

MARYLAND STATE BOARD OF LAW EXAMINERS
July 2014 Out-of-State Attorney's Exam
BOARD'S ANALYSIS

Notice: The Out of State Attorney's Exam Board's Analysis consists of a discussion of the principal legal and factual issues raised by each question on the Maryland Out-of-State Attorney Exam. It is prepared by the Board. The Board's Analysis is not a model answer, nor is it an exhaustive listing of all possible legal issues suggested by the facts of the question.

Question 1

The validity of the arrest and search should be challenged with a Maryland Rule 4-252(a)(3) mandatory pretrial motion (unlawful search and seizure). Said motion must be filed within 30 days of the earlier of the entries of appearance or the defendants' first appearance in circuit court. Md. R. 4-252(b).

Under Maryland Rule 4-221(a), a Defendant is entitled to a preliminary hearing upon timely request. The court has no discretion to deny this request. Md. R. 4-221(a).

The defendants could be indicted by the State, which would eliminate their right to a preliminary hearing. Md. R. 4-221(c)(1).

Question 2

Attorney Martin should argue for the exclusion of the testimony based upon the fact that one spouse is not considered competent to disclose any confidential communications between the spouses which occurred during the marriage, and it is James' privilege to exercise in this instance. Md. Code Ann., Cts. & Jud. Proc. § 9-105 (2002); *Miles v. State*, 365 Md. 488, 781 A.2d 787 (2001).

Attorney Martin can demonstrate that James and Dolly were married at the time of the conversation, that the statement was made to Dolly within the confidential bounds of that marriage (with no one else present), and with the expectation that it would go no further than the two spouses having the conversation; therefore, the court should properly exclude any of Dolly's testimony related to marital conversations with James, as James is permitted to preclude her testimony as incompetent in this regard. *Matthews v. State*, 89 Md. App. 488 (1991).

Question 3

Pursuant to Maryland Rule 5-607, the credibility of a witness may be attacked by any party, including the party calling the witness. Md. R. 5-607. In addition, a witness may be asked about prior statements provided that the statement at issue is disclosed and the witness is given an opportunity to explain or deny the statement in question. Md. R. 5-613.

Question 4

This issue is governed by Maryland Rule 5-609. Both convictions are within the fifteen-year time limit established by the Rule for admission on credibility grounds. Md. R. 5-609(b). A *nolo contendere* plea is the same as a guilty plea for the purposes of this Rule. Md. R. 5-609(d).

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Malicious destruction of property is neither an "infamous" crime nor "relevant to the witness's credibility." Md. R. 5-609(a). As a result, evidence of this conviction would be inadmissible.

Possession with intent to distribute CDS has been held by the Court of Appeals to be an "infamous" crime, and, therefore, admission of evidence of this conviction is properly admissible as it bears on Zachary's credibility. *State v. Woodland*, 357 Md. 519 (1995).

Question 5

James may file a motion for a new trial within ten days of the verdict (he must do so before sentence is imposed). Md. R. 4-331(a).

James may file for the judgment to be set aside as unjust or improper within ninety days of the date of sentencing. Md. R. 4-331(b).

James may file for a review (three-judge panel) of the sentence within thirty days of the date of imposition of sentence. Md. R. 4-344. He may also file for a modification of sentence within ninety days of the imposition of sentence. Md. R. 4-345.

James may also file an appeal to the Court of Special Appeals within thirty days of the imposition of sentence. Md. Code Ann., Cts. & Jud. Proc. 12-301 (2002); Md. R. 8-202(a); *Miller v. State*, 1 Md. App. 653, 232 A.2d 548 (1967); *Stewart v. State*, 282 Md. 557, 386 A.2d 1206 (1978); *Jones v. State*, 298 Md. 634, 471 A.2d 1055 (1983); *Ridgeway v. State*, 140 Md. App. 49, 779 A.2d 1031 (2001). In the event that a motion for new trial is filed pursuant to Maryland Rule 4-331(a), the notice of appeal must be filed within thirty days after the later of the imposition of sentence or entry of a notice withdrawing the motion for new trial, or an order denying the motion. Md. R. 8-202(b).

James would no longer have an automatic right of appeal; he would need to seek leave to appeal to the Court of Special Appeals. Md. R. 8-204; Md. Code Ann. Cts. & Jud. Proc. §12-302(e). All other options would remain the same.

Question 6

Venue would be proper either in Prince George's County, as George lives there, or in Montgomery County, as George and carries on regular business there, and that is where the incident occurred. Md. Code Ann., Cts. & Jud. Proc. §§ 6-201 (2002).

The amount in question places the matter squarely within the jurisdiction of the circuit court. Md. Code Ann. Cts. & Jud. Proc. §§ 1-501, 4-401(2002).

An answer to the complaint and a response to the motion must be filed within thirty days of service on George. Md. R. 2-311(b).

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Question 7

Millard must seek leave of court pursuant to Maryland Rule 2-411 and serve notice in accordance with Maryland Rule 2-412. Md. R. 2-411, 412.

Abraham must attempt to conduct the deposition to the extent practicable. Md. R. 2-415(h). Abraham must then file a Motion to Compel Discovery pursuant to Maryland Rule 2-432(b)(B). The Motion must be filed with reasonable promptness, and contain the good-faith certification required by Maryland Rule 2-431. Md. R. 2-431, 432(d).

Question 8

The deposition may be entered into evidence due to Franklin's incarceration. Md. R. 2-419(a)(3)(C).

Question 9

George can file a motion for judgment notwithstanding the verdict (JNOV) pursuant to Maryland Rule 2-532 within ten days of the date of the entry of judgment on the record, or a motion for a new trial pursuant to Maryland Rule 2-533 within ten days of the entry of judgment. Md. R. 2-532, 533. Within 30 days, George could also file a revisory motion under Maryland Rule 2-535. Md. R. 2-535. George could also file a direct appeal to the Court of Special Appeals. Md. Code Ann., Cts. & Jud. Proc. § 12-301 (2011). Such an appeal must be filed within thirty days of the entry of judgment. Md. R. 8-202.

The Motion for JNOV may only be made if George made a motion for judgment at the close of all the evidence in the trial, which he did. Md. R. 2-532. There are no such restrictions on the motion for a new trial.

Question 10

Contingency fee agreements must be in writing. M.R.P.C. 1.5(c) (all references to the M.R.P.C. are found under Maryland Rule 16-812).

A "three-quarters to the attorney" contingency fee is *prima facie* excessive and unethical. M.R.P.C. 1.5(a); *Attorney Grievance Commission of Maryland v. Korotki*, 318 Md. 646 (1990).

An attorney is absolutely obligated to respond. M.R.P.C. 8.1(b).