vacate an order that reinstates the petitioner if (1) the petitioner has failed to demonstrate substantial compliance with the order, including any condition of reinstatement imposed under Rule 19-752 (i) or (2) the petition filed under section (a) of this Rule contains a false statement or omits a material fact, the petitioner knew the statement was false or the fact was omitted, and the true facts were not disclosed to Bar Counsel prior to entry of the order. The petitioner may file a verified response within 15 days after service of the motion, unless a different time is ordered. If there is a factual dispute to be resolved, the court may enter an order designating a judge in accordance with Rule 19-722 to hold a hearing. The judge shall allow reasonable time for the parties to prepare for the hearing and may

authorize discovery pursuant to Rule 19-726. The applicable provisions of Rule 19-727 shall govern the hearing. The applicable provisions of Rules 19-728 and 19-729, except section (c) of Rule 19-729, shall govern any subsequent proceedings in the Court of Appeals. The Court may reimpose the discipline that was in effect when the order was entered or may impose additional or different discipline.

Source: This Rule is new.

REPORTER'S NOTE

Subsection (c) (3) of Rule 19-751 is proposed to be amended to add the caption required for a petition for reinstatement. This subsection is also amended to replace the reference to Rule 19-742 with a reference to Rule 19-741. This amendment is necessary to conform to the renumbering of Division 5 required by renumbering Rule 19-740 as new Rule 19-717.1.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 6. REINSTATEMENT

AMEND Rule 19-752 by making stylistic changes; by deleting "placed on" from section (a); by adding "transferred to disability" to section (a); by adding certain language to subsection (c) (3) pertaining to the format of a caption in a petition for reinstatement; by adding certain language to subsection (c) (3) (A) pertaining to the requirement to include all disciplinary actions pending against an attorney as of the date of the attorney's disbarment or suspension along with a petition to reinstate; by replacing each reference to former Rule 19-741 with Rule 19-740, former Rule 19-742 with Rule 19-741, and former Rule 19-744 with Rule 19-743; by adding new subsection (c) (3) (F) requiring an attorney to provide an averment that no complaints or disciplinary proceedings are pending against the attorney when a petition to reinstate is filed; by making stylistic changes to subsection (c) (3); by adding the words "or held" to subsection (d) (2) (H); by replacing the words "placed on" with the words "transferred to disability" in the tagline and body of subsection (d) (3); by correcting a typo in subsection (d) (3) (B); by replacing the words "placed on"

with the words "transferred to disability" in subsection (h) (2) (C); by adding certain language to section (i) limiting the number of petitions for reinstatement that may be filed without the consent of Bar Counsel to three; by replacing "Maryland Bar" with "Uniform Bar" in subsection (j) (2); and by adding new language to subsection (j) (2) pertaining to the Multistate Professional Responsibility Examination, as follows:

Rule 19-752. REINSTATEMENT - OTHER SUSPENSION; DISBARMENT;
DISABILITY INACTIVE STATUS; RESIGNATION

(a) Scope of Rule

This Rule applies to an attorney who has been disbarred, suspended indefinitely, suspended for a fixed period longer than six months, or ~~placed on~~ transferred to disability inactive status or who has resigned from the practice of law.

(b) Reinstatement Not Automatic

An attorney subject to this Rule is not automatically reinstated upon expiration of the period of suspension. An attorney is not reinstated until the Court of Appeals enters an Order of Reinstatement.

(c) Petition for Reinstatement

(1) Requirement

An attorney who seeks reinstatement under this Rule shall file a verified petition for reinstatement with the Clerk

of the Court of Appeals and serve a copy on Bar Counsel. The attorney shall be the petitioner. Bar Counsel shall be the respondent.

(2) Timing Following Order of Suspension or Disbarment

(A) If the attorney was suspended for a fixed period, the petition may not be filed earlier than 30 days prior to the end of the period of suspension.

(B) If the attorney was suspended for an indefinite period or disbarred, the petition may not be filed earlier than (i) the time specified in the order of suspension or disbarment.

(3) Content

The petition shall be captioned "In the Matter of the Petition for Reinstatement of XXXXX to the bar of Maryland" and state or be accompanied by the following:

(A) docket references to all prior disciplinary or remedial actions, including all actions pending as of the date of the attorney's disbarment or suspension, to which the attorney was a party;

(B) a copy of the order that disbarred or suspended the attorney, placed the attorney on inactive status, or accepted the resignation of the attorney and any opinion of the Court that accompanied the order;

(C) that the attorney has complied in all respects with the provisions of Rule ~~19-742~~ 19-741 or, if applicable, Rule ~~19-~~

~~744~~ 19-743, and with any terms or conditions stated in the disciplinary or remedial order;

(D) a description of the conduct or circumstances leading to the order of disbarment, suspension, placement on inactive status, or acceptance of resignation; ~~and~~

(E) facts establishing the attorney's subsequent conduct and reformation, present character, present qualifications and competence to practice law, and ability to satisfy the criteria set forth in section (h) of this Rule; and

(F) a statement that, to the best of the attorney's knowledge, information, and belief, no complaints or disciplinary proceedings are currently pending against the attorney.

(d) Information for Bar Counsel

(1) Generally

Upon the filing of the petition, the attorney shall separately supply to Bar Counsel, in writing, the following information:

(A) the attorney's current address, e-mail address, if any, and telephone number;

(B) the information specified in subsection (c)(2) or (c)(3) of this Rule, as applicable;

(C) evidence establishing compliance with all applicable requirements set forth in section (h) of this Rule;

(D) a statement of whether the attorney has applied for reinstatement in any other jurisdiction and the current status of each such application; and

(E) any other information that the attorney believes is relevant to determining whether the attorney possesses the character and fitness necessary for reinstatement; and

(2) If Disbarred or Suspended

If the attorney has been disbarred or suspended, the information supplied to Bar Counsel shall include:

(A) the address of each residence of the attorney during the period of discipline, with inclusive dates of each residence;

(B) the name, address, e-mail address, if any, and telephone number of each employer, associate, and partner of the attorney during the period of discipline, together with (i) the inclusive dates of each employment, association, and partnership, (ii) the positions held, (iii) the names of all immediate supervisors, and (iv) if applicable, the reasons for termination of the employment, association, or partnership;

(C) the case caption, general nature, and disposition of each civil and criminal action pending during the period of discipline to which the attorney was a party or in which the attorney claimed an interest;

(D) a statement of monthly earnings and all other income during the period of discipline, including the source;

(E) copies of the attorney's state and federal income tax returns for the three years preceding the effective date of the order of disbarment or suspension and each year thereafter;

(F) a statement of the attorney's assets and financial obligations;

(G) the names and addresses of all creditors;

(H) a statement identifying all other business or occupational licenses or certificates applied for or held during the period of discipline and the current status of each application; and

(I) the name and address of each financial institution at which the attorney maintained or was signatory on any account, safe deposit box, deposit, or loan during the period of discipline and written authorization for Bar Counsel to obtain financial records pertaining to such accounts, safe deposit boxes, deposits, or loans.

(3) If ~~Placed on~~ Transferred to Disability Inactive Status

If the attorney was ~~placed on~~ transferred to disability inactive status, the information supplied to Bar Counsel shall include:

(A) the name, address, and telephone number of each health care provider or addiction care provider and institution that

examined or treated the attorney for incapacity during the period of inactive status; and

(B) a written waiver of any physician-patient privilege with respect to each psychiatrist, psychologist, or psychiatric-mental health nursing specialist named in subsection (d) (3) (A) of this Rule.

(e) Response to Petition

(1) Generally

Within 30 days after service of the petition, Bar Counsel shall file and serve on the attorney a response. Except as provided in subsection (d) (2) of this Rule, the response shall admit or deny the averments in the petition in accordance with Rule 2-323 (c). The response may include Bar Counsel's recommendations in support of or opposition to the petition and with respect to any conditions to reinstatement.

(2) Consent

If Bar Counsel is satisfied that the attorney has complied fully with the provisions of Rule ~~19-742~~ 19-741 and any requirements or conditions in the order of suspension or disbarment, and there are no known complaints or disciplinary proceedings pending against the attorney, the response may be in the form of a consent to the reinstatement.

(f) Disposition

(1) Consent by Bar Counsel

If, pursuant to subsection (e) (2) of this Rule, Bar Counsel has filed a consent to reinstatement, the Clerk shall proceed in accordance with Rule 19-751 (e) (1).

(2) Other Cases

In other cases, upon review of the petition and Bar Counsel's response, the Court may (A) without a hearing, dismiss the petition or grant the petition and enter an order of reinstatement with such conditions as the Court deems appropriate, or (B) order further proceedings in accordance with section (g) of this Rule.

(g) Further Proceedings

(1) Order Designating Judge

If the Court orders further proceedings pursuant to subsection (f) (2) (B) of this Rule, it shall enter an order designating a judge of any circuit court to hold a hearing.

(2) Discovery

The judge shall allow reasonable time for Bar Counsel to investigate the petition and, subject to Rule 19-726, to take depositions and complete discovery.

(3) Hearing

The applicable provisions of Rule 19-727 shall govern the hearing and the findings and conclusions of the judge, except that the attorney shall have the burden of proving the averments of the petition by clear and convincing evidence.

(4) Proceedings in Court of Appeals

The applicable provisions of Rules 19-728 and 19-729 (a), (b), and (d) shall govern subsequent proceedings in the Court of Appeals. The Court may (A) dismiss the petition, (B) order reinstatement, with such conditions as the Court deems appropriate, or (C) remand for further proceedings.

(h) Criteria for Reinstatement

(1) Generally

In determining whether to grant a petition for reinstatement, the Court of Appeals shall consider the nature and circumstances of the attorney's conduct that led to the disciplinary or remedial order and the attorney's (A) subsequent conduct, (B) current character, and (C) current qualifications and competence to practice law.

(2) Specific Criteria

The Court may order reinstatement if the attorney meets each of the following criteria or presents sufficient reasons why reinstatement should be ordered in the absence of satisfaction of one or more of those criteria:

(A) the attorney has complied in all respects with the provisions of Rule ~~19-742~~ 19-741 or, if applicable, ~~19-744~~ 19-743 and with the terms and conditions of prior disciplinary or remedial orders;

(B) the attorney has not engaged in or attempted or offered to engage in the unauthorized practice of law during the period of disbarment, suspension, or inactive status;

(C) if the attorney was ~~placed on~~ transferred to disability inactive status, the incapacity or infirmity, including alcohol or drug abuse no longer exists and is not likely to recur in the future;

(D) if the attorney was disbarred or suspended, the petitioner recognizes the wrongfulness and seriousness of the professional misconduct for which discipline was imposed;

(E) the attorney has not engaged in any professional misconduct or, other than minor traffic or municipal infractions, any unlawful activity since the imposition of discipline;

(F) the attorney currently has the requisite honesty and integrity to practice law;

(G) the attorney has kept informed about recent developments in the law and is competent to practice law; and

(H) the attorney has complied with all financial obligations required by these Rules or by court order, including (i) reimbursement of all amounts due to the attorney's former clients, (ii) payment of restitution which, by court order, is due to the attorney's former clients or any other person, (iii) reimbursement of the Client Protection Fund for all claims that

arose out of the attorney's practice of law and satisfaction of all judgments arising out of such claims, and (iv) payment of all costs assessed by court order or otherwise required by law.

(i) Subsequent Petitions

Except upon order of the Court of Appeals, an attorney may not file a petition for reinstatement sooner than one year after the Court denied a prior petition for reinstatement. Absent leave of Court or the consent of Bar Counsel, an attorney may not file more than three petitions for reinstatement.

(j) Conditions to Reinstatement

An order that reinstates an attorney may include, as a condition precedent to reinstatement or as a condition of probation after reinstatement that the attorney:

(1) take the oath of attorneys required by Code, Business Occupations and Professions Article, § 10-212;

(2) pass either the comprehensive ~~Maryland Bar~~ Uniform Bar examination, ~~or~~ an attorney examination administered by the Board of Law Examiners, or the Multistate Professional Responsibility Examination;

(3) attend a bar review course approved by Bar Counsel and submit to Bar Counsel satisfactory evidence of attendance;

(4) submit to Bar Counsel evidence of successful completion of a professional ethics course at an accredited law school;

(5) submit to Bar Counsel evidence of attendance at the professionalism course required for newly-admitted attorneys;

(6) engage an attorney satisfactory to Bar Counsel to monitor the attorney's legal practice for a period stated in the order of reinstatement;

(7) limit the nature or extent of the attorney's future practice of law in the manner set forth in the order of reinstatement;

(8) participate in a program tailored to individual circumstances that provides the attorney with law office management assistance, attorney assistance or counseling, treatment for substance or gambling abuse, or psychological counseling;

(9) demonstrate, by a report of a health care professional or other evidence, that the attorney is mentally and physically competent to resume the practice of law;

(10) issue an apology to one or more persons; or

(11) take any other corrective action that the Court deems appropriate.

(k) Effective Date of Reinstatement Order

An order that reinstates the petitioner may provide that it shall become effective immediately or on a date stated in the order.

(l) Duties of Clerk

(1) Attorney Admitted to Practice

Promptly after the effective date of an order that reinstates a petitioner, the Clerk of the Court of Appeals shall comply with Rule 19-761.

(2) Attorney Not Admitted to Practice

Upon receiving a reinstatement notice authorized by section (e) of this Rule, or on the effective date of an order or notice that reinstates a petitioner not admitted by the Court of Appeals to practice law, the Clerk of the Court of Appeals shall remove the petitioner's name from the list maintained in that Court of non-admitted attorneys who are ineligible to practice law in this State, and shall certify that fact to the Board of Law Examiners and the clerks of all courts in the State.

(m) Motion to Vacate Reinstatement

Bar Counsel may file a motion to vacate an order that reinstates the petitioner if (1) the petitioner has failed to demonstrate substantial compliance with the order, including any condition of reinstatement imposed under Rule 19-752 (h) or section (j) of this Rule or (2) the petition filed under section (a) of this Rule contains a false statement or omits a material fact, the petitioner knew the statement was false or the fact was omitted, and the true facts were not disclosed to Bar Counsel prior to entry of the order. The petitioner may file a

verified response within 15 days after service of the motion, unless a different time is ordered. If there is a factual dispute to be resolved, the court may enter an order designating a judge in accordance with Rule 19-722 to hold a hearing. The judge shall allow reasonable time for the parties to prepare for the hearing and may authorize discovery pursuant to Rule 19-726. The applicable provisions of Rule 19-727 shall govern the hearing. The applicable provisions of Rules 19-728 and ~~19-741~~ 19-740, except section (c) of Rule ~~19-741~~ 19-740, shall govern any subsequent proceedings in the Court of Appeals. The Court may reimpose the discipline that was in effect when the order was entered or may impose additional or different discipline. Source: This Rule is derived from former Rule 16-781 (2016).

REPORTER'S NOTE

Rule 19-752 is proposed to be amended to change each reference to Rule 19-741 with a reference to Rule 19-740, each reference to Rule 19-742 with a reference to Rule 19-741, and each reference to Rule 19-743 with a reference to Rule 19-742. These amendments are necessary to conform to the renumbering of Division 5 required by renumbering Rule 19-740 as new Rule 19-717.1. Stylistic changes are also made to Rule 19-752.

Section (a) of this Rule is amended so that a matter is now "transferred to disability inactive status" rather than having an attorney "placed on inactive status."

Subsection (c)(3) is amended to add the format of a caption in a petition for reinstatement. Subsection (c)(3)(A) is amended to require docket references to all pending disciplinary actions against an attorney as of the date of the attorney's

disbarment or suspension to be included with the petition for reinstatement. New subsection (c)(3)(F) is added, which requires an attorney to provide an averment that no complaints or disciplinary proceedings are pending against the attorney when a petition to reinstate is filed. Stylistic changes are also made to subsection (c)(3).

Subsection (d)(2)(H) is amended to include any occupational licenses or certificates held by the attorney during the period of discipline. The current version only requires that licenses or certificates applied for must be disclosed.

Subsection (d)(3) is amended so that an attorney is now "transferred to disability inactive status" rather than having an attorney "placed on inactive status." Subsection (d)(3)(B) is amended to correct a typo.

Subsection (h)(2)(C) is amended so that an attorney is now "transferred to disability inactive status" rather than having an attorney "placed on inactive status."

Section (i) is amended to limit to three the number of petitions for reinstatement that may be filed without the consent of Bar Counsel or leave of the Court of Appeals.

Subsection (j)(2) is amended to replace "Maryland Bar" with "Uniform Bar" and to add the Multistate Professional Responsibility Examination as an approved examination for the purposes of this subsection.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 7. REINSTATEMENT

Rule 19-761. DUTIES OF CLERK OF COURT OF APPEALS UPON
ATTORNEY'S SUSPENSION, TERMINATION, OR REINSTATEMENT

(a) Register of Attorneys

Upon the entry of an Order of the Court of Appeals suspending or terminating an attorney's authority to practice law in this State, except an Order pursuant to Rule 19-409, 19-503, or 19-606, the Clerk of the Court of Appeals shall strike the name of the attorney from the register of attorneys maintained by the Clerk. Upon the entry of an Order of the Court of Appeals reinstating the attorney's authority to practice law, the Clerk shall replace the name of the attorney on the register as of the date of or specified in the Order.

(b) Notice

Upon the entry of an order of the Court of Appeals suspending, terminating, or reinstating an attorney's authority to practice law in this State, including a suspension or reinstatement pursuant to an Order of Decertification or

Recertification under Rule 19-409 or 19-503 or a suspension or reinstatement under Rule 19-606, the Clerk shall:

- (1) send a copy of the order to the attorney;
- (2) post notice of the order on the Judiciary website; and
- (3) send notice of the order to:

(A) the Clerk of the Court of Special Appeals;

(B) the Clerk of each Circuit Court;

(C) the Chief Clerk of the District Court;

(D) the Clerk of the United States Supreme Court;

(E) the Clerk of the U.S. Court of Appeals for the Fourth Circuit;

(F) the Clerk of the U.S. District Court for the District of Maryland;

(G) the Register of Wills for each county;

(H) the State Court Administrator;

(I) the trustees of the Client Protection Fund;

(J) the Office of Administrative Hearings; and

(K) unless the suspension, termination, or reinstatement is solely pursuant to Rule 19-409, 19-503, or 19-606:

(i) the National Lawyer Regulatory Data Bank of the American Bar Association; and

(ii) the disciplinary authority of every other jurisdiction in which the Clerk knows the attorney is admitted to practice.

(c) Notice Upon Request

In addition to the persons listed in subsection (b)(3) of this Rule, the Clerk may send notice of the order to other persons who have requested such notice.

(d) Form of Notice

The Clerk may send the notice under subsection (b)(3) of this Rule in electronic or paper form.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 4. DISPOSITION OTHER THAN FILING OF CHARGES

AMEND Rule 18-428 by revising the citation to Rule 19-740 in the cross reference after subsection (c)(2), as follows:

Rule 18-428. RETIREMENT AS A DISPOSITION

...

(c) Effect

(1) Retirement under this Rule is permanent. A judge who is retired under this Rule may not be recalled to sit on any court, but the judge shall lose no other retirement benefit to which he or she is entitled by law.

(2) Retirement under this Rule does not constitute discipline.

Cross reference: See Rule 18-441 dealing with special procedures in disability cases. See also Md. Const., Art. IV, § 4B(a)(2), authorizing the Commission to recommend to the Court of Appeals retirement of a judge "in an appropriate case" and Rule ~~19-740~~ 19-717.1 authorizing a comparable disposition for attorneys who have a disability.

Source: This Rule is new.

REPORTER'S NOTE

The cross reference to Rule 19-740 after Rule 18-428 (c) (2) is amended to conform to the renumbering of Rule 19-740 as 19-717.1 in the proposed revisions to Title 19, Chapter 700.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-305.4 by revising the citation in the cross reference after section (d), as follows:

Rule 19-305.4. PROFESSIONAL INDEPENDENCE OF AN ATTORNEY (5.4)

...

(d) An attorney shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a non-attorney owns any interest therein, except that a fiduciary representative of the estate of an attorney may hold the stock or interest of the attorney for a reasonable time during administration;

(2) a non-attorney is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a non-attorney has the right to direct or control the professional judgment of an attorney.

Cross reference: Md. Rule ~~19-742~~ 19-741.

...

REPORTER'S NOTE

The cross reference to Rule 19-742 after Rule 19-305.4 (d) is amended to conform to the renumbering of Rule 19-742 as 19-741 in the proposed revisions to Title 19, Chapter 700.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-308.1 by revising the citation in the cross reference, as follows:

Rule 19-308.1. BAR ADMISSION AND DISCIPLINARY MATTERS (8.1)

...

COMMENT

[1] The duty imposed by this Rule extends to persons seeking admission or reinstatement to the bar as well as to attorneys. Hence, if a person makes a material false statement in connection with an application for admission or for reinstatement, the statement may be the basis for subsequent disciplinary action if the person is admitted or reinstated, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to an attorney's own admission or discipline as well as that of others. Thus, it is a separate professional offense for an attorney to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the attorney's own conduct. This Rule also requires affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] The Court of Appeals has considered this Rule applicable when information is sought by the Attorney Grievance Commission from any attorney on any matter, whether or not the attorney is personally involved. See Attorney Grievance Commission v. Oswinkle, 364 Md. 182 (2001).

[3] This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[4] An attorney representing an applicant for admission to the bar, or representing an attorney who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-attorney relationship.

Cross reference: Md. Rule ~~19-701 (k)~~ 19-701 (q) (defining "Reinstatement").

...

REPORTER'S NOTE

In Rule 19-308.1, the cross reference to the Rule 19-701 (k) definition of "Reinstatement" is amended to conform to the revision and renumbering of this definition as Rule 19-701 (q) in the proposed revisions to Title 19, Chapter 700.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-308.5 by revising the citation in the cross reference, as follows:

Rule 19-308.5. DISCIPLINARY AUTHORITY; CHOICE OF LAW (8.5)

(a) Disciplinary Authority.

(1) An attorney admitted by the Court of Appeals to practice in this State is subject to the disciplinary authority of this State, regardless of where the attorney's conduct occurs.

(2) An attorney not admitted to practice in this State is also subject to the disciplinary authority of this State if the attorney:

(A) provides or offers to provide any legal services in this State,

(B) holds himself or herself out as practicing law in this State, or

(C) has an obligation to supervise or control another attorney practicing law in this State whose conduct constitutes a violation of these Rules.

Cross reference: Md. Rule ~~19-701 (a)~~ 19-701 (b).

...

REPORTER'S NOTE

In Rule 19-308.5, the cross reference to the Rule 19-701 (a) definition of "Attorney" is amended to conform to the revision and renumbering of this definition as Rule 19-701 (b) in the proposed revisions to Title 19, Chapter 700.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

AMEND Rule 19-605 by revising the citation in section (b),
as follows:

Rule 19-605. OBLIGATION OF ATTORNEYS

...

(b) Attorneys on Inactive/Retired Status.

(1) The trustees of the Fund may approve attorneys, other than attorneys on permanent retired status pursuant to Rule ~~19-740~~ 19-717.1, for inactive/retired status, and, by regulation, may provide a uniform deadline date for seeking approval of inactive/retired status.

...

Source: This Rule is derived in part from former Rule 16-811.5 (2016), and is in part new.

REPORTER'S NOTE

The citation to Rule 19-740 in section (b) of Rule 19-605 is amended to conform to the renumbering of Rule 19-740 as Rule 19-717.1 in the proposed revisions to Title 19, Chapter 700.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

AMEND Rule 19-606 by revising the citations in section (b),
as follows:

Rule 19-606. ENFORCEMENT OF OBLIGATIONS

...

(b) Temporary Suspension.

...

(3) Effect of Order. An attorney who has been served with a copy of the Temporary Suspension Order and has not been restored to good standing may not practice law in Maryland and shall comply with the requirements of Rule ~~19-742~~ 19-741 (c) and (d). In addition to any other remedy or sanction allowed by law, an action for contempt may be brought against an attorney who practices law in violation of a Temporary Suspension Order.

An attorney who has been served with a copy of the Temporary Suspension Order and has not been restored to good standing may not practice law in Maryland and shall comply with the requirements of Rule ~~19-742~~ 19-741 (c) and (d). In addition to any other remedy or sanction allowed by law, an action for contempt may be brought against an attorney who practices law in violation of a Temporary Suspension Order.

...

Source: This Rule is derived from former Rule 16-811.6 (2016).

REPORTER'S NOTE

The citations to Rule 19-742 in Rule 19-606 (b) (3) are amended to conform to the renumbering of Rule 19-742 as Rule 19-741 in the proposed revisions to Title 19, Chapter 700.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 800 - ATTORNEY INFORMATION SYSTEM

AMEND Rule 19-802 by revising certain citations in section (b), as follows:

Rule 19-802. REGISTRATION

...

(b) Exceptions. Attorneys in the following categories need not register so long as they remain in one of those categories:

(1) attorneys who have been placed and remain on inactive status pursuant to Rule 19-739 or permanent retired status pursuant to Rule ~~19-740~~ 19-717.1;

(2) attorneys who are suspended pursuant to Rule 19-606 or ~~19-741~~ 19-740;

...

Source: This Rule is new.

REPORTER'S NOTE

The citation to Rule 19-740 in Rule 19-802 (b)(1) is amended to conform to the renumbering of Rule 19-740 as Rule 19-717.1 in the proposed revisions to Title 19, Chapter 700.

The citation to Rule 19-741 in subsection (b)(2) of this Rule is amended to conform to the renumbering of Rule 19-741 as Rule 19-740 in the proposed revisions to Title 19, Chapter 700.

MARYLAND RULES OF PROCEDURE
TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT
CHAPTER 400 - APPELLATE REVIEW

AMEND Rule 20-405 by revising the citation in section (c),
as follows:

Rule 20-405. OTHER SUBMISSIONS

...

(c) Paper Copies Required From Persons Who File
Electronically. An attorney or other registered user who files
any of the following submissions electronically also shall file
eight copies of the submission in paper form:

(1) a petition for certiorari to the Court of Appeals or a
response to the petition;

(2) a petition to the Court of Appeals for a writ of
mandamus, a writ of prohibition, or other extraordinary relief
or a response to the petition;

(3) a motion for reconsideration filed pursuant to Rule 8-
605 or a response to the motion;

(4) in an attorney grievance matter, (A) exceptions filed in
the Court of Appeals pursuant to Rule 19-728 or a response to
the exceptions, (B) recommendations concerning the appropriate
disposition of a matter under Rule ~~19-729~~ 19-740 (c) or a
response to the recommendations, (C) a petition filed in the

Court of Appeals under Rule 19-737, 19-738, 19-739 (b), or 19-752 or a response to the petition, (D) an application filed in the Court of Appeals pursuant to Rule 19-735 (a) or a response to the application;

...

Source: This Rule is new.

REPORTER'S NOTE

Rule 19-729 was renumbered as Rule 19-741 in 2017. The citation to Rule 19-729 in subsection (c)(4) of Rule 20-405 was not updated at that time. Rule 19-741 is renumbered as Rule 19-740 in the current proposed revisions to Title 19, Chapter 700. The citation in Rule 20-405 is updated to conform to the currently proposed renumbering of the Rules in Chapter 700.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 700 - OPINIONS AND EXPERT TESTIMONY

DELETE current Rule 5-702 and ADD new Rule 5-702, as follows:

RULE 5-702. TESTIMONY BY EXPERTS

(a) Generally

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(1) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(2) the testimony is based on sufficient facts or data;

(3) the testimony is the product of reliable principles and methods; and

(4) the expert has reliably applied the principles and methods to the facts of the case.

(b) Factors to Consider

In relevant factors for determining the reliability of the expected testimony are flexible and may include but are not limited to:

- (1) whether a theory or technique can be and has been tested;
- (2) whether a theory or technique has been subjected to peer review and publication;
- (3) whether a particular scientific technique has a known or potential rate of error;
- (4) the existence and maintenance of standards and controls;
- (5) whether a theory or technique is generally accepted;
- (6) whether experts are proposing to testify about matters growing naturally and directly out of research they have conducted independent of litigation, or whether they have developed their opinions expressly for the purpose of testifying;
- (7) whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion;
- (8) whether the expert has adequately accounted for obvious alternative explanations;
- (9) whether the expert is being as careful as the expert would be in the expert's regular professional work outside the expert's paid litigation consulting; and

(10) whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give.

Committee note: In applying the factors set forth in section (b), courts also should consider the potential impact of these factors on people of color and members of underserved or other disadvantaged communities. See *Rochkind v. Stevenson*, ___ Md. (2020), Watts, J. dissenting.

Cross reference: See *Rochkind v. Stevenson*, ___ Md. ___ (2020).

Source: This Rule is new. It is derived from the 2020 version of Fed. R. Evid. 702 and *Rochkind v. Stevenson*, ___ Md. (2020).

REPORTER'S NOTE

The Rules Committee recommends that current Rule 5-702 be deleted and replaced by proposed revised Rule 5-702, which codifies the holding in *Rochkind v. Stevenson*, ___ Md. ___ (2020). In that case, the Court of Appeals adopted the *Daubert* reliability factors for expert testimony (*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)) and rejected the previous *Frye-Reed* standard (*Frye v. United States*, 293 U.S. 1003 (D.C. Cir. 1923) and *Reed v. State*, 282 Md. 374 (1978)).

Section (a) is derived from Fed. R. Evid. 702, which states the general principle that a witness qualified as an expert by knowledge, skill, experience, training, or education may testify if certain conditions are met.

Section (b) lists the non-exhaustive factors for the court to consider, if relevant, in determining the reliability of testimony under section (a). Subsections (b)(1) through (5) are derived from the *Daubert* opinion, which emphasized that the factors are neither exclusive nor dispositive. Subsections (b)(6) through (10) are additional factors developed by various courts that the Court of Appeals found persuasive in interpreting the admissibility Rule.

A Committee note following section (b) notes that, in applying the factors set forth in section (b), courts should be mindful of a concern expressed in the dissenting opinion in *Rochkind* regarding the potential impact on people of color and members of underserved or other disadvantaged communities.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 800 - HEARSAY

AMEND Rule 5-803 by updating a cross reference following subsection (b) (6), as follows:

Rule 5-803. HEARSAY EXCEPTIONS: UNAVAILABILITY OF DECLARANT NOT REQUIRED

. . .

(b) Other Exceptions

(1) Present Sense Impression

A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited Utterance

A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then Existing Mental, Emotional, or Physical Condition

A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), offered to prove the declarant's then existing condition or the declarant's future action, but not including a statement of

memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for Purposes of Medical Diagnosis or Treatment

Statements made for purposes of medical treatment or medical diagnosis in contemplation of treatment and describing medical history, or past or present symptoms, pain, or sensation, or the inception or general character of the cause or external sources thereof insofar as reasonably pertinent to treatment or diagnosis in contemplation of treatment.

(5) Recorded Recollection

See Rule 5-802.1 (e) for recorded recollection.

(6) Records of Regularly Conducted Business Activity

A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses if (A) it was made at or near the time of the act, event, or condition, or the rendition of the diagnosis, (B) it was made by a person with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course of a regularly conducted business activity, and (D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation. A record of this kind may be excluded if the source of information or the method or

circumstances of the preparation of the record indicate that the information in the record lacks trustworthiness. In this paragraph, "business" includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Cross reference: Rule 5-902 ~~(b)~~ (12).

Committee note: Public records specifically excluded from the public records exceptions in subsection (b)(8) of this Rule may not be admitted pursuant to this exception.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 5-803 updates a cross reference following subsection (b)(6) in light of proposed amendments to Rule 5-902.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 900 - AUTHENTICATION AND IDENTIFICATION

AMEND Rule 5-901 by updating a Committee note following subsection (b) (9), as follows:

Rule 5-901. REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION

. . .

(b) Illustrations

. . .

(9) Process or System

Evidence describing a process or system used to produce the proffered exhibit or testimony and showing that the process or system produces an accurate result.

Committee note: This Rule is not intended to indicate the type of evidence that may be required to establish that a system or process produces an accurate result. See, e.g., Rule 5-702 ~~and its Committee note.~~

. . .

REPORTER'S NOTE

The proposed amendment to Rule 5-901 updates a Committee note following subsection (b) (9) in light of proposed amendments to Rule 5-702.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 900 - AUTHENTICATION AND IDENTIFICATION

DELETE current Rule 5-902 and ADD new Rule 5-902, as follows:

Rule 5-902. SELF-AUTHENTICATION

Subject to the conditions in this Rule, the following items of evidence are self-authenticating, and, except as required by statute or this Rule, require no testimony or other extrinsic evidence of authenticity in order to be admitted:

(1) Domestic Public Documents Under Seal

A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the trust territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Domestic Public Documents Not Under Seal

A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) of this Rule, having no seal, if a public officer having a seal and having official duties in the

district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Foreign Public Documents

A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester - or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

(A) order that it be treated as presumptively authentic without final certification; or

(B) allow it to be evidenced by an attested summary with or without final certification.

(4) Certified Copies of Public Records

A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with this Rule or complying with any applicable statute or these rules.

(5) Official Publications

Books, pamphlets, or other publications purporting to be issued or authorized by a public agency.

(6) Newspapers and Periodicals

Printed materials purporting to be newspapers or periodicals.

(7) Trade Inscriptions and the Like

Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) Acknowledged Documents

Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) Commercial Paper and Related Documents

To the extent provided by applicable commercial law, commercial paper, signatures thereon, and related documents.

Cross reference: See, e.g., Code, Commercial Law Article, §§ 1-202, 3-308, and 3-505.

(10) Presumptions Under Statutes or Treaties

Any signature, document, or other matter declared by applicable statute or treaty to be presumptively genuine or authentic.

(11) Items as to Which Required Objections Not Made

Unless justice otherwise requires, any item as to which, by statute, rule, or court order, a written objection as to authenticity is required to be made before trial, and an objection was not made in conformance with the statute, rule, or order.

(12) Certified Records of Regularly Conducted Activity

The original or a copy of a record of a regularly conducted activity that meets the requirements of Rule 5-803 (b) (6) (A)-(D) and has been certified in a Certification of Custodian of Records or Other Qualified Individual Form substantially in compliance with such a form approved by the State Court Administrator and posted on the Judiciary website, provided that, before the trial or hearing in which the record will be offered into evidence, the proponent (A) gives an adverse party reasonable written notice of the intent to offer the record and (B) makes the record and certification available for inspection so that the adverse party has a fair opportunity

to challenge them on the ground that the sources of information or the method or circumstances of preparation indicate lack of trustworthiness.

Committee note: An objection to self-authentication under paragraph (12) of this Rule made in advance of trial does not constitute a waiver of any other ground that may be asserted as to admissibility at trial.

In a consumer debt collection action not resolved by judgment on affidavit, Code, Courts Article, § 5-1203 (b) (2) requires that a debt buyer or a collector acting on behalf of a debt buyer introduce specified documents "in accordance with the Rules of Evidence applicable to actions that are not small claims actions brought under § 4-405 of this Article." Consequently, if the debt buyer or collector intends to offer business records into evidence in a small claim action without in-court testimony of a witness, the debt buyer must provide notice to the opposing party in conformance with Rule 5-902 (12).

(13) Certified Records Generated by an Electronic Process or System

A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification and notification requirements of paragraph (12) of this Rule.

(14) Certified Data Copied from an Electronic Device, Storage Medium, or File

Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification and notification requirements of paragraph (12) of this Rule.

Committee note: Paragraphs 13 and 14 of this Rule are derived from Fed. R. Evid. 902 (13) and (14). See Advisory Committee Notes attached to the federal provisions for an explanation of how these provisions are intended to operate.

Nothing in paragraphs (13) and (14) is intended to limit a party from establishing authenticity of electronic evidence on any ground provided in these Rules, including under Rule 5-901 or through judicial notice where appropriate.

A certification under paragraphs (13) and (14) can only establish that the proffered item is authentic. The opponent remains free to object to admissibility of the proffered item on other grounds.

Source: This Rule is in part derived from the 2020 version of Fed. R. Evid. 902 and is in part new.

REPORTER'S NOTE

The Rules Committee recommends that current Rule 5-902 be deleted and replaced by proposed revised Rule 5-902, which aligns the Maryland Rule with Fed. R. Evid. 902.

Paragraph (1) is derived from current Rule 5-902 (a) (1).

Paragraph (2) is derived from current Rule 5-902 (a) (2).

Paragraph (3) is derived from Fed. R. Evid. 902(3).
Current Rule 5-902 (a) (3) contains a similar provision.

Paragraph (4) is derived from current Rule 5-902 (a) (4).

Paragraph (5) is derived from current Rule 5-902 (a) (5).

Paragraph (6) is derived from current Rule 5-902 (a) (6).

Paragraph (7) is derived from current Rule 5-902 (a) (7).

Paragraph (8) is derived from current Rule 5-902 (a) (8).

Paragraph (9) is derived from current Rule 5-902 (a) (9).

Paragraph (10) is derived from current Rule 5-902 (a) (10).

Paragraph (11) is derived from current Rule 5-902 (a) (11).
There is no counterpart to this paragraph in the Federal Rules.

Paragraph (12) is derived from Fed. R. Evid. 902 (12) and current Rule 5-902 (b)(1). The current subsection includes a form certificate. The proposed new paragraph refers to a form approved by the State Court Administrator and posted on the Judiciary website. The current section requires a party intending to offer the record to provide written notice to the adverse party at least ten days before the proceeding. The adverse party has five days from service of the notice to file a written objection. The proposed new paragraph replaces these time frames with the "reasonable written notice" and "fair opportunity to challenge" requirements of the Federal Rule. The Committee note following paragraph (12) is in the current Rule.

Paragraph (13) is derived from Fed. R. Evid. 902 (13). The Federal Rule sets forth a procedure to authenticate certain electronic evidence, such as a registry showing that a certain device was connected to a computer. Certification must comply with the certification and notification requirements of new paragraph (12).

Paragraph (14) is derived from Fed. R. Evid. 902 (14). The Federal Rule allows a party to authenticate data copied from an electronic device, storage medium, or file, such as a forensic copy of a hard drive, through a certification. Certification must comply with the certification and notification requirements of new paragraph (12).

A Committee note following paragraphs (13) and (14) refers to the Advisory Committee notes to the Federal Rules, which provide detailed information about the intended applications of the paragraphs. The Committee note also states that a party may establish authenticity of electronic evidence through other means and that a certification of authenticity does not preclude an objection to admissibility of the proffered item on other grounds.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

AMEND Rule 19-702 by replacing the existing title "Executive Secretary" with the new title "Executive Counsel and Director" throughout the Rule, as follows:

Rule 19-702. ATTORNEY GRIEVANCE COMMISSION

. . .

(e) Executive ~~Secretary~~ Counsel and Director

The Commission may select an attorney to serve as the Executive Secretary Counsel and Director. The Executive ~~Secretary~~ Counsel and Director shall serve at the pleasure of the Commission and receive the compensation set forth in the budget of the Commission. As directed by the Commission, the Executive ~~Secretary~~ Counsel and Director shall (1) receive documents that are filed with the Commission and maintain the records of the Commission, (2) prepare the agenda of meetings of the Commission and before each meeting send to each Commission member a copy of the agenda and meeting materials, (3) serve as in-house attorney to the Commission, (4) serve as liaison to the

Chair of the Peer Review Committee, and (5) have such other administrative powers and duties assigned by the Commission.

(f) Removal of Commission Members

The Court of Appeals may remove a member of the Commission at any time.

(g) Quorum

The presence of seven members of the Commission constitutes a quorum for the transaction of business. The concurrence of seven members is required for all actions taken by the Commission other than adjournment of a meeting for lack of a quorum.

(h) Powers and Duties

The Commission has the powers and duties to:

(1) recommend to the Court of Appeals the adoption of procedural and administrative guidelines and policies consistent with these Rules;

(2) employ and prescribe the compensation of the Executive ~~Secretary~~ Counsel and Director;

(3) with the approval of the Court of Appeals, appoint Bar Counsel;

(4) supervise the activities of Bar Counsel;

(5) authorize Bar Counsel to employ attorneys, investigators, and staff personnel and to prescribe their compensation;

(6) appoint special counsel as the need arises;

(7) appoint members of the Peer Review Committee, designate the Chair and one or more Vice Chairs, and remove any member for cause;

(8) employ and prescribe the compensation of personnel to assist the Chair of the Peer Review Committee;

(9) exercise the authority granted in the Rules in this Chapter with respect to the approval or disapproval of (A) the dismissal of a complaint or Statement of Charges, (B) the termination of a complaint with or without a warning, (C) a Conditional Diversion Agreement, (D) a reprimand, or (E) the filing of a Petition for Disciplinary or Remedial Action;

(10) grant or deny any requests for extensions of time permitted under the Rules of this Chapter or delegate to the Chair of the Commission the authority to grant or deny such requests;

(11) authorize the issuance of subpoenas in accordance with these Rules;

(12) perform the duties required by Title 19, Chapter 400 (Attorney Trust Accounts);

(13) administer the Disciplinary Fund;

(14) submit not later than September 1 of each year a report to the Court of Appeals accounting for the Disciplinary Fund,

evaluating the effectiveness of the disciplinary system, and recommending any changes; and

(15) submit annually to the State Court Administrator for review and approval by the Court of Appeals a proposed budget for the disciplinary system.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 19-702 reflect the Rules Committee's recommendation to replace the existing title "Executive Secretary" with the new title "Executive Counsel and Director."

The Rules Committee was asked to consider changing the titles for three positions mentioned in the Maryland Rules: "Executive Secretary" (Attorney Grievance Commission), "Executive Secretary" (Commission on Judicial Disabilities), and "Secretary" (State Board of Law Examiners).

The current Executive Secretary to the Attorney Grievance Commission initially requested consideration of a title change due to confusion about her role by members of the public. The current title can be perceived as clerical and not reflective of the administrative and other duties of the position.

The Executive Secretary to the Commission on Judicial Disabilities and the Secretary to the State Board of Law Examiners expressed support for amending their titles to more accurately reflect their roles and duties within their respective units.

Various options for a title change were explored by reviewing the titles of individuals who hold comparable positions in other jurisdictions, consulting with the Office of the Attorney General so that any title selected would not appear to conflict with the roles and duties of the Assistant Attorney General assigned to the Judiciary, and contacting the Judiciary's Human Resources Department to obtain information about titles used for various positions in the Judiciary.

Although the Attorney Grievance Commission operates its own personnel system, the consultation with the Judiciary Human Resources Department was undertaken to coordinate, to the extent possible, harmonious use of titles. Human Resources advised that the use of the title of "Executive Director" has been discontinued, but that the titles "Executive Counsel" or "Executive Counsel and Director" were permissible.

The current Executive Secretary to the Commission on Judicial Disabilities requested that she not have "director" as part of her title because it could cause confusion based on the internal structure of the Commission (within the Commission, the Investigative Counsel is designated as a "director").

The three titleholders and their respective agencies have agreed to the following changes to their titles:

- "Executive Secretary" (Attorney Grievance Commission) would become "Executive Counsel and Director" (affected Rule: 19-702)
- "Executive Secretary" (Commission on Judicial Disabilities) would become "Executive Counsel" (affected Rules: 18-405, 18-409.1, 18-411, 18-433, 18-437, and 18-438)
- "Secretary" (State Board of Law Examiners) would become "Secretary and Director" (affected Rule: 19-102)

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 18-405 by replacing the existing title "Executive Secretary" with the new title "Executive Counsel" throughout the Rule, as follows:

RULE 18-405. *EX PARTE* COMMUNICATION

(a) The Commission and Executive ~~Secretary~~ Counsel

Except as otherwise permitted by the Rules in this Chapter, directly or by necessary implication, members of the Commission and the Executive ~~Secretary~~ Counsel to the Commission shall not engage in *ex parte* communications with Investigative Counsel, members of the Board, a judge against whom a complaint has been filed, or an attorney for that judge that pertain to the substance of a complaint against that judge.

(b) The Board

Except as otherwise permitted by the Rules in this Chapter, directly or by necessary implication, members of the Board shall not engage in *ex parte* communications with members of the Commission, the Executive ~~Secretary~~ Counsel to the Commission, Investigative Counsel, a judge against whom a

complaint has been filed, or an attorney for that judge that pertain to the substance of a complaint against that judge.

Committee note: The Rules in this Chapter give the Executive Secretary Counsel to the Commission and the Chairs of the Commission and the Board certain functions that anticipate some *ex parte* communications with each other or with Investigative Counsel, the judge, or the judge's attorney that are necessary for them to perform their duties. See, for example, Rules 18-409.1 and 18-434, regarding applications for a subpoena; Rule 18-422 (a) (3), regarding a request for immunity; Rule 18-422 (a) (6), regarding an extension of time to complete an investigation; Rule 18-423 (b), permitting the Board to meet informally with the judge; and Rule 18-423 (d) (1) (B), allowing consultation between the Chair of the Commission and the Chair of the Board regarding the evidence to be produced before the Commission. The intent of this Rule is not to preclude those kinds of *ex parte* communications or any other *ex parte* communications permitted or anticipated by these Rules but only those that reasonably could leave the impression, intended or unintended, of an improper attempt to influence the nature, scope, or conduct of an investigation by Investigative Counsel, a recommendation by Investigative Counsel, or a proceeding or decision by the Commission or the Board. Commission and Board members should be guided by relevant provisions of Rule 18-202.9. This Rule also is not intended to preclude general supervision of Investigative Counsel, who is appointed by and serves at the pleasure of the Commission.

Source: This Rule is new and is based in part on ABA Model Rules for Judicial Disciplinary Enforcement, Rule 10.

REPORTER'S NOTE

Proposed amendments to Rule 18-405 reflect the Rules Committee's recommendation to replace the existing title "Executive Secretary" with the new title "Executive Counsel." See the Reporter's note to Rule 19-702.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 18-409.1 by replacing the existing title "Executive Secretary" with the new title "Executive Counsel" throughout the Rule, as follows:

RULE 18-409.1. SUBPOENAS

. . .

(b) Subpoenas Issued Pursuant to Rule 18-433 or 18-434

The Chair of the Commission, on behalf of the Commission, may authorize the Executive ~~Secretary~~ Counsel to issue a subpoena to compel the attendance of witnesses and the production of documents or other tangible things at a time and place specified in the subpoena. To the extent otherwise relevant, the provisions of Rule 2-510 (c), (d), (e), (f), (g), (h), (i), (j), and (k) shall apply to subpoenas issued pursuant to this section. References to a court in those Rules shall mean the Chair of the Commission, on behalf of the Commission. Promptly after service of a subpoena on a person other than the subject judge, the party who requested the issuance of the

subpoena shall serve a copy of it upon the other party electronically at an address furnished by the other party.

Committee note: The intent of section (b) is that the Executive ~~Secretary~~ Counsel issues an authorized subpoena and provides it to the party who requested it for service.

Source: This Rule is new and is derived, in part, from Rule 19-712 (2018).

REPORTER'S NOTE

Proposed amendments to Rule 18-409.1 reflect the Rules Committee's recommendation to replace the existing title "Executive Secretary" with the new title "Executive Counsel." See the Reporter's note to Rule 19-702.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 2. STRUCTURE

AMEND Rule 18-411 by replacing the existing title "Executive Secretary" with the new title "Executive Counsel" throughout the Rule, as follows:

RULE 18-411. COMMISSION ON JUDICIAL DISABILITIES

. . .

(d) Executive ~~Secretary~~ Counsel

(1) Appointment; Compensation

The Commission may select an attorney as Executive ~~Secretary~~ Counsel. The Executive ~~Secretary~~ Counsel shall serve at the pleasure of the Commission and receive the compensation set forth in the budget of the Commission.

(2) Duties

The Executive ~~Secretary~~ Counsel shall: (A) receive documents that are filed with the Commission and maintain the records of the Commission; (B) prepare the agenda of meetings of the Commission and before each meeting send to each Commission member a copy of the agenda and meeting materials; (C) attend meetings of the Commission and the Inquiry Board, keep minutes

of those meetings, and retain the minutes, subject to the retention schedule approved by the Chief Judge of the Court of Appeals; (D) serve as attorney to the Commission; (E) serve as liaison to the Board and to Investigative Counsel; and (F) have such other administrative powers and duties assigned by the Commission, other than duties committed to Investigative Counsel by these Rules.

Committee note: Keeping minutes of Board meetings is purely a secretarial service. Under Rule 18-407, proceedings before the Board are confidential, and those minutes therefore are not to be shared with members of the Commission.

(3) Assistants and Other Staff

As the need arises and to the extent funds are available in the Commission's budget, the Commission may employ additional persons to assist the Executive ~~Secretary~~ Counsel. The Executive ~~Secretary~~ Counsel shall keep an accurate record of the time and expenses of additional persons employed and ensure that the cost does not exceed the amount allocated by the Commission.

(e) Investigative Counsel; Assistants

(1) Appointment; Compensation

Subject to approval by the Court of Appeals, the Commission shall appoint an attorney with substantial trial experience and familiarity with these Rules and the Code of Judicial Conduct as Investigative Counsel. Before appointing Investigative Counsel, the Commission shall notify bar

associations and the general public of the vacancy and shall consider any recommendations that are timely submitted. Investigative Counsel shall serve at the pleasure of the Commission and shall receive the compensation set forth in the budget of the Commission.

(2) Powers and Duties

Investigative Counsel shall have the powers and duties set forth in the Rules in this Chapter and shall report and make recommendations to the Board and the Commission as required under these Rules or directed by the Commission. All reports and recommendations shall be in writing and maintained as a record of Investigative Counsel and the recipient.

(3) Additional Attorneys and Staff

As the need arises and to the extent funds are available in the Commission's budget, the Commission may appoint additional attorneys or other persons, other than its Executive ~~Secretary~~ Counsel and any persons employed pursuant to subsection (d) (3) of this Rule to assist Investigative Counsel. Investigative Counsel shall keep an accurate record of the time and expenses of additional persons employed and ensure that the cost does not exceed the amount allocated by the Commission.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 18-411 reflect the Rules Committee's recommendation to replace the existing title "Executive Secretary" with the new title "Executive Counsel." See the Reporter's note to Rule 19-702.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5. FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

AMEND Rule 18-433 by replacing the existing title "Executive Secretary" with the new title "Executive Counsel," as follows:

RULE 18-433. DISCOVERY

. . .

(b) Open File

Upon request by the judge or the judge's attorney, at any time after service of charges upon the judge (1) the Executive ~~Secretary~~ Counsel of the Commission shall allow the judge or attorney to inspect and copy the entire Commission record, (2) Investigative Counsel shall (A) allow the judge or attorney to inspect and copy all evidence accumulated during the investigation and all material, information, and statements as defined in Rule 2-402 (f), (B) provide summaries or reports of all oral statements for which contemporaneously recorded substantially verbatim recitals do not exist, and (C) certify to the judge in writing that, except for material that constitutes attorney work product or that is subject to a lawful privilege

or protective order issued by the Commission, the material disclosed constitutes the complete record of Investigative Counsel as of the date of inspection.

. . .

REPORTER'S NOTE

A proposed amendment to Rule 18-433 reflects the Rules Committee's recommendation to replace the existing title "Executive Secretary" with the new title "Executive Counsel." See the Reporter's note to Rule 19-702.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5. FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

AMEND Rule 18-437 by replacing the existing title "Executive Secretary" with the new title "Executive Counsel," as follows:

RULE 18-437. PROCEEDINGS IN COURT OF APPEALS

. . .

(c) Response

The Commission shall file a response within 30 days after service of the exceptions in accordance with Rule 20-405. The Commission shall be represented in the Court of Appeals by its Executive ~~Secretary~~ Counsel or such other attorney as the Commission may appoint. A copy of the response shall be served on the judge in accordance with Rules 1-321 and 1-323.

. . .

REPORTER'S NOTE

A proposed amendment to Rule 18-437 reflects the Rules Committee's recommendation to replace the existing title "Executive Secretary" with the new title "Executive Counsel." See the Reporter's note to Rule 19-702.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5. FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

AMEND Rule 18-438 by replacing the existing title "Executive Secretary" with the new title "Executive Counsel," as follows:

RULE 18-438. SUSPENSION OF EXECUTION OF DISCIPLINE

...

(c) Response; Hearing

Within fifteen days after the filing of the Commission's report, the judge may file a response with the Court. The judge shall serve a copy of any response on the Commission. The Court shall hold a hearing on the Commission's report and any timely response filed by the judge and may take whatever action it finds appropriate. The Commission may be represented in the proceeding by its Executive ~~Secretary~~ Counsel or any other attorney the Commission may appoint.

...

REPORTER'S NOTE

A proposed amendment to Rule 18-438 reflects the Rules Committee's recommendation to replace the existing title "Executive Secretary" with the new title "Executive Counsel." See the Reporter's note to Rule 19-702.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 100 - STATE BOARD OF LAW EXAMINERS AND

CHARACTER COMMITTEES

AMEND Rule 19-102 by replacing the existing title "secretary" with the new title "secretary and director" throughout the Rule and by making stylistic changes, as follows:

RULE 19-102. STATE BOARD OF LAW EXAMINERS

. . .

(e) Professional Assistants

The Board may appoint the professional assistants necessary for the proper conduct of its business. Each professional assistant shall be an attorney admitted and in good standing to practice law in Maryland and shall serve at the pleasure of the Board.

Committee note: Professional assistants primarily assist grading the bar examination. Section (e) does not apply to the secretary and director or to administrative staff.

(f) Compensation of Board Members and Assistants

The members of the Board and assistants shall receive the compensation fixed by the Court.

(g) Secretary and Director to the Board

The Court may appoint a an individual to serve as the secretary and director to the Board.~~to~~ The individual shall hold office at the pleasure of the Court. The secretary and director shall be a member of a Bar of a state. The secretary and director shall have the administrative powers and duties prescribed by the Board and shall serve as the administrative director of the Office of the State Board of Law Examiners.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 19-102 reflect the Rules Committee's recommendation to replace the existing title "secretary" with the new title "secretary and director." See the Reporter's note to Rule 19-702.

Stylistic changes are also made to this Rule to clarify that the "secretary and director" is one individual, rather than two.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO JUDICIAL RECORDS

DIVISION 2. LIMITATIONS ON ACCESS

AMEND Rule 16-919 by revising subsection (a)(2) to clarify that the reference to judicial records pertains to records in any form, by revising section (d) to refer to requests for "judicial records" instead of "electronic information" filed pursuant to section (a), by removing the catchall provision from subsection (e)(1)(C)(iii), by adding new subsection (e)(1)(C)(v) permitting a request to be denied if it is a request repeated by the same or affiliated person, by adding a cross reference following subsection (e)(1)(C)(v), by deleting the phrase "proposed program" from subsection (e)(2)(C) and replacing it with the word "request," by deleting the phrase "through the program" from subsection (e)(2)(D), by adding new subsection (e)(2)(E) concerning burdensomeness and narrowing a request, by adding new subsection (e)(3) requiring the custodian to attempt to confer with the requester under certain circumstances, by adding a provision requiring a denial based on an unduly burdensome request to state the relevant facts supporting this conclusion, and by making stylistic changes, as follows:

Rule 16-919. CREATION OF NEW JUDICIAL RECORDS

(a) Scope

This Rule applies to requests for (1) the creation of a new judicial record from ~~(1)~~ electronic databases maintained by a judicial agency or special judicial unit or (2) a reformatting of existing judicial records in any form.

Cross reference: See Rule 16-918 for electronic access to existing electronic records.

(b) Definition

In this Rule, "reformatting" includes indexing, compilation, programming, or reorganization of existing judicial records, documents, or information.

(c) Generally

(1) Except as required by other law, a custodian, judicial agency, or special judicial unit is not required to create a new judicial record or reformat existing judicial records not necessary to be created or reformatted for judicial functions.

(2) The removal, deletion, or redaction from a judicial record of information not subject to inspection under the Rules in this Chapter in order to make the judicial record subject to inspection does not create or reformat a new record within the meaning of this Rule.

(3) If a custodian, judicial agency, or special judicial unit (A) reformats existing judicial records or other documents

or information to create a new judicial record, or (B) comes into possession of a new judicial record created by another from the reformatting of other judicial records, documents or information, and there is no basis under the Rules in this Chapter to deny inspection of that new judicial record or some part of that judicial record, the new judicial record or part for which there is no basis to deny inspection shall be subject to inspection.

(d) Request

A person who desires to obtain ~~electronic information~~ judicial records pursuant to section (a) of this Rule shall submit to the custodian a written request that describes with particularity the information that is sought. If there is no known custodian, the request shall be made to the SCA, who shall designate a custodian.

(e) Review and Response

(1) Generally. The custodian shall review the request, may consult with other employees, legal counsel, or technical experts, and, within 30 business days after receipt of the request, shall take one of the following actions:

(A) Approve the request to the extent that the information requested is subject to inspection under the Rules in this Chapter or Title 20 and that will not directly or indirectly

impose significant fiscal or operational burdens on any court, judicial agency, or special judicial unit.

(B) Conditionally approve a request to the extent that the information requested is subject to inspection under the Rules in this Chapter or Title 20 but will directly or indirectly impose significant and reasonably calculable fiscal or operational burdens on a court, judicial agency, or special judicial unit, on condition of the requester's prepayment in full of all additional expenses reasonably expected to be incurred as a result of the approval.

(C) Deny the request and state the reason for the denial if or to the extent that:

(i) the request seeks inspection of information from judicial records that is not subject to inspection under the Rules in this Chapter or Title 20;

(ii) the requester fails or refuses to satisfy a condition imposed under subsection (e) (1) (B) of this Rule;

(iii) granting the request would impose significant and reasonably calculable operational burdens on a court, judicial agency, or special judicial unit that cannot be overcome merely by prepayment of additional expenses under subsection (e) (1) (B) of this Rule; ~~or any other practicable condition; or~~

(iv) the request directly or indirectly imposes a significant but not reasonably calculable fiscal or operational

burden on any court, judicial agency, or special judicial unit;
or-

(v) the request is a repeated one by the same or affiliated person for the same records that were previously provided or that were the subject of a prior request that was properly denied and there has been no material change in the basis for the denial.

Cross reference: See *Glass v. Anne Arundel Cty.*, 453 Md. 201 (2017).

(2) Considerations. In determining whether to grant or deny the request, the custodian shall consider the following, to the extent relevant:

(A) whether the data processing system, operational system, electronic filing system, or manual or electronic storage and retrieval system used by or planned for the court, judicial agency, or special judicial unit that maintains the judicial records can currently provide the inspection requested in the manner requested and in conformance with the Rules in this Chapter, and, if not, any changes or effort required to enable those systems to provide that inspection;

(B) whether any changes to the data processing, operational, electronic filing, or storage or retrieval systems used by or planned for other courts, other judicial agencies, or other special judicial units in the State would be required in

order to avoid undue disparity in the ability of those courts, agencies, or units to provide equivalent inspection of judicial records maintained by them;

(C) any other fiscal, personnel, or operational impact of the request ~~proposed program~~ on the court, other judicial agency, or special judicial unit or on the State judicial system as a whole;

(D) whether there is a substantial possibility that information retrieved ~~through the program~~ may be used for any fraudulent or other unlawful purpose or may result in the dissemination of inaccurate or misleading information concerning judicial records or individuals who are the subject of judicial records and, if so, whether there are any safeguards to prevent misuse of disseminated information and the dissemination of inaccurate or misleading information; ~~and~~

(E) whether (i) the request would be unduly burdensome for the custodian or judicial agency, (ii) there is any practicable way to narrow the request to make it manageable, and (iii) the burden on the custodian or judicial agency would outweigh the public interest in the information; and

~~(E)~~ (F) any other consideration that the custodian finds relevant.

(3) Before invoking subsection (e) (1) (C) (iii) or (iv) of this Rule, the custodian shall extend to the person making the

request an opportunity to confer with the custodian in an attempt to reduce the request to manageable proportions.

~~(3)~~(4) Notice of Denial. If the custodian denies the request, the custodian shall give written notice to the requester and summarize the reasons for the denial. If the denial is on the basis that compliance with the request would be unduly burdensome, the notice shall state the relevant facts supporting that conclusion.

Source: This Rule is derived from former Rule 16-909 (f) (2019).

REPORTER'S NOTE

The proposed amendments to Rule 16-919 have been requested by the State Court Administrator to clarify the authority and responsibility of judicial officials when asked to either create new judicial records from existing electronic databases or to reformat existing judicial records in circumstances where there is no existing necessity on the part of the Judiciary for the new judicial records to be created or reformatted.

The current Rule permits the custodian to deny such a request if granting it would impose a significant operational burden on the court or other judicial unit or agency that cannot be overcome merely by requiring the requester to prepay any additional cost of granting the request. New subsection (e) (1) (C) (v) permits a denial of the request if it is a repeated one by the same or affiliated person for the same records that were previously provided or that was properly denied. New subsections (e) (2) (E) and (F) require the custodian to consider whether there is any practicable way to narrow the request to make it manageable and confer with the requester in that regard.

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

AMEND Rule 1-326 by adding a new section (d) pertaining to access to case records and by making stylistic changes, as follows:

RULE 1-326. PROCEEDINGS REGARDING VICTIMS AND VICTIMS'
REPRESENTATIVES

(a) Entry of Appearance

An attorney may enter an appearance on behalf of a victim or a victim's representative in a proceeding under Title 4, Title 8, or Title 11 of these Rules for the purpose of representing the rights of the victim or victim's representative.

(b) Service of Pleadings and Papers

A party shall serve, pursuant to Rule 1-321 on ~~counsel~~ the attorney for a victim or a victim's representative, copies of all pleadings or papers that relate to: (1) the right of the victim or victim's representative to be informed regarding the criminal or juvenile delinquency case, (2) the right of the

victim or victim's representative to be present and heard at any hearing, or (3) restitution. Any additional pleadings and papers shall be served only if the court directs.

(c) Duties of Clerk

The clerk shall (1) send to ~~counsel~~ the attorney for a victim or victim's representative a copy of any court order relating to the rights of the victim referred to in section (b) of this Rule and (2) notify ~~counsel~~ the attorney for a victim or a victim's representative of any hearing that may affect the rights of the victim or victim's representative.

(d) Access to Case Records

An attorney who has entered an appearance in an action for a victim or victim's representative shall have access to all case records in the action that are not sealed, shielded under the Rules in Title 16, Chapter 900 of these Rules, or subject to a protective order.

Committee note: This Rule does not abrogate any obligation to provide certain notices to victims and victims' representatives required by statute or by other Rule.

Cross reference: See Maryland Declaration of Rights, Article 47; Rule 18-102.6 (a); and Rule 18-202.6 (a). For definitions of "victim" and "victim's representative," see Code, Courts Article, § 3-8A-01 and Code, Criminal Procedure Article, Title 11.

Source: This Rule is new.

REPORTER'S NOTE

Proposed to be added to Rule 1-326 is new section (d), which provides to an attorney who has entered an appearance for a victim or victim's representative in an action access to all case records in the action, other than case records that are sealed, shielded under the Rules in Title 16, Chapter 900, or subject to protective order. The attorney's access provided by this Rule includes remote access in an MDEC action. See the proposed amendments to Rule 20-109 (b).

Amendments to sections (b) and (c) of Rule 1-326 are stylistic, only.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-109 by adding the phrase "for a party" to section (b) and by adding a second sentence to section (b) to provide for certain access by an attorney for a victim or victim's representative, as follows:

RULE 20-109. ACCESS TO ELECTRONIC RECORDS IN MDEC ACTIONS

(a) Generally

Except as otherwise provided in this Rule, access to judicial records in an MDEC action is governed by the Rules in Title 16, Chapter 900.

(b) Parties and Attorneys of Record

Subject to any protective order issued by the court or other law, parties to and attorneys of record for a party in an MDEC action shall have full access, including remote access, to all case records in that action. An attorney for a victim or victim's representative shall have access, including remote access, to case records as provided in Rule 1-326 (d).

. . .

Source: This Rule is new.

REPORTER'S NOTE

In Rule 20-109, the addition of the phrase, "for a party," is intended to clarify the first sentence of section (b).

A second sentence is proposed to be added to section (b) to state that an attorney for a victim or victim's representative has access, including remote access, to case records as provided in Rule 1-326 (d).

MARYLAND RULES OF PROCEDURE
TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 800 - REVOCABLE TRUSTS

ADD New Rule 10-801, as follows:

RULE 10-801. NOTICE UPON DEATH OF SETTLOR

(a) Notice to Personal Representative

If a proceeding other than for a small estate under Code, Estates and Trusts Article Title 5, Subtitle 6 is commenced to administer the estate of the decedent-settlor of a trust that was revocable at the time of death, the trustee of the trust shall notify the personal representative of the existence of the trust and the identity of each trustee within 30 days after the date the trustee acquires knowledge of the opening of the estate.

Cross reference: See Code, Estates and Trusts Article, §14.5-508 (b) (1) for the effect of a claim filed in an estate proceeding on trust property. See Rule 6-413 for the right of a trustee to intervene before a claim is allowed in the estate proceeding.

(b) Notice to Surviving Spouse

If the decedent-settlor is survived by a spouse, the trustee shall notify the surviving spouse of the existence of the trust, the identity of each trustee, and of the surviving spouse's right to request a copy of the trust instrument within

60 days of after the date the trustee acquires knowledge of the decedent's death.

Cross reference: For the duties of a trustee in connection with the calculation and payment of the elective share, see Code, Estates and Trusts Article, §3-409.

REPORTER'S NOTE

Proposed new Title 10, Chapter 800 is intended to implement Chapter 100, 2015 Laws of Maryland (HB 666), which was brought to the Committee's attention as a potential area requiring clarification, and Chapter 435, 2019 Laws of Maryland (HB 99), which changes the elective share law to an augmented estate format.

HB 666 extended protections to the trustee, trust property, and beneficiaries of a trust that was revocable at the death of the decedent-settlor if a claim is not presented within certain statutory deadlines. If an estate proceeding other than a small estate is commenced, the creditor must present the claim within the required time to preserve a claim against any revocable trust property. If no estate or a small estate proceeding is commenced, the trustee may obtain protection by publishing his or her own notice to creditors, which is outlined in proposed new Rule 10-802.

New Rule 10-801 provides a mechanism for the trustee to alert the personal representative and surviving spouse of the existence of the trust.

Section (a) requires notice to the personal representative of the existence of a trust within 30 days after the trustee acquires knowledge of the opening of the estate. Practitioners noted that the personal representative has no way to know about revocable trusts of the decedent unless the personal representative also serves as the trustee or some other circumstance brings it to the attention of the personal representative. Similarly, a trustee who is not otherwise involved in the estate proceeding has no definitive way to be alerted to claims filed in the estate, which the personal representative may act to allow or disallow, impacting the trust.

A cross reference to Code, Estates and Trusts Article, §14-508 (b)(1) and Rule 6-413 follows section (a).

Section (b) is derived from Code, Estates and Trusts Article, §3-409 (c) and requires notice to the surviving spouse, if one exists. This notice requirement is statutory and required regardless of the existence of an open estate or a personal representative.

The notice requirement in section (b) differs from the requirement in section (a) because the goal of section (b) is to alert the surviving spouse of assets that are part of the augmented estate subject to election. The goal of section (a) is to notify a personal representative of trust assets that are subject to claims filed in the estate proceeding.

MARYLAND RULES OF PROCEDURE
TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 800 - REVOCABLE TRUSTS

ADD New Rule 10-802, as follows:

RULE 10-802. LIABILITY FOR CLAIMS AGAINST DECEDENT-SETTLOR

(a) Generally

After the death of a settlor, subject to Code, Estates and Trusts Article, §14.5-508 (b) (1) and the right of the settlor to direct the source from which liabilities will be paid, the property of a trust that was revocable at the death of the settlor is subject to claims of the creditors of the decedent-settlor.

Cross-reference: See Code, Estates and Trusts Article, §14.5-508 (a) (5).

(b) Responsibilities of Trustee Where Estate Proceeding Commenced

If a proceeding has been commenced to administer the estate of a decedent-settlor other than a small estate, the trustee, property, and beneficiaries of a revocable trust are not liable for claims of creditors of the settlor that are not presented in the estate proceeding pursuant to Rule 6-413.

(c) Responsibilities of Trustee Where No Estate Proceeding Commenced

(1) If a proceeding to administer the estate of the decedent-settlor has not been commenced, or if a small estate has been commenced, the trustee of a revocable trust of which the decedent was a settlor may publish a notice pursuant to subsections (c) (2) and (3) of this Rule. Publication of the notice shall afford the trust property, trustee, and beneficiaries of the trust with the protections afforded in Code, Estates and Trusts Article, § 8-103, for claims presented more than six months after the date of the first publication of the notice.

(2) The trustee's notice to creditors shall be substantially in the following form:

Notice to Creditors of a Settlor of a Revocable Trust
To all persons interested in the trust of _____:

This is to give notice that _____ died on or about _____. Before the decedent's death, the decedent created a revocable trust for which the undersigned, _____, whose address is _____, is now a trustee.

To have a claim satisfied from the property of this trust, a person who has a claim against the decedent shall present the claim on or before the date that is six months after the date of

the first publication of this notice to the undersigned trustee at the address stated above. The claim shall include the following information:

1. A verified written statement of the claim indicating its basis;
2. The name and address of the claimant;
3. If the claim is not yet due, the date on which it will become due;
4. If the claim is contingent, the nature of the contingency;
5. If the claim is secured, a description of the security; and
6. The specific amount claimed.

Any claim not presented to the trustee on or before that date or any extension provided by law is unenforceable.

(Signature of Trustee)

Date of first publication: _____.

(3) The trustee shall publish the notice once a week for three successive weeks in a newspaper of general circulation in what would otherwise be the proper venue for an administration of judicial probate for that decedent.

(4) Claims against the decedent-settlor are forever barred as against the trust property, trustee, and beneficiaries of the trust unless, within six months of first publication of notice, the creditor (A) files an action against the trustee and serves a copy of the complaint on the trustee within 30 days of filing

or (B) presents a claim to the trustee with the information required by the notice.

(5) If the trustee disallows the claim wholly or in a stated amount, the claimant is forever barred to the extent of the disallowance unless the claimant files an action against the trustee or against any person to whom the trust property has been distributed within 60 days after the mailing of the notice of disallowance by the trustee to the claimant. The notice informing the claimant of the disallowance shall contain a warning to the claimant concerning the time limitation for commencing an action.

Cross-reference: See Code, Estates and Trusts Article, §14.5-508 (b) (2)-(6).

REPORTER'S NOTE

Proposed new Title 10, Chapter 800 is intended to implement Chapter 100, 2015 Laws of Maryland (HB 666).

In Rule 10-802, section (a) states the principle in Code, Estates and Trusts Article, Title 14.5, the Maryland Trust Act, that the property of a revocable trust may be subject to the claims of creditors after the death of the settlor.

Section (b) applies where an estate proceeding other than a small estate has been commenced to administer the decedent-settlor's estate. Claims against the settlor or trust property in those estates are governed by Rule 6-413, as amended by Rules Order dated March 30, 2021.

Section (c) outlines the notice and claim process against a trust when no estate has been opened or a small estate proceeding has been opened. It follows §14.5-508 (b) (2)-(6).

MARYLAND RULES OF PROCEDURE
TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 800 - REVOCABLE TRUSTS

ADD New Rule 10-803, as follows:

RULE 10-803. AUGMENTED ESTATE

(a) Generally

A trust that is revocable at the time of death of the settlor is part of the decedent-settlor's augmented estate for the purposes of calculating the estate subject to election by a surviving spouse pursuant to Code, Estates and Trusts Article, Title 3, Subtitle 4.

(b) Duties of Trustee

On receipt of a written request by the decedent-settlor's surviving spouse, the trustee of a revocable trust shall deliver all information necessary to calculate the elective share.

Cross-reference: Code, Estates and Trusts Article, § 3-409.

(c) Value and Sources of Payment

The orphans' court may issue orders that may be necessary to determine or modify the value or sources of payment of an elective share.

Cross-reference: See Code, Estates and Trusts Article, §§ 2-102 and 3-413.

REPORTER'S NOTE

Proposed new Rule 10-803 is intended to implement Chapter 435, 2019 Laws of Maryland (HB 99), which changes the elective share law to an augmented estate format and includes revocable trusts in the augmented estate. The law requires the trustee of a revocable trust of the decedent-settlor to deliver information to the surviving spouse, on request, and gives the orphans' court the power to issue orders necessary to calculate the elective share and determine sources of payment.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 800 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL
PROCEEDINGS

AMEND Rule 2-801 by adding definitions of "evidentiary proceeding," "judicial proceeding," and "virtual jury trial"; by adding clarifying language to the definition of "remote location" and a Committee Note after the definition; by revising the definition of "video conferencing" to include virtual jury trials; and by making stylistic changes, as follows:

RULE 2-801. DEFINITIONS

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

(a) Evidentiary Proceeding

"Evidentiary proceeding" means a judicial proceeding at which evidence in any form will be presented.

(b) Judicial Proceeding

"Judicial proceeding" means any evidentiary or non-evidentiary proceeding over which a judge, magistrate, auditor, or examiner presides.

~~(a)~~ (c) Non-evidentiary Proceeding

“Non-evidentiary proceeding” means a judicial proceeding, including a conference, presided over by a judge, magistrate, auditor, or examiner, where neither testimony nor documentary or physical evidence will be presented, other than by stipulation by all parties.

Committee note: Consideration of documents attached to a motion or a response to a motion does not, itself, preclude a hearing on the motion from being deemed a “non-evidentiary proceeding.”

~~(b)~~ (d) Participant

“Participant” includes a party, witness, attorney for a party or witness, judge, magistrate, auditor, or examiner, and any other individual entitled to speak or make a presentation at the proceeding.

~~(c)~~ (e) Remote Electronic Participation

“Remote electronic participation” means simultaneous participation in a judicial proceeding or conference from a remote location by means of telephone, video conferencing, or other electronic means approved by the court pursuant to the Rules in this Chapter.

~~(d)~~ (f) Remote Location

“Remote location” means a place other than the courtroom or other physical location where a judicial proceeding or conference is to be conducted. For purposes of this definition, the place where a judicial proceeding or conference is to be

conducted is the place from which the presiding judicial official will be participating.

Committee note: Section (f) of this Rule takes account of the situation in which the presiding judicial official also will be participating from a place other than the court facility.

(e) (g) Video Conferencing

"Video conferencing" means a method of conducting a judicial proceeding ~~conducted~~ by the use of an interactive technology that sends video, voice, and data signals over a transmission circuit so that two or more individuals or groups can communicate with each other simultaneously using video monitors and related audio equipment.

(h) Virtual Jury Trial

"Virtual jury trial" means a jury trial conducted by remote electronic participation.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 2-801 provide additional definitions for terms of art used throughout Chapter 800.

New sections (a) and (b) define "evidentiary proceeding" and "judicial proceeding," respectively.

In section (f), clarifying language is added to the definition of "remote location." A Committee note also is added.

A definition of "virtual jury trial" is added as section (h).

Stylistic changes are also made.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 800 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL
PROCEEDINGS

ADD new Rule 2-807, as follows:

RULE 2-807. VIRTUAL JURY TRIALS

(a) Applicability

(1) Applicability of this Rule.

This Rule applies to civil actions that the county's case management plan provides are eligible for a virtual jury trial.

Cross reference: See Rule 16-302 (b).

(2) Applicability of Other Rules

Except to the extent of any inconsistency with this Rule, the other applicable Maryland Rules apply. To the extent there is any inconsistency, this Rule prevails.

(b) Circumstances Warranting Virtual Jury Trial

In any case where (1) the parties and the county administrative judge consent to a virtual jury trial or (2) the court orders a virtual trial due to a state of emergency declared by the Governor and the Chief Judge of the Court of

Appeals, the trial shall proceed through remote video conferencing.

Committee note: The need for this Rule was a consequence of the 2020-2021 COVID-19 pandemic. While not limited to pandemics or other natural disasters, the invocation of this Rule should be considered only in the most dire and emergent circumstances. The Rule is not intended to substitute trial processes on virtual platforms for trials conducted in courthouses where participants can be physically present in a designated location. Trial judges are reminded to employ virtual jury trials as a procedure of last resort and to preserve the time-honored process of public trials with full and unfettered opportunity of parties to participate in the proceedings in person, except as otherwise permitted elsewhere in the Rules of Procedure.

(c) Pretrial Proceedings

(1) Scheduling Conference

If the court anticipates conducting a virtual jury trial in an action, or upon motion of a party, the court shall conduct a scheduling conference pursuant to Rule 2-504.1. At the scheduling conference, any party may note an objection to a virtual jury trial and provide reasons for the objection. The court shall consider the objection prior to determining whether a virtual jury trial will be held.

(2) Pretrial Conference

(A) Timing

The court shall conduct a pretrial conference no later than ten days before a virtual jury trial.

(B) Prior to Pretrial Conference

To the extent practicable, all proposed exhibits, other than rebuttal and impeachment exhibits, and requested jury selection questions shall be filed with the court and served on the other parties at least ten days before pretrial conference. To the extent practicable, any objections to the admissibility of an exhibit shall be filed and served within three days after service of the proposed exhibit.

(C) Considerations at Pretrial Conference

In addition to the matters listed in Rule 2-504.2 (b), the court shall consider the following matters in preparation for a virtual jury trial:

(i) an inquiry to confirm that each attorney, party, and witness has the technology required to participate;

Committee note: The court should direct all participants to familiarize themselves with the video conferencing software, exhibit presentation, use of breakout rooms, bench conferences, and other aspects of the virtual trial.

(ii) appropriate virtual backgrounds to be displayed by each attorney, party, and witness at all times;

(iii) resolution of any objections raised pursuant to subsection (c) (2) (B);

(iv) conversion into electronically viewable format of exhibits to be offered into evidence and, as appropriate, made available to jurors and witnesses;

(v) identification and determination of any objections to depositions under Rule 2-419 (d) at the pretrial conference;

(vi) additional instructions that are to be given pertaining to the remote nature of the jury trial;

Committee note: Instructions should include guidelines for participating in the virtual proceedings, such as a requirement that video cameras remain powered on throughout the entirety of the hearing, background noises and other distractions should be minimized, participants may only use their technological device to attend the proceeding, and all other technological devices must be powered off.

(vii) the method for providing jury instructions to jurors, such as through e-mail or via a court-approved secure file sharing service;

(xiii) a trial schedule designed to minimize the fatigue associated with online participation in a virtual trial; and

Committee note: A trial schedule designed to minimize fatigue may include limiting morning and afternoon sessions to three hours and scheduling periodic breaks. The judge and attorneys should make a reasonable effort to agree on the schedule, but if no agreement is reached, the court determines an appropriate trial schedule.

(ix) any other matters that can be resolved prior to trial to minimize sidebar conferences or otherwise expedite the trial proceedings.

(D) Pretrial Conference Order

Following the pretrial conference, the court shall enter a Pretrial Conference Order reciting the actions taken and

stipulations made. The Order shall control the subsequent proceedings and may be modified only to prevent injustice.

(d) Subpoenas

(1) Generally

In addition to complying with the content requirements of Rule 2-510, a subpoena issued to require the presence of an individual at a proceeding to be conducted by remote electronic participation shall describe the method by which that presence will be implemented and state that details will be supplied by a court official prior to the court proceeding. The party requesting the subpoena shall provide the court official in writing with an e-mail address for the individual subject to the subpoena. Unless impracticable, the court official shall send log-in information at least five days before the date of the virtual jury trial. The subpoena shall direct the individual subject to the subpoena to contact the party who requested the subpoena within three days if the individual is unable to effect his or her presence by the manner stated in the subpoena.

(2) If Remote Electronic Participation by Witness is Impracticable

If it is impracticable for a witness to appear by remote electronic participation for the proceeding, the subpoena may direct the witness to appear at the courthouse to participate with lawful and appropriate assistance from court personnel.

The party requesting the subpoena shall (A) file a return of service and (B) notify the clerk in writing at least three days before the trial if a witness was served with a subpoena pursuant to subsection (d)(2) of this Rule.

Committee note: The party requesting the subpoena should make reasonable efforts to secure an e-mail address for the witness to comply with subsection (d)(1). However, in the instance where remote electronic participation cannot be secured, subsection (d)(2) requires the witness to physically appear at the courthouse for assistance in complying with the subpoena.

(e) Jurors

(1) Jury Selection

(A) Juror Qualification Forms

A juror qualification form may be used to collect information regarding a juror's ability to participate in a virtual jury trial. The contents of the form shall comply with Rule 16-309 (b). Except as provided in Rule 2-512 (c), responses to juror qualification forms shall remain confidential.

(B) Examination

Jury selection may occur by video conferencing. In advance of the examination, case-specific written questionnaires may be used to elicit appropriate information. The parties shall have access to the jurors' responses to case-specific written questionnaires in advance of the examination to expedite the selection process.

(C) Additional Jurors

in addition to the alternates ordinarily selected for an in-person jury trial, the court may select up to two additional alternate jurors to serve on the jury panel.

Committee note: The additional alternate jurors permitted by subsection (e)(1)(C) account for jurors who experience technical difficulties that could prevent them from continuing with the trial or who develop a health-related issue that requires them to be excused.

(2) Jury Instructions

(A) The court shall provide empaneled jurors with instructions and training on the use of remote technology and the protocol for informing the court if they experience technical problems during the trial. Designated staff shall be made available to monitor and address technical issues.

Committee note: The Court's instructions for contacting designated court staff to convey technical problems or other issues during trial may include instructions for the jurors to contact staff by phone call, text messaging, email, or through video conferencing.

(B) At the commencement of trial, the court shall provide specific instructions and information to the jury that pertain to the remote format of the trial.

Committee note: The trial judge should provide an enhanced jury charge that emphasizes the need for jurors to give their full attention to the trial and to maintain the secrecy of jury proceedings.

(C) After all evidence has been presented, and pursuant to Rule 2-520, the court shall issue instructions to the jury by

video conferencing. At the court's discretion, jury instructions may be made available to jurors during deliberations in a digital viewing format.

(3) Jurors' Notes

Jurors shall be permitted to take notes but shall be instructed to destroy or delete those notes at the conclusion of the trial. A juror's notes may not be reviewed by or relied upon for any purpose by any person other than the author.

Cross reference: See Rule 2-521 (a) regarding jurors' notes during an in-person trial.

(4) Juror Review of Evidence

The court shall arrange for documentary evidence and a verdict sheet to be converted into a digital viewing format that is secure and available for juror access during deliberations.

(5) Deliberations

Jurors shall deliberate using the video conferencing software used to participate during the virtual jury trial. For deliberations, jurors shall be placed in a separate virtual breakout room, and no one other than the jurors shall be allowed access to the virtual deliberation room. Once a verdict has been reached, the jury foreperson shall notify the designated officer of the court, who will then notify the judge.

(6) Jury Verdict

Once a verdict has been reached, the jury shall be moved from the separate virtual breakout room to the virtual courtroom to return the verdict. The jury shall be polled before it is discharged. If the poll discloses that the jury has not concurred in the verdict, the court may direct the jury to retire for further deliberations or may discharge the jury.

Committee note: Although for in-person jury trials, Rule 2-522 (b) (4) requires polling of the jury "on request of a party or on the court's own initiative," subsection (e) (6) of this Rule requires polling of the jury for all virtual jury trials in which a verdict has been reached.

(7) Communication with Court

All communications by a juror shall be made to the court employee designated by the judge to receive them. Upon receipt of a communication from the jury or a juror, the designated employee shall promptly notify the judge of the communication. If the judge determines that the communication pertains to the action, the judge shall promptly, and before responding to the communication, direct that the parties be notified of the communication and invite and consider, on the record, the parties' positions on any response.

Cross reference: See Rule 2-521 (d) for communications with the jury during an in-person trial.

(f) Use of Electronic Devices

In accordance with the standards and requirements set forth in Rule 2-805, court personnel, parties to a case, and

witnesses may use technological equipment and video conferencing software to facilitate a virtual jury trial. A juror may use an electronic device with audio and video capabilities and video conferencing software to participate in the virtual jury trial. A juror may not use the electronic device for any purpose other than participating in the virtual jury trial while the trial is in session. Except during periods specified by the judge or as otherwise permitted by this Rule, other electronic devices shall be turned off or set on silent mode while the trial is in session.

Committee note: An example of a permitted use of an electronic device that otherwise is required to be turned off or set on silent mode is the use of the juror's cell phone to contact designated court staff regarding a technical problem with the video conferencing software.

(g) Recording Proceedings

A person may not record, download, or transmit an audio, audio-video, video, or still image of proceedings under this Rule except as directed by the court for compliance with Rule 2-804 (e) and (f).

Source: This rule is new.

REPORTER'S NOTE

On March 12, 2020, the Chief Judge of the Court of Appeals issued an Administrative Order on the Statewide Suspension of Jury Trials, suspending all civil and criminal jury trials throughout the State due to the outbreak of the novel coronavirus, COVID-19. Jury trials remained suspended until

October 5, 2020. On November 12, 2020, after significant increases in COVID-19 infection rates throughout the State, criminal and civil jury trials were again suspended by the Chief Judge's Third Amended Administrative Order Re-Imposing the Statewide Suspension of Jury Trials and Maintaining Grand Jury Trials. The Fifth Amended Administrative Order Re-Imposing the Statewide Suspension of Jury Trials and Maintaining Grand Juries, issued on December 22, 2020, extended the suspension until April 23, 2021.

On February 21, 2021, the Chief Judge issued the Eighth Administrative Order Restricting Statewide Judiciary Operations Due to the COVID-19 Emergency. The Eighth Administrative Order provided, "[T]he courts are authorized and shall conduct remote proceedings to the greatest extent possible during the health emergency..." As a result of COVID-19 and the necessary steps taken to suspend many in-person proceedings, all jurisdictions are facing a backlog of civil and criminal jury trials that must be addressed. The technology to conduct virtual civil jury trials is available and may be used to begin clearing the backlog of cases pending in circuit courts. The Rules Committee proposes new Rule 2-807 to establish the requirements for civil virtual jury trials.

The Rules Committee recognizes that virtual jury trials may not be appropriate in every case. Sections (a) and (b) limit the use of virtual jury trials. Section (a) states the applicability of the Rule to civil actions that the county's case management plan provides as eligible. Section (b) sets forth the two circumstances in which a virtual jury trial may be warranted, limited to situations where the parties and the County Administrative Judge consent or where a state of emergency is declared by the Governor and the Chief Judge. A proposed Committee note after section (b) explains that use of virtual jury trials is a procedure of last resort and courts should strive to have appropriate in-person proceedings.

To ensure that a virtual jury trial may be conducted smoothly, participants and the court must work to address unique concerns and issues associated with a virtual jury trial before the proceeding. Section (c) provides an overview of the pretrial proceedings required. Subsection (c)(1) requires that the court conduct a scheduling conference if a virtual jury trial is anticipated and states that any objections to a virtual jury trial may be raised at the scheduling conference. Subsection (c)(2) addresses pretrial conferences, including the timing of the conference, the procedures concerning exhibits and

related objections that must be completed prior to the pretrial conference, the considerations for the pretrial conference, and the entry of a signed Order after the pretrial conference. Three committee notes provide guidance on the importance of the enumerated considerations at the pretrial conference.

Section (d) addresses changes to the subpoena process for virtual jury trials. Subsection (d)(1) provides general guidance for use of subpoenas in a virtual jury trial while subsection (d)(2) creates an alternate procedure when remote electronic participation by a subpoenaed witness is impracticable. The Committee note after subsection (d)(2) clarifies that subsection (d)(2) provides a procedure when an e-mail address required in subsection (d)(1) cannot be obtained after reasonable efforts.

Information and procedures pertinent to jurors are addressed in section (e). Subsection (e)(1) concerns jury selection and several facets of the process impacted by the virtual nature of the proceedings. Jury instructions are addressed in subsection (e)(2), including a requirement that specific instructions pertaining to the remote format must be given at the commencement of trial. Subsections (e)(3) and (4) address a juror's ability to take notes and review evidence during deliberations. Subsection (e)(5) explains how deliberations are conducted in a separate virtual breakout room. The verdict of a jury for a virtual trial is addressed in subsection (e)(6), requiring polling of the jury before discharge. Communications between the court and virtual jurors throughout the proceeding are addressed by subsection (e)(7).

Section (f) concerns the use of electronic devices to participate in virtual jury trials and restricts the use of non-approved electronic devices by jurors. A common concern raised when considering virtual jury trials is the potential inability to properly monitor a juror's actions during the trial. Restrictions on the use of other devices during the trial are included in the Rule to help ensure that a juror's attention is devoted to the proceeding. The requirement that non-approved electronic devices be turned off or set on silent mode mirrors the common requirement imposed on jurors during in-person trials.

Section (g) prohibits the recording of proceedings. The prohibition is broadly drafted to ensure that all forms of recording of a virtual proceeding, such as taking screenshots, are prohibited.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 300 - CIRCUIT COURTS - ADMINISTRATION AND CASE

MANAGEMENT

AMEND Rule 16-302 by adding new subsection (b) (5) requiring a certain addition to be made to a case management plan pertaining to virtual jury trials, by renumbering current subsections (b) (5) and (b) (6) as subsections (b) (6) and (b) (7), respectively, and by adding a Committee note and cross reference following new subsection (b) (5), as follows:

RULE 16-302. ASSIGNMENT OF ACTIONS FOR TRIAL; CASE MANAGEMENT PLAN

(a) Generally

The County Administrative Judge in each county shall supervise the assignment of actions for trial in a manner that maximizes the efficient use of available judicial personnel, brings pending actions to trial, and disposes of them as expeditiously as feasible.

(b) Case Management Plan; Information Report

(1) Development and Implementation

(A) The County Administrative Judge shall develop and, upon approval by the Chief Judge of the Court of Appeals, implement a case management plan for the prompt and efficient scheduling and disposition of actions in the circuit court. The plan shall include a system of differentiated case management in which actions are classified according to complexity and priority and are assigned to a scheduling category based on that classification and, to the extent practicable, follow any template established by the Chief Judge of the Court of Appeals.

(B) The County Administrative Judge shall send a copy of the plan and all amendments to it to the State Court Administrator. The State Court Administrator shall review the plan or amendments and transmit the plan or amendments, together with any recommended changes, to the Chief Judge of the Court of Appeals.

(C) The County Administrative Judge shall monitor the operation of the plan, develop any necessary amendments to it, and, upon approval by the Chief Judge of the Court of Appeals, implement the amended plan.

. . .

(5) Virtual Jury Trials

In any jurisdiction where the County Administrative Judge deems it appropriate, the plan shall include procedures for the operation of virtual jury trials. The plan shall

consider each phase of a trial and the roles of the judge, courtroom clerk, bailiff, jury office, clerk's office, and Information Technology department. The plan for conducting a virtual jury trial shall include:

(A) categories of civil actions eligible for virtual jury trials;

Committee note: Examples of categories that courts may consider eligible for virtual jury trials include motor torts, slip and fall cases, and contract disputes.

(B) criteria to evaluate and determine which cases are appropriate for virtual trials;

Committee note: Examples of criteria to determine a case's suitability for a virtual trial include the number of plaintiffs and defendants, the number of parties that require translation services, and the complexity of legal issues raised.

(C) procedures for summoning jurors;

(D) methods to determine whether prospective jurors have access to technology with which to participate and the ability to participate in a private space;

(E) alternative means, if available, to offer prospective jurors that lack the ability to participate virtually;

Committee note: Alternative means may include providing each juror a technological device to use throughout the virtual proceedings or providing a secluded location, such as a conference room inside the courthouse or other remote location pursuant to Rule 2-801 (d), within which jurors may participate.

(F) exhibits and evidence management;

(G) technical training for bailiffs or other designated court personnel to assist prospective jurors with technical issues during check-in, trial, and deliberations; and

(H) measures to provide public access to virtual trials pursuant to Rule 2-804 (g).

Committee note: The intent of subsection (b) (5) is to allow for the possibility of remote electronic participation where appropriate, pursuant to the Seventh Administrative Order Restricting Statewide Judiciary Operations Due to the COVID-19 Emergency issued by the Chief Judge of the Court of Appeals on December 22, 2020, and any subsequent orders issued by the Court.

Cross reference: See Title 2, Chapter 800 and Rule 16-309 for provisions that may be included in the case management plan concerning the operation of remote jury trials.

~~(5)~~(6) Consultation.

. . .

~~(6)~~(7) Information Report.

. . .

Source: This Rule is derived in part from former Rule 16-202 (2016) and is in part new.

REPORTER'S NOTE

Rule 16-302 addresses the assignment of actions for trial and the information to be included in case management plans. To implement virtual jury trials as set forth in proposed new Rule 8-207, courts must develop appropriate procedures to ensure the success of proceedings by remote electronic participation.

Proposed new subsection (b) (5) permits the County Administrative Judge to include procedures for the operation of virtual jury trials in the jurisdiction's case management plan. This subsection sets forth seven criteria that must be included in the plan, including details about procedures for determining

appropriate cases, summoning jurors, determining use of technology, and ensuring public access to virtual trials. Committee notes after subsections (b) (5) (A), (B), and (E) highlight considerations unique to virtual trials and provide examples for reference. A proposed Committee note after subsection (b) (5) clarifies the intent of the subsection to allow for the possibility of virtual jury trials during the COVID-19 emergency. A cross reference to Title 2, Chapter 800 and Rule 16-309 points to other Rules that may provide guidance on pertinent considerations for case management plans. Additional stylistic changes renumber subsections as needed.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURT ADMINISTRATION
CHAPTER 300 - CIRCUIT COURTS - ADMINISTRATION AND CASE
MANAGEMENT

ADD new Rule 16-309, as follows:

RULE 16-309. REMOTE ELECTRONIC PARTICIPATION IN JURY CASES

(a) Applicability

This Rule applies to situations in which any significant proceeding in a case that may be tried before a jury may or will be conducted by remote electronic participation under Rule 2-807.

(b) Jury Plan

The Jury Plan adopted by the court pursuant to Code, Courts Article, Title 8, Subtitle 2 shall require that the juror qualification form created pursuant to Code, Courts Article, § 8-302 (a) inform a prospective juror that one or more proceedings in a case in which an individual may be called to sit as a juror may be conducted by remote electronic participation; (2) explain in sufficient detail and with clarity what that means and what that would require of a prospective juror; (3) inquire whether the prospective juror has the kind of

equipment and the knowledge and ability to operate that equipment necessary to be able to participate by means of remote electronic participation; and (4) inform the prospective juror that, if the answer to that question is "no" and if the prospective juror is otherwise found qualified and summoned to act as a juror, the individual may be able to participate from the courthouse with lawful and appropriate assistance from court personnel.

Committee note: Code, Courts Article, § 8-212 permits a jury plan to state any question to be included in the juror qualification form consistent with the interest of sound administration of justice and not inconsistent with the Code. It is critical, even when physical appearance at a proceeding is not feasible, that virtual jury pools represent a fair cross-section of the qualified citizenry. Remote electronic participation may be impossible or inordinately difficult for some people. Jury plans must take account of that and, when possible, make suitable provision for an alternative.

(c) Trial

(1) Generally

The county administrative judge, with the assistance of the court administrator, the clerk of the court, the Administrative Office of the Courts, and such other persons or entities that the county administrative judge finds necessary or useful, shall make reasonable efforts to make courtrooms, jury rooms, and other facilities safely available for jurors, witnesses, and court personnel to use, to avoid the need for

individual remote electronic participation in the trial itself or to reduce that need to the extent practicable.

(2) If Remote Electronic Participation at Trial is Required

If remote electronic participation at trial is required, the county administrative judge shall:

(A) designate and authorize one or more judicial employees to assist prospective jurors who require assistance in participating in juror selection procedures by remote electronic participation;

Committee note: A judicial employee designated pursuant to subsection (c) (2) (A) of this Rule should be instructed that the employee's role is strictly limited to assisting the prospective juror in responding to questions and that the employee is not to discuss what the juror's responses should be.

(B) assure that all members of the jury, including alternates, witnesses, and court personnel are able to participate by remote electronic participation; and

(C) provide a method for jurors to communicate with the judge when necessary and appropriate.

Source: This Rule is new.

REPORTER'S NOTE

With the implementation of virtual jury trials as set forth in proposed new Rule 2-807, court administration will need to develop certain procedures and practices for remote trials to be successful. Proposed new Rule 16-309 sets forth considerations for the county administrative judge when contemplating implementation of virtual jury trials.

Section (a) states the applicability of the Rule.

Section (b) includes requirements for a jury plan to ensure proper consideration of prospective jurors. A Committee note following section (b) addresses the concern that the jury pool for a virtual jury trial may not accurately reflect a cross-section of the population, requiring suitable provisions for alternatives to remote electronic participation when possible.

Subsection (c)(1) acknowledges that reasonable efforts must be made to avoid the need for remote electronic participation in a jury trial, demonstrating the preference for in-person proceedings when possible. Subsection (c)(2) lists important actions required by the county administrative judge with respect to virtual jury trials. A Committee note clarifies that employees designated to assist prospective jurors with the juror selection process by remote electronic participation are limited to assisting the prospective juror in responding to questions.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 800 - MISCELLANEOUS COURT ADMINISTRATION MATTERS

AMEND Rule 16-803 by adding a reference to Emergency Orders in section (b) and by adding a Committee note after section (b), as follows:

RULE 16-803. CONTINUITY OF OPERATIONS PLAN

. . .

(b) Conformance to AOC Guidelines and Emergency Orders

The plan shall conform to guidelines established by the Administrative Office of the Courts and is subject to emergency orders issued by the Chief Judge of the Court of Appeals pursuant to Rules 16-1001 through 16-1003. The plan and any amendments to it shall be submitted to the State Court Administrator.

Committee note: Jury plans are governed in part by Code, Courts Article, Title 8, Subtitle 2, but the Court of Appeals may adopt Rules to govern the provisions and implementation of those plans. See Code, Courts Article, § 8-202. Jury plans proposed by the circuit courts are subject to approval by the Court of Appeals. See Code, Courts Article, § 8-203.

. . .

REPORTER'S NOTE

Rule 16-803 concerns the need for continuity of operations plans. Section (b) requires continuity of operations plans to comply with any guidelines established by the Administrative Office of the Courts. Proposed amendments to section (b) provide that continuity of operations plans are also subject to emergency orders issued by the Chief Judge of the Court of Appeals pursuant to Rules 16-1001 through 16-1003. A proposed Committee note after section (b) notes that jury plans are governed by Code, Courts Article, Title 8, Subtitle 2.

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

AMEND Rule 2-504 by amending subsection (b) (2) (I) to reference remote electronic participation, and by making stylistic changes to subsection (b) (2), as follows:

RULE 2-504. SCHEDULING ORDER

. . .

(b) Contents of Scheduling Order

. . .

(2) Permitted

A scheduling order ~~may~~ also may contain:

. . .

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

(I) procedures and requirements the court finds necessary when any proceedings in the action will be conducted by remote electronic participation pursuant to Title 2, Chapter 800 of these Rules; and

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

. . .

REPORTER'S NOTE

Rule 2-504 addresses scheduling orders for civil actions in circuit court. Section (b) sets forth the required and permitted contents of a scheduling order. In light of increased virtual proceedings, each jurisdiction may consider addressing procedures and requirements for remote electronic participation in a civil scheduling order. Proposed new subsection (b)(2)(I) provides that scheduling orders may, but are not required, to include necessary procedures and requirements for proceedings conducted by remote electronic participation. Stylistic changes are also proposed to subsection (b)(2).

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

AMEND Rule 2-504.1 by amending section (a) to reference remote electronic proceedings, by adding new subsection (a) (3) regarding proceedings conducted by remote electronic participation, and by making stylistic changes, as follows:

RULE 2-504.1. SCHEDULING CONFERENCE

(a) When Required

In any of the following circumstances, the court shall issue an order requiring the parties to attend a scheduling conference, in person or by remote electronic participation pursuant to the Rules in Title 2, Chapter 800 of these Rules:

(1) in an action placed or likely to be placed in a scheduling category for which the case management plan adopted pursuant to Rule 16-302 (b) requires a scheduling conference;

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

(3) in an action in which jury selection or any other significant proceeding will be conducted by remote electronic participation; or

~~(3)~~(4) in an action, in which a party requests a scheduling conference and represents that, despite a good faith effort, the parties have been unable to reach an agreement ~~(i)~~(A) on a plan for the scheduling and completion of discovery, ~~(ii)~~(B) on the proposal of any party to pursue an available and appropriate form of alternative dispute resolution, or ~~(iii)~~(C) on any other matter eligible for inclusion in a scheduling order under Rule 2-504.

. . .

REPORTER'S NOTE

Actions requiring scheduling conferences are listed in Rule 2-504.1 (a). Proposed amendments to section (a) indicate that scheduling conferences may be held in person or by remote electronic participation pursuant to the Rules in Title 2, Chapter 800. Proposed new subsection (a)(3) requires a scheduling conference to be held in actions in which jury selection or any other significant proceeding will be conducted by remote electronic participation. The proposed subsection is in conformance with proposed new Rule 2-807 (c)(1), requiring a scheduling conference when a jury trial will be conducted by remote electronic participation. Stylistic changes are also proposed.

