

**MARYLAND BAR EXAMINATION  
BOARD'S WRITTEN TEST**

**February 23, 2016**

**EXTRACT FOR QUESTION 5**

**THIS EXTRACT IS TO BE USED FOR QUESTION 5 OF THE BOARD'S WRITTEN TEST. THIS EXTRACT CONTAINS SELECTED PROVISIONS OF THE MARYLAND RULES.**

**Note: Asterisks (\* \* \*) indicate places where material contained in the Maryland Rules has been omitted from this extract.**

**MARYLAND RULES**

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**TITLE 2. CIVIL PROCEDURE -- CIRCUIT COURT**

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**CHAPTER 500. TRIAL**

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**Rule 2-533. Motion for new trial**

(a) Time for filing. Any party may file a motion for new trial within ten days after entry of judgment. A party whose verdict has been set aside on a motion for judgment notwithstanding the verdict or a party whose judgment has been amended on a motion to amend the judgment may file a motion for new trial within ten days after entry of the judgment notwithstanding the verdict or the amended judgment. A motion for new trial filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

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(b) Grounds. All grounds advanced in support of the motion shall be filed in writing within the time prescribed for the filing of the motion, and no other grounds shall thereafter be assigned without leave of court.

(c) Disposition. The court may set aside all or part of any judgment entered and grant a new trial to all or any of the parties and on all of the issues, or some of the issues if the issues are fairly severable. If a partial new trial is granted, the judge may direct the entry of judgment as to the remaining parties or issues or stay the entry of judgment until after the new trial. When a motion for new trial is joined with a motion for judgment notwithstanding the verdict and the motion for judgment notwithstanding the verdict is granted, the court at the same time shall decide whether to grant that party's motion for new trial if the judgment is thereafter reversed on appeal.

(d) Costs. If a trial or appellate court has ordered the payment of costs as a part of its action in granting a new trial, the trial court may order all further proceedings stayed until the costs have been paid.

**Rule 2-534. Motion to alter or amend a judgment -- Court decision**

In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial. A motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

**Rule 2-535. Revisory power**

(a) Generally. On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

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(b) Fraud, mistake, irregularity. On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

(c) Newly-discovered evidence. On motion of any party filed within 30 days after entry of judgment, the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 2-533.

(d) Clerical mistakes. Clerical mistakes in judgments, orders, or other parts of the record may be corrected by the court at any time on its own initiative, or on motion of any party after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed by the appellate court, and thereafter with leave of the appellate court.

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**Rule 2-541. Magistrates**

(a) Appointment -- Compensation.

(1) Standing Magistrate. A majority of the judges of the circuit court of a county may appoint a full time or part time standing magistrate and shall prescribe the compensation, fees, and costs of the magistrate.

(2) Special Magistrate. The court may appoint a special magistrate for a particular action and shall prescribe the compensation, fees, and costs of the special magistrate and assess them among the parties. The order of appointment may specify or limit the powers of a special magistrate and may contain special directions.

(3) Officer of the court. A magistrate serves at the pleasure of the appointing court and is an officer of the court in which the referred matter is pending.

(b) Referral of cases.

(1) Referral of domestic relations matters to a magistrate shall be in accordance with Rule 9-208 and shall proceed only in accordance with that Rule.

(2) On motion of any party or on its own initiative, the court, by order, may refer to a magistrate any other matter or issue not triable of right before a jury.

(c) Powers. Subject to the provisions of any order of reference, a magistrate has the power to regulate all proceedings in the hearing, including the powers to:

(1) Direct the issuance of a subpoena to compel the attendance of witnesses and the production of documents or other tangible things;

(2) Administer oaths to witnesses;

(3) Rule upon the admissibility of evidence;

(4) Examine witnesses;

(5) Convene, continue, and adjourn the hearing, as required;

(6) Recommend contempt proceedings or other sanctions to the court; and

(7) Recommend findings of fact and conclusions of law.

(d) Hearing.

(1) Notice. The magistrate shall fix the time and place for the hearing and shall send written notice to all parties.

(2) Attendance of witnesses. A party may procure by subpoena the attendance of witnesses and the production of documents or other tangible things at the hearing.

(3) Record. All proceedings before a magistrate shall be recorded either stenographically or by an electronic recording device, unless the making of a record is waived in writing by all parties. A waiver of the making of a record is also a waiver of the right to file any exceptions that would require review of the record for their determination.

(e) Report.

(1) When filed. The magistrate shall notify each party of the proposed recommendation, either orally at the conclusion of the hearing or thereafter by written notice served pursuant to Rule 1-321. Within five days from an oral notice or from service of a written notice, a party intending to file exceptions shall file a notice of intent to do so and within that time shall deliver a copy to the magistrate. If the court has directed the magistrate to file a report or if a notice of intent to file exceptions is filed, the magistrate shall file a written report with the recommendation. Otherwise, only the recommendation need be filed. The report shall be filed within 30 days after the notice of intent to file exceptions is filed or within such other time as the court directs. The failure to file and deliver a timely notice is a waiver of the right to file exceptions.

(2) Contents. Unless otherwise ordered, the report shall include findings of fact and conclusions of law and a recommendation in the form of a proposed order or judgment, and shall be accompanied by the original exhibits. A transcript of the proceedings before the magistrate need not be prepared prior to the report unless the magistrate directs, but, if prepared, shall be filed with the report.

(3) Service. The magistrate shall serve a copy of the recommendation and any written report on each party pursuant to Rule 1-321.

(f) Entry of order.

(1) The court shall not direct the entry of an order or judgment based upon the magistrate's recommendations until the expiration of the time for filing exceptions, and, if exceptions are timely filed, until the court rules on the exceptions.

(2) If exceptions are not timely filed, the court may direct the entry of the order or judgment as recommended by the magistrate.

(g) Exceptions.

(1) How taken. Within ten days after the filing of the magistrate's written report, a party may file exceptions with the clerk. Within that period or within three days after service of the first exceptions, whichever is later, any other party may file exceptions. Exceptions shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

(2) Transcript. Unless a transcript has already been filed, a party who has filed exceptions shall cause to be prepared and transmitted to the court a transcript of so much of the testimony as is necessary to rule on the exceptions. The transcript shall be ordered at the time the exceptions are filed, and the transcript shall be filed within 30 days thereafter or within such longer time, not exceeding 60 days after the exceptions are filed, as the magistrate may allow. The court may further extend the time for the filing of the transcript for good cause shown. The excepting party shall serve a copy of the transcript on the other party. Instead of a transcript, the parties may agree to a statement of facts or the court by order may accept an electronic recording of the proceedings as the transcript. The court may dismiss the exceptions of a party who has not complied with this section.

(h) Hearing on exceptions. The court may decide exceptions without a hearing, unless a hearing is requested with the exceptions or by an opposing party within five days after service of the exceptions. The exceptions shall be decided on the evidence presented to the magistrate unless: (1) the excepting party sets forth with particularity the additional evidence to be offered and the reasons why the evidence was not offered before the magistrate, and (2) the court determines that the additional evidence should be considered. If additional evidence is to be considered, the court may remand the matter to the magistrate to hear the additional evidence and to make appropriate findings or conclusions, or the court may hear and consider the additional evidence or conduct a de novo hearing.

(i) Costs. Payment of the compensation, fees, and costs of a magistrate may be compelled by order of court. The costs of any transcript may be included in the costs of the action and assessed among the parties as the court may direct.

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## **Rule 2-551. In banc review**

(a) Generally. When review by a court in banc is permitted by the Maryland Constitution, a party may have a judgment or determination of any point or question reviewed by a court in banc by filing a notice for in banc review. Issues are reserved for in banc review by making an objection in the manner set forth in Rules 2-517 and 2-520. Upon the filing of the notice, the Circuit Administrative Judge shall designate three judges of the circuit, other than the judge who tried the action, to sit in banc.

(b) Time for filing. Except as otherwise provided in this section, the notice for in banc review shall be filed within ten days after entry of judgment. When a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice for in banc review shall be filed within ten days after entry of an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534. A notice for in banc review filed before the disposition of any of these motions that was timely filed shall have no effect, and a new notice for in banc review must be filed within the time specified in this section.

(c) Memoranda. Within 30 days after the filing of the notice for in banc review, the party seeking review shall file four copies of a memorandum stating concisely the questions presented, any facts necessary to decide them, and supporting argument. Within 15 days thereafter, an opposing party who wishes to dispute the statement of questions or facts shall file four copies of a memorandum stating the alternative questions presented, any additional or different facts, and supporting argument. In the absence of such dispute, an opposing party may file a memorandum of argument.

(d) Transcript. Promptly after the filing of memoranda, a judge of the panel shall determine, by reviewing the memoranda and, if necessary, by conferring with counsel, whether a transcript of all or part of the proceeding is reasonably required for decision of the questions presented. If a transcript is required, the judge shall order one of the parties to provide the transcript and shall fix a time for its filing. The expenses of the transcript shall be assessed as costs against the losing party, unless otherwise ordered by the panel.

(e) Hearing and decision. A hearing shall be scheduled as soon as practicable but need not be held if all parties notify the clerk in writing at least 15 days before the scheduled hearing date that the hearing has been waived. In rendering its decision, the panel shall prepare and file or dictate into the record a brief statement of the reasons for the decision.

(f) Motion to shorten or extend time requirements. Upon motion of any party filed pursuant to Rule 1-204, any judge of the panel may shorten or extend the time requirements of this Rule, except the time for filing a notice for in banc review.

(g) Dismissal. The panel, on its own initiative or on motion of any party, shall dismiss an in banc review if (1) in banc review is not permitted by the Maryland Constitution, (2) the notice for in banc review was prematurely filed or not timely filed, or (3) the case has become moot, and the panel may dismiss if the memorandum of the party seeking review was not timely filed.

(h) Further review. Any party who seeks and obtains review under this Rule has no further right of appeal. The decision of the panel does not preclude an appeal to the Court of Special Appeals by an opposing party who is otherwise entitled to appeal.

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### **Rule 8-201. Method of securing review -- Court of Special Appeals**

(a) By notice of appeal. Except as provided in Rule 8-204, the only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within the time prescribed in Rule 8-202. The notice shall be filed with the clerk of the lower court or, in an appeal from an order or judgment of an Orphans' Court, with the register of wills. The clerk or register shall enter the notice on the docket.

(b) Filing fees. At the time of filing a notice of appeal in a civil case, or within the time for transmitting the record under Rule 8-412 in a criminal case, an appellant shall deposit the fee prescribed pursuant to Code, Courts Article, § 7-102 with the clerk of the lower court unless:

(1) if the appeal is in a civil action, the prepayment of prepaid costs has been waived in accordance with Rule 1-325.1; or

(2) if the appeal is in a criminal action, the fee has been waived by an order of court or the appellant is represented by the Public Defender's Office

(c) Transmittal of record. After all required fees have been deposited, the clerk shall transmit the record as provided in Rules 8-412 and 8-413. The fee shall be forwarded with the record to the Clerk of the Court of Special Appeals.

### **Rule 8-202. Notice of appeal -- Times for filing**

(a) Generally. Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken. In this Rule, "judgment" includes a verdict or decision of a circuit court to which issues have been sent from an Orphans' Court.

(b) Criminal action -- Motion for new trial. In a criminal action, when a timely motion for a new trial is filed pursuant to Rule 4-331 (a), the notice of appeal shall be filed within 30 days after the later of (1) entry of the judgment or (2) entry of a notice withdrawing the motion or an order denying the motion.

(c) Civil action -- Post judgment motions. In a civil action, when a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534. A notice of appeal filed before the withdrawal or disposition of any of these motions does not deprive the trial court of jurisdiction to dispose of the motion. If a notice of appeal is filed and thereafter a party files a timely motion pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be treated as filed on the same day as, but after, the entry of a notice withdrawing the motion or an order disposing of it.

(d) When notice for in banc review filed. A party who files a timely notice for in banc review pursuant to Rule 2-551 or 4-352 may file a notice of appeal provided that (1) the notice of appeal is filed within 30 days after entry of the judgment or order from which the appeal is taken and (2) the notice for in banc review has been withdrawn before the notice of appeal is filed and prior to any hearing before or decision by the in banc court. A notice of appeal by any other party shall be filed within 30 days after entry of a notice withdrawing the request for in banc review or an order disposing of it. Any earlier notice of appeal by that other party does not deprive the in banc court of jurisdiction to conduct the in banc review.

(e) Appeals by other party -- Within ten days. If one party files a timely notice of appeal, any other party may file a notice of appeal within ten days after the date on which the first notice of appeal was filed or within any longer time otherwise allowed by this Rule.

(f) Date of entry. "Entry" as used in this Rule occurs on the day when the clerk of the lower court enters a record on the docket of the electronic case management system used by that court.

**(END OF EXTRACT)**

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